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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

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December 22, 2016

Elizabeth J. Fischmann
Designated Agency Ethics Official
U.S. Department of Health and Human Services
200 Independence Ave SW
Washington, DC 2020

Dear Ms. Fischmann:

I write today to request information on your agency's implementation of the Ethics in Government Act and how you will address the potential conflicts of interest of nominees that require Senate confirmation.

As you may be aware, President-elect Donald Trump has indicated that he plans to depart from the practices of past presidents and will not conduct himself in a manner consistent with federal conflict of interest laws. President-elect Trump also recently cancelled a press conference at which he had promised to announce the steps he would take with respect to his business and financial interests and, as of this date, has yet to reschedule it. However, the President's nominees, if confirmed by the Senate, will be subject to criminal and civil penalties for violations of these laws, which require the disqualification of an executive branch official from participating in any governmental matter in which that official has any financial interest.¹

Regulations issued by the Office of Government Ethics set forth the uniform financial disclosure procedures and requirements necessary to address potential conflicts of interests prior to Senate confirmation.² First, a nominee's financial disclosure statement, which lists certain financial holdings, must be filed with the designated agency ethics official, who coordinates and manages an agency's ethics program.³ The designated agency ethics official then, in accordance with the standards and procedures of all other reviews, conducts an expedited review of this statement.⁴

¹ 18 U.S.C. § 208 provides criminal penalties for "an officer or employee of the executive branch of the United States Government ... [who] participates personally and substantially as a Government officer or employee, through decision, approval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee ... has a financial interest...."

² 5 C.F.R. § 2634.101 (2015).

³ 5 C.F.R. § 2634.602 (2015). The Office of Government Ethics also receives copies of the report. *Id.*

⁴ 5 C.F.R. § 2634.605(c) (2015).

Second, if this review identifies any current or potential conflicts of interest, the agency may require the nominee to take remedial action and memorialize these steps in an ethics agreement.⁵ This agreement will include promises to undertake specific actions upon confirmation in order to alleviate actual or apparent conflicts of interest, including through recusals, divestitures, resignations, waivers, or the establishment of qualified blind or diversified trusts.

Third, the designated agency ethics official certifies that the nominee has no unresolved conflicts of interest and transmits the statement and ethics agreements to the Office of Government Ethics.⁶ The Director of the Office of Government Ethics then reviews these materials. If satisfied that no unresolved conflict of interest exist, the Director signs and dates these documents and then submits them with a letter to the appropriate Senate committee stating that the nominee has complied with all conflict of interest laws and regulations.⁷

By law, presidential nominees are required to file their financial disclosure statement within five days of the President's formal transmission of the nomination to the Senate.⁸ The nominee must, at or before the commencement of the first Senate committee hearing to consider the nomination, file an updated statement with the appropriate Senate committee.⁹ Failure to adhere to these long-standing requirements may subject an appointee to criminal or civil penalties under federal law.¹⁰

As the principal manager of your agency's ethics program, you play an important role by assuring that public servants remain free from conflicts of interest and that public service remains a public trust. It is important that Congress support your office's ability to fulfill its responsibilities under the Ethics in Government Act regardless of any inappropriate pressure that may occur. To better understand how your office will address the potential conflicts of interest of nominees that require Senate confirmation, please provide the following information by January 5, 2016:

1. Have any representatives of the Office of the President-elect contacted your office? If so, please indicate the date on which your office was initially contacted.
2. Since November 8, 2016, for individuals the President-elect has announced his intention to nominate to an executive branch position, have you received any financial disclosure statements, including a Form OGE 278, for your review? If so, please indicate the date you initially received these statements.

⁵ 5 C.F.R. §§ 2634.605(b)(4)–(5) (2015).

⁶ 5 C.F.R. § 2634.605(c)(2)(iii)(B) (2015).

⁷ 5 C.F.R. § 2634.605(c)(3) (2015).

⁸ 5 U.S.C. app. § 101(b) (2014).

⁹ 5 U.S.C. app. § 101(b) (2014); 5 C.F.R. § 2634.606(a) (2015).

¹⁰ 18 U.S.C. §§ 208, 216 (2014).

3. Since November 8, 2016, has any individual the President-elect has announced his intention to nominate to an executive branch position refused to provide any information that you believe is necessary to conduct a conflicts analysis as required by law?
4. Since November 8, 2016, have you been asked to conduct an expedited review of a financial disclosure statement under a timeline you believe would not allow you to fulfill your responsibilities under the Ethics in Government Act?
5. What are the standards your office uses to make a referral to the Department of Justice when an executive branch official participates directly and substantially in a matter in which they have a financial interest?
6. What are the standards your office uses to make a referral to the Department of Justice when an executive branch official violates an ethics agreement, including an appointee's failure to divest certain assets or participation in a matter from which the appointee is recused?
7. If an executive branch employee believes an appointee is participating in a matter from which the appointee is recused or is otherwise in violation of the Ethics in Government Act, where should this potential misconduct be reported?

[REDACTED]
[REDACTED] Thank you very much for your attention to this matter.

With best personal regards, I am

Sincerely yours,



Tom Carper
Ranking Member

cc: The Honorable Ron Johnson
Chairman

The Honorable Claire McCaskill
United States Senator

