



April 6, 2017

Mr. Donald F. McGahn, II
White House Counsel
Office of the White House Counsel
1650 Pennsylvania Ave., NW
Washington, DC 20501

Dear Mr. McGahn:

The Project On Government Oversight (POGO) urges the White House Counsel's Office to take action to ensure that Stephen A. Feinberg is subject to federal conflict-of-interest laws.

Bloomberg News has reported that the administration is considering Mr. Feinberg for a role where he would look for efficiencies in defense spending—a goal that our organization shares.¹ However, as CEO of Cerberus Capital Management, Mr. Feinberg owns a financial stake in a companies with national security-related contracts, notably Dyncorp International, which could benefit from Mr. Feinberg's recommendations and actions. Lobbying disclosures show that defense contracting is a federal legislative and policy priority for Cerberus and Dyncorp.² The White House can prevent foreseeable ethics scandals.

As you know, federal ethics laws and regulations are meant to ensure that public officials act in the public interest, without conflicts that would raise questions about the propriety of their decision-making. The public wants to ensure government decisions are made because they are in the broad interest of the public, not in the narrow interest of an official who has money on the line. With President Trump's defense spending request for Fiscal Year 2017 north of \$640 billion, and Mr. Feinberg's companies competing for ever bigger slices of the budget pie, a massive amount of our taxpayer dollars is on the line.³ We cannot waste money on service contracts that provide questionable benefits to the military. This makes government integrity a national security issue.

Given Mr. Feinberg's significant conflicts of interest, it is crucial that he be subject to federal ethics laws and regulations if he plays any role impacting defense spending: if he is appointed by

¹ Max Abelson and Zachary Mider, "Billionaire Feinberg Might Keep Cerberus Stake in New Trump Role," *Bloomberg*, April 3, 2017. <https://www.bloomberg.com/politics/articles/2017-04-03/billionaire-feinberg-might-keep-cerberus-stake-in-new-trump-role> (Downloaded April 3, 2017)

² "Specific Issues Reports for S.2943 by Cerberus Capital Management , 114th Congress," Center for Responsive Politics. (Downloaded April 3, 2017) <https://www.opensecrets.org/lobby/specissue.php?bid=s2943-114&id=D000021907&name=Cerberus+Capital+Management+++++++&year=2016>

³ This includes Overseas Contingency Operations funding. White House Budget Request to Congress for FY 2017, March 14, 2017. (Downloaded April 3, 2017) https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/amendment_03_16_18.pdf

President Trump, Mr. Feinberg should either be a government employee or special government employee and thereby subject to ethics laws and regulations.

As such, Mr. Feinberg would be required to divest himself of his business investments and assets and place them into a genuine blind trust or an equivalent that will pass muster with the Office of Government Ethics. Other wealthy members of this administration with conflicts have done so, such as Secretary of State Rex Tillerson.⁴ This means that control of these assets would be transferred to an independent trustee who would sell the assets and place the proceeds in investments which do not create conflicts of interest and which are not disclosed to him. Mr. Feinberg should be required to file financial disclosures, just as you and other White House and administration employees are. And any ethics waivers or recusal agreements should promptly be made available to the public. Mr. Feinberg will benefit from the transparency, guidance, and clarity in status that comes with being subject to the conflict-of-interest laws. He can more readily avoid ethical minefields. Without these actions, any recommendations Mr. Feinberg might make are bound to be controversial, will be easily dismissed, and will undermine the Trump administration's efforts if he is not considered beyond reproach.

In contrast, it would be a grave mistake to repeat what the administration did with investor Carl Icahn, who was appointed as the President's Special Advisor on Regulatory Reform—but who was explicitly not made a special government employee.⁵ Mr. Icahn's actions and comments on the Environmental Protection Agency's Renewable Fuel Standard and a perception among many in the biofuels industry that he presented himself as acting as a Trump administration official created problems for the White House in late February.⁶ The ethical gray zone that Mr. Icahn operates in may continue to be a lightning rod for critics. There will continue to be legitimate questions whenever he—as the President's Special Advisor—takes actions or participates in decisions that would benefit his business interests.

We urge the White House to either: 1) Convert Mr. Icahn to a special government employee who is recused from any matter where he has a business interest; or 2) Remove his title and take other actions, such as clarifying that he does not have a portfolio of government responsibilities or speak for the administration, to ensure that he solely acts as an informal advisor to President Trump without crossing or skirting the line into becoming a de facto special government employee.⁷

⁴ “Remarks of Walter M. Shaub, Jr., Director, U.S. Office of Government Ethics, as prepared for delivery at 4:00 p.m. on January 11, 2017, at the Brookings Institution.” (Downloaded April 3, 2017) [https://oge.gov/web/oge.nsf/0/6E08189CF6AF742B852580A500799063/\\$FILE/Remarks%20of%20W%20M%20S%20haub%20Jr%20\(1\).pdf](https://oge.gov/web/oge.nsf/0/6E08189CF6AF742B852580A500799063/$FILE/Remarks%20of%20W%20M%20S%20haub%20Jr%20(1).pdf)

⁵ The Trump-Pence Transition Team, “President-Elect Donald J. Trump Names Carl Icahn Special Advisor to the President on Regulatory Reform,” GreatAgain, December 21, 2016. <https://greatagain.gov/icahn-advisor-regs-cd3c949af118> (Downloaded April 3, 2017)

⁶ Eric Wolff, “Icahn's ethanol push fuels ethics storm,” *Politico*, March 10, 2017. <http://www.politico.com/story/2017/03/carl-icahn-ethanol-push-trump-235934> (Downloaded April 3, 2017)

⁷ Memorandum from John Harmon, Acting Assistant Attorney General of the Office of Legal Counsel, to the Attorney General, regarding Conflict of Interest—Status of an Informal Presidential Advisor as a “Special Government Employee, February 24, 1977. <https://www.justice.gov/file/20966/download> (Downloaded April 3, 2017)

The highly questionable arrangement with Mr. Icahn is bad enough. Repeating this mistake with Mr. Feinberg would send a strong signal that this administration only gives lip service to the principle of ethics in government.

Sincerely,

A handwritten signature in blue ink, reading "Danielle Brian". The signature is fluid and cursive, with the first name "Danielle" and last name "Brian" clearly distinguishable.

Danielle Brian
Executive Director

cc: U.S. Office of Government Ethics
Senate Homeland Security and Governmental Affairs Committee
House Oversight and Government Reform Committee