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July 12, 2018

James Carroll
725 17th Street, NW
New Executive Office Bldg.
Room 5001
Washington DC 20503

Dear Mr. Carroll:

Public Citizen formally requests that your office investigate whether Joseph Grogan, Associate Director of Health Programs at the Office of Management and Budget (OMB), is in violation of paragraphs 6 and 7 of President Donald Trump's ethics Executive Order No. 13770 and other conflicts of interest rules by not recusing himself *until after the fact* from official duties that directly and substantially affects his former employer within the last two years, Gilead Sciences, Inc., and involves the "same specific issue area" Grogan had lobbied on behalf of his former employer.

This is the second request from Public Citizen regarding the ethics problems posed by Joseph Grogan serving as OMB's Associated Director of Health. On March 22, 2018, Public Citizen alerted your office that Grogan may well be in violation of paragraph 7 of Trump's ethics Executive Order that restricts a former lobbyist from serving in an official capacity that oversees the "same specific issue area" recently lobbied by Grogan while in the private sector. If properly followed, this ethics rule would help public officials avoid serious conflicts of interest issues that could taint an official's reputation and cast aspersions on the integrity of official actions taken at OMB.

But our first request for your office to address the potential conflict of interest posed by Joseph Grogan's public service apparently was ignored.

Now, that conflict of interest situation appears to have simmered into a potentially direct and egregious ethics transgression. According to a Freedom of Information Act (FOIA) request by Democracy Forward, which is highlighted in a letter to your office from Rep. Elijah Cummings (D-Md.), Grogan in his official capacity collaborated with the drug company Novartis on a demonstration project to develop a payment model for CAR-T therapy – at the same time Gilead was working to acquire its own CAR-T therapy – without Grogan disclosing his apparent conflict of interest to OMB until after the fact.¹

Grogan's former employer, Gilead, had been pursuing the same CAR-T therapy when Grogan worked as a lobbyist for Gilead and accelerated its acquisition of the therapy on August 28, 2017, with the purchase of Kite Pharmaceuticals which specialized in the therapy.

¹ Letter from Rep. Elijah Cummings, Ranking Member of the House Committee on Oversight and Government Reform, to Director Mick Mulvaney, Office of Management and Budget (July 11, 2018), available at: <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2018-07-11.EEC%20to%20Mulvaney-OMB%20re..Joseph%20Grogan.pdf>

One day after Gilead's acquisition of Kite Pharmaceuticals, and one day before Novartis announced its new FDA approval of the CART-T demonstration project, did Grogan finally disclose his potential conflict of interest to OMB ethics officials.

Not only does the timing of Grogan's disclosure raise ethics concerns, but his close coordination in his official capacity with Novartis in the development project raised concerns with the Centers for Medicare and Medicaid Services (CMS) as to how much the company was influencing official actions. Agency lawyers were "surprised and concerned with Novartis' interactions with the agency" and cautioned that agency officials were being unduly influenced.² These are precisely the types of conflicts of interest concerns the ethics rules are intended to avoid.

Public Citizen again requests that your office examine whether Joseph Grogan is in violation of paragraph 7 of ethics Executive Order No. 13770 prohibiting a former lobbyist from overseeing "any particular matter on which [the lobbyist] lobbied within 2 years before the date of appointment" as well as paragraph 6 of the Executive Order which prohibits officials from participating in "any particular matter involving specific parties that is directly and substantially related to [the official's] former employer." If it is determined that such a violation or violations may have occurred, Public Citizen encourages your office to take appropriate remedial actions.

Sincerely,



Craig Holman, Ph.D.
Government affairs lobbyist
Public Citizen's Congress Watch division

cc: David Apol, Director, Office of Government Ethics

² Sarah Karlin-Smith and David Pittman, "CMS quit test of pricey cancer treatment amid concerns of industry role," Politico (July 9, 2018), available at: <https://www.politico.com/story/2018/07/09/cms-quit-test-of-pricey-cancer-treatment-amid-concerns-over-industry-role-674086>

First letter from Public Citizen to James Carroll is below.

March 22, 2018

James Carroll
725 17th Street, NW
New Executive Office Bldg.
Room 5001
Washington DC 20503

Dear Mr. Carroll:

Public Citizen is writing to express its concern about the implementation and enforcement of paragraph 7 of President Donald Trump's ethics Executive Order No. 13770. Paragraph 7 of the executive order expressly prohibits former lobbyists from working in the administration on the same "specific issue area" they had lobbied within the previous two years, unless a waiver has been issued. A recent study by Public Citizen has identified that Joseph Grogan in the Office of Management and Budget, appears to be working on the same specific issue areas he had lobbied on within the last two years, and has not received a waiver from the ethics rules.

Public Citizen requests an explanation from your office for this anomaly.

Paragraph 7 of Executive Order No. 13770 requires political appointees into the Trump administration to pledge:

If I was a registered lobbyist within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 6, I will not for a period of 2 years after the date of my appointment participate in any particular matter on which I lobbied within the 2 years before the date of my appointment or participate in the specific issue area in which that particular matter falls.

Using a partial list of 572 political appointees into the administration, Public Citizen has documented dozens of former lobbyists who appear to be overseeing the same specific issue areas they had lobbied in the previous two years, but only six have been recognized as such by the administration and received ethics waivers. At least 30 other appointees appear to be in violation of the executive order with no publicly disclosed waivers from the conflict of interest rule. The study is available at: <http://bit.ly/2wpZ0JV>

Paragraph 7 is a critical provision of Trump's ethics executive order designed to prevent former lobbyists from unduly influencing official actions of the administration solely in the interests of their paying clients. It is important that the White House Counsel and agency ethics officers take the necessary steps to ensure compliance to this conflict of interest rule.

The fact that so many appointees appear not to be in compliance raises serious questions about the commitment of the administration to its own ethics rules.

Public Citizen respectfully requests a response to this query at your earliest convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig Holman". The signature is fluid and cursive, with the first name "Craig" and last name "Holman" clearly distinguishable.

Craig Holman, Ph.D.
Government affairs lobbyist
Public Citizen's Congress Watch division