

Congress of the United States
Washington, DC 20510

April 21, 2017

Stefan C. Passantino
Deputy White House Counsel
and Designated Agency Ethics Official
Office of the White House Counsel
1600 Pennsylvania Avenue N.W.
Washington, D.C. 20500

Dear Mr. Passantino,

We write today to seek clarification on disclosures included in your Form 278e that indicate a previous financial connection to Carl Icahn, an adviser to President Trump, as well as financial connections to other Administration officials, and to understand your compliance with federal ethics regulations.

Federal Ethics Requirements

As you know, President Trump signed Executive Order 13770 on January 28, 2017, committing all political appointees in the Trump Administration to an “Ethics Pledge.”¹ Among other provisions, the Ethics Pledge requires that an appointee not “participate in any particular matter involving specific parties that is directly and substantially related to” any person that the appointee “served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment.” The ban extends for two years after the date of appointment.²

In addition, federal ethics regulations require executive branch employees performing “official duties” to “avoid an appearance of loss of impartiality.”³ An employee “should not participate in a particular matter” when he or she is in a “covered relationship” with a person who “is or represents a party” in that matter.⁴ An executive branch employee is considered to be in a “covered relationship” with individuals “for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.”⁵

Financial Connections to Special Advisor Carl Icahn

¹ President Donald J. Trump, “Executive Order 13770,” *WhiteHouse.gov* (January 28, 2017) (online at <https://www.whitehouse.gov/the-press-office/2017/01/28/executive-order-ethics-commitments-executive-branch-appointees>).

² *Id.*

³ 5 C.F.R. § 2635.501 (online at <https://www.law.cornell.edu/cfr/text/5/2635.501>).

⁴ *Id.*

⁵ 5 C.F.R. § 2635.502 (online <https://www.law.cornell.edu/cfr/text/5/2635.502>).

On December 21, 2016, then President-elect Trump announced that billionaire investor Carl Icahn would serve the President as a “special advisor to the president on issues related to regulatory reform.”⁶ The White House has treated Mr. Icahn as an informal advisor, allowing him to avoid complying with basic standards that apply to other federal employees, such as requirements to disclose conflicts of interest or divest from financial assets that pose potential conflicts.⁷ As a result, Mr. Icahn has been advising President Trump while simultaneously serving as the Chairman of the Board and majority shareholder of Icahn Enterprises, a “diversified holding company.” Ethics watchdogs have called Mr. Icahn’s arrangement “the purest definition of a conflict of interest that you can get.”⁸ Several of us have written to both White House Counsel Don McGahn and Mr. Icahn seeking information on Mr. Icahn’s role in the White House and any financial disclosures he has been required to file but have received no response.⁹

The White House has not offered any justification for its classification of Mr. Icahn or its decision not to follow these basic ethics procedures for someone advising the President on a broad range of issues.

You are the Designated Agency Ethics Official (“DAEO”) for the Executive Office of the President.¹⁰ In your capacity as the DAEO, you are “responsible for coordinating and managing the...ethics program”¹¹ by enforcing the executive branch financial disclosure requirements included in Title I of the Ethics in Government Act of 1978 and 5 C.F.R. Part 2634.¹²

You are responsible for ensuring that the classification of Mr. Icahn is appropriate, determining which ethics rules do and do not apply to Mr. Icahn, and ensuring that Mr. Icahn is complying with these rules.

However, you have recently disclosed that you previously worked for Mr. Icahn, which raises obvious conflict of interest questions about your potential role as the official responsible for approving and enforcing his ethics requirements.

⁶ The Trump-Pence Transition Team, “President-Elect Donald J. Trump Names Carl Icahn Special Advisor to the President on Regulatory Reform” (December 21, 2016) (online at <https://greatagain.gov/icahn-advisor-regs-cd3c949af118>).

⁷ David Dayen, “Crony Capitalism at Work? Trump Adviser Carl Icahn Strong-Arms Ethanol Lobby to Save His Company Millions,” *The Intercept* (March 2, 2017) (online at <https://theintercept.com/2017/03/02/crony-capitalism-at-work-trump-adviser-carl-icahn-strong-arms-ethanol-lobby-to-save-his-company-millions/>).

⁸ Icahn Enterprises L.P., “Investor Relations” (online at <http://www.ielp.com/investor.cfm>); Jennifer A Dlouhy, Ari Natter, and Bill Allison, “‘Purest Definition of a Conflict’: Icahn’s \$126 Million Gain on Biofuel Deal Draws Criticism,” *Bloomberg Markets* (March 1, 2017) (online at <https://www.bloomberg.com/news/articles/2017-02-28/icahn-s-126-million-gain-on-biofuel-deal-prompts-criticism>).

⁹ Letter to Don McGahn, White House Counsel, from Senators Whitehouse, Stabenow, Brown, Klobuchar, Franken, Baldwin, and Warren (February 13, 2017).

¹⁰ U.S. Office of Government Ethics, “DAEO List” (April 10, 2017) (online at <https://www.oge.gov/Web/OGEnsf/Resources/DAEO+List>).

¹¹ 5 C.F.R. § 2635.107 (online at <https://www.law.cornell.edu/cfr/text/5/2635.107>).

¹² U.S. Office of Government Ethics, “Designated Agency Ethics Official and Alternate Designated Agency Ethics Official” (online at <https://www.oge.gov/Web/278eGuide.nsf/Content/Definitions~Designated+Agency+Ethics+Official+and+Alternate+Designated+Agency+Ethics+Official>).

Prior to your White House service, and until July 2015, you were employed as a partner at Dentons US, LLP, an Atlanta-based law firm and from July 2003 to July 2015, you were a partner at McKenna, Long & Aldridge LLP. According to your ethics disclosure form, which was recently made public, you received “compensation exceeding \$5,000 in a year” within the past two calendar years from Icahn Capital LP, a “wholly owned subsidiary” of Icahn Enterprises, after providing the company with “legal services.”¹³

Given that Executive Order 11370 forbids you from participating in any matter involving any client you “served personally as agent, attorney, or consultant within the 2 years prior to” your appointment, and given also that you are required by regulation to “maintain the appearance of impartiality” regarding your former employers, we were concerned to learn about this connection with Mr. Icahn.

Your ethics forms also indicate that you provided “legal services” to Dr. Ben Carson, the current Secretary of Housing and Urban Development, and Tom Price for Congress, the official campaign of now-Secretary of Health and Human Services Tom Price.

While it is possible that you have properly recused yourself from any dealings relating to your former clients, the White House’s lack of transparency in making public any recusal or waiver forms necessitates that we seek formal answers.

Questions

To help us better understand your compliance with executive branch ethics requirements, as well as your specific involvement with Mr. Icahn, please provide us with answers to the following no later than April 28, 2017:

1. Please describe the nature of the “legal services” you provided to Icahn Capital LP.
2. Did you sign an Ethics Pledge, as outlined in Executive Order 13770? If so, please provide a copy of your signed Ethics Pledge.
3. Upon signing an Ethics Pledge, did you receive any guidance from the Office of Government Ethics or the Office of the White House Counsel regarding the protocols for compliance with the Ethics Pledge? If so, please provide copies of that guidance, if written guidance was made, or description of that guidance, if guidance was provided verbally.
4. In your role as Deputy White House Counsel and/or DAEO for the Executive Office of the President, have you worked on or provided advice or input on any matters relating to


¹³ See OGE Form 278e for Stefan Passantino, Deputy Counsel to the President (updated on February 22, 2017); Icahn Enterprises, “Icahn Enterprises L.P. Announces Hiring of Dr. Richard C. Mulligan” (March 1, 2017) (online at <http://www.ielp.com/releasedetail.cfm?ReleaseID=1015132>); New entrants to the executive branch are required to file a Form 278e, which includes their “sources of compensation exceeding \$5,000 in a year” over the “preceding two years to [the] filing date.” See U.S. Office of Government Ethics, “2.01: Reporting Periods” (online at <https://www2.oge.gov/Web/278eGuide.nsf/2cf9ac792bc0654a85257ea1005f838a/5df300cba7fca98485257f450074e3a4?OpenDocument>).


Mr. Icahn? If so, did you seek or receive an opinion from the Office of Government Ethics or the Office of the White House Counsel prior to your involvement with Mr. Icahn, to determine whether your communications would violate Executive Order 13770 or 5 C.F.R. § 2635.502? If so, what was their determination?

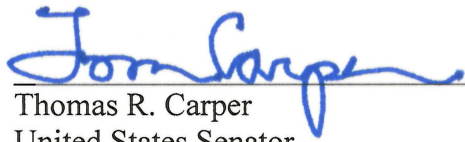
5. Did you provide any advice or approval for the decision to utilize Mr. Icahn as a special adviser without formally appointing him as a federal employee?
6. Your Form 278e also indicates that you received compensation for “legal services” provided to Dr. Ben Carson and Tom Price for Congress.
 - a. In your role as Deputy White House Counsel and/or DAEO for the Executive Office of the President, have you worked on matters relating to Dr. Ben Carson or Dr. Tom Price?
 - b. If so, did you seek or receive an opinion from the Office of Government Ethics or the Office of the White House Counsel prior to your involvement with Dr. Carson or Dr. Price to determine whether your communications would violate Executive Order 13770 or 5 C.F.R. § 2635.502? If so, what was their determination?
7. If you have formally recused yourself from providing advice or input on any matters, including those related to Mr. Icahn or your other former clients, please provide a copy of that recusal paperwork, and any and all documents referring to or regarding that recusal. Please also disclose who serves as the Designated Agency Ethics Officer in those instances.
8. Have you received a conflict of interest waiver? If so, who approved the waiver? Please provide a copy.

Please do not hesitate to reach out to Brian Cohen of Senator Warren’s staff at 202-224-4543, Joe Gaeta of Senator Whitehouse’s staff at 202-224-2921, John Kilvington of Senator Carper’s staff at 202-224-2241, or Krista Boyd of Representative Cummings’ staff at 202-225-4741 with any questions or concerns.

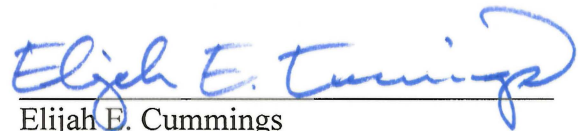
Sincerely,


Elizabeth Warren
United States Senator

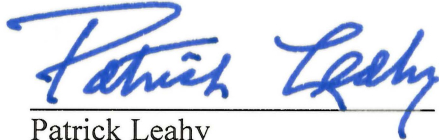

Sheldon Whitehouse
United States Senator



Thomas R. Carper
United States Senator



Elijah E. Cummings
United States Representative



Patrick Leahy
United States Senator