

August 20, 2020

The Honorable Michael Horowitz
Acting Chair
Pandemic Response Accountability Committee
United States Department of Justice
950 Pennsylvania Avenue,
NW Washington, DC 20530-0001

Dear Mr. Horowitz:

I write to urge the Pandemic Response Accountability Committee (the Committee) to investigate the U.S. International Development Finance Corporation's (DFC) decision to award a \$765 million loan to Eastman Kodak Company (Kodak) to create a new arm of the company to produce generic pharmaceuticals as part of the Trump Administration's efforts "to collaborate in support of the domestic response to COVID-19."¹ DFC provided this taxpayer-funded loan to produce an unproven drug to Kodak, a company that had no pharmaceutical manufacturing experience, through an opaque process and after an extensive and unprecedented lobbying effort by the company. Then, it got worse. Kodak executives' behavior surrounding the loan was described by President Trump's White House trade advisor as unforeseeably "stupid," and "the dumbest decisions made by executives in corporate history,"² causing the Securities and Exchange Commission (SEC) to open an insider trading investigation and the Administration to revoke the loan. The net result has been a waste of time, money, and resources, no progress whatsoever in the effort to mitigate the coronavirus disease 2019 (COVID-19) pandemic, and a host of questions about how and why the Trump Administration is handing out taxpayer funds and who is benefitting from these expenditures.

On July 28, 2020, Kodak and the DFC announced that the DFC had awarded the company \$765 million loan to produce generic drug ingredients in response to the COVID-19 pandemic.³ On August 3, 2020, after allegations of early stock purchases by Kodak executives and unusual trading in Kodak stock in the days prior to the announcement, I called on the SEC to investigate Kodak board members for their possible engagement in insider trading.⁴ The next day, reports

¹ U.S. International Development Finance Corporation, DFC to Sign Letter of Interest for Investment in Kodak's Expansion Into Pharmaceuticals, July 28, 2020, <https://www.dfc.gov/media/press-releases/dfc-sign-letter-interest-investment-kodaks-expansion-pharmaceuticals>

² WHAM, "WH trade advisor on Kodak stock investigation: 'You can't fix stupid,'" August 17, 2020, <https://13wham.com/news/local/wh-trade-adviser-on-kodak-stock-investigation-you-cant-fix-stupid>.

³ U.S. International Development Finance Corporation, DFC to Sign Letter of Interest for Investment in Kodak's Expansion Into Pharmaceuticals, July 28, 2020, <https://www.dfc.gov/media/press-releases/dfc-sign-letter-interest-investment-kodaks-expansion-pharmaceuticals>.

⁴ Letter to the Honorable Jay Clayton from Sen. Elizabeth Warren, August 3, 2020, <https://www.warren.senate.gov/imo/media/doc/2020.08.03%20Letter%20to%20SEC%20re%20Kodak%20stock%20trades.pdf>; Washington Post, "Warren says SEC should investigate potential insider trading at Eastman Kodak," August 4, 2020, <https://www.washingtonpost.com/business/2020/08/04/warren-says-sec-should-investigate-potential-insider-trading-eastman-kodak/>.

indicated that the SEC had opened an investigation.⁵ And on August 7th, the DFC put the loan on hold, announcing that the “allegations of wrongdoing raise serious concerns. We will not proceed any further unless these allegations are cleared.”⁶

The stated goal of this loan was to increase domestic production of active ingredients for pharmaceuticals to help fight the COVID-19 pandemic. President Trump called it “one of the most important deals in the history of U.S. pharmaceutical industries. ... a historic agreement,” a “momentous step toward achieving American pharmaceutical independence,” and “a core of our strategy to protect our people from the horrible” coronavirus.⁷ But the deal quickly turned into a fiasco.

It is vital that the U.S. take a more active role in the manufacturing of drugs domestically and rely less on foreign imports as a matter of national security.⁸ The repercussions of this dependence on foreign active ingredients in pharmaceuticals has become more apparent during the COVID-19 pandemic where disruptions to international pharmaceutical supply chains have affected Americans’ access to prescription drugs—possibly endangering lives.⁹ But rather than choose one of the many qualified and well-prepared biomedical companies in the U.S. to receive this loan, the DFC chose a company with no recent experience in producing these active ingredients.¹⁰ And it reportedly gave this loan to Kodak to produce hydroxychloroquine (among other generic drugs), a drug touted by President Trump despite the fact that there is no clinical evidence that it is a useful treatment for COVID-19.¹¹

One possible explanation for this unusual series of choices may be Kodak’s lobbying efforts. In the months prior to the loan’s announcement, Kodak reportedly spent nearly \$1 million lobbying members of Congress and the Trump Administration – an “unprecedented” lobbying effort by the company.¹²

⁵ Wall Street Journal, “Kodak Loan Disclosure and Stock Surge Under SEC Investigation,” Dave Michaels, and Theo Francis, August 4, 2020, <https://www.wsj.com/articles/kodak-loan-disclosure-and-stock-surge-under-sec-investigation-11596559126>.

⁶ @DFCgov, TWITTER (August 7, 2020, 5:49 PM), <https://twitter.com/DFCgov/status/1291853877168558086>.

⁷ The White House, “Remarks by President Trump in Press Briefing,” July 28, 2020, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-press-briefing-july-28-2020/>.

⁸ Letter to The Honorable Mark T. Esper from Senators Warren, Cotton, Kaine, and Romney, December 5, 2019, <https://www.warren.senate.gov/imo/media/doc/2019.12.05%20Letter%20to%20DoD%20re%20pharmaceutical%20product%20supply%20chain.pdf>; CBS, “Senators raise national security concerns around Chinese pharmaceuticals,” <https://www.cbs19news.com/story/41466617/senators-raise-national-security-concerns-around-chinese-pharmaceuticals>.

⁹ Food and Drug Administration Statement, “Coronavirus (COVID-19) Supply Chain Update”, February 27, 2020, <https://www.fda.gov/news-events/press-announcements/coronavirus-covid-19-supply-chain-update>.

¹⁰ CNN, “How Kodak went from photography pioneer to pharmaceutical producer”, Clare Duffy, August 4, 2020, <https://www.cnn.com/2020/08/04/business/kodak-history-pharmaceutical-production/index.html>.

¹¹ Wall Street Journal, “Kodak Shifts Into Drug Production With Help of \$765 Million U.S. Loan,” Rachael Levy, July 28, 2020, <https://www.wsj.com/articles/kodak-lands-765-million-u-s-loan-in-start-of-medical-supply-chain-fix-11595930400>.

¹² The Daily Beast, “Kodak Spent Big Money Lobbying Trump Before Scoring \$765 Million COVID Deal,” Lachlan Markay, August 05, 2020, <https://www.thedailybeast.com/kodak-spent-big-money-lobbying-trump-before-scoring-dollar765-million-covid-deal>.

The fiasco surrounding the decision to offer, then revoke, the Kodak loan also raises larger questions about corruption, nepotism, and mismanagement in the Trump Administration's response to COVID-19. President Trump delegated authority to DFC to grant loans under the *Defense Production Act* via an executive order on May 14, 2020.¹³

The Kodak loan would have been the first of its kind. The CEO of this newly formed agency, which President Trump tasked with aiding the nation in the crucial COVID-19 response, is Adam Boehler, a former college roommate of President Trump's son-in-law and White House adviser Jared Kushner.¹⁴ It is not at all clear why President Trump, in his Executive Order, chose to give the DFC, which was created in 2018 to "to help address development challenges and foreign policy priorities of the United States,"¹⁵ this new loan authority – but the mismanagement of the Kodak loan raises new concerns that it may be fundamentally unsuited to the task.¹⁶

Congress established the Pandemic Response Accountability Committee in the *Coronavirus Aid, Relief, and Economic Security Act* to "promote transparency and conduct and support oversight of covered funds and the Coronavirus response to...prevent and detect fraud, waste, abuse, and mismanagement,"¹⁷ and granted the Committee broad authority to review the Trump Administration's response to the COVID-19 pandemic. I urge the committee to investigate the circumstances of the botched \$765 million Kodak loan, and review waste, fraud, abuse, and mismanagement pertaining to the loan. This investigation should include:

1. The rationale for and methodology by which the DFC chose Kodak as the first recipient of a *Defense Production Act* loan in response to the COVID-19 pandemic, including a determination of why hydroxychloroquine, which has not been shown to be an effective treatment for COVID-19, was included in the list of drugs to be produced by Kodak.
2. Whether Kodak's lobbying efforts unduly or inappropriately influenced Trump Administration officials.
3. Whether any Trump Administration officials' conflicts of interest may have affected the decision to provide the loan.
4. Whether any Trump Administration officials may have aided or abetted insider trading or profiteering by Kodak executives or other officials.
5. Whether the Kodak loan represented an effective or wasteful use of resources in the COVID-19 response.

¹³ The White House, "EO on Delegating Authority Under the DPA to the CEO of the U.S. International Development Finance Corporation to Respond to the COVID-19 Outbreak," May 14, 2020, <https://www.whitehouse.gov/presidential-actions/eo-delegating-authority-dpa-ceo-u-s-international-development-finance-corporation-respond-covid-19-outbreak/>.

¹⁴ Business Insider, "Jared Kushner hired his college roommate to create a national coronavirus testing plan, according to a new report," Jake Lahut, July 31, 2020, <https://www.businessinsider.com/kushner-hired-college-roommate-national-covid-coronavirus-testing-plan-2020-7>.

¹⁵ U.S. International Development Finance Corporation, Who We Are, 2020, <https://www.dfc.gov/who-we-are/overview>.


¹⁶ NPR, Trump Redirects Foreign Aid Agency to Work on Pandemic. Congress Has Questions, July 17, 2020, <https://www.npr.org/2020/07/17/891896361/trump-redirects-foreign-aid-agency-to-work-on-pandemic-congress-has-questions>; Devex.com, "Trump authorizes US DFC to invest in domestic COVID-19 response," May 15, 2020, <https://www.devex.com/news/trump-authorizes-us-dfc-to-invest-in-domestic-covid-19-response-97246>.

¹⁷ CARES Act, Pub.L. 116–136, Sec. 15010(b)

6. Whether there was any waste, fraud, abuse, or mismanagement in DFC's decision to provide the loan to Kodak.

Thank you for your consideration of this important matter.

Sincerely,



Elizabeth Warren
United States Senator