

THE WHITE HOUSE
Washington

July 21, 2021

MEMORANDUM FOR ALL WHITE HOUSE STAFF

FROM: DANA REMUS
COUNSEL TO THE PRESIDENT

SUBJECT: PROHIBITED CONTACTS WITH AGENCIES AND DEPARTMENTS

SUMMARY

The White House plays an important role in coordinating the activities of departments and agencies, particularly with respect to policy development. But it is also important to ensure the integrity of government decision making and public confidence that decisions by government officials are made based on appropriate considerations. Balancing these interests and the President's constitutional obligation to take care that the laws be faithfully executed, the White House has adopted a policy of imposing and abiding by certain important restrictions on communications between White House staff and departments and agencies.

This memorandum sets forth the restrictions that apply to your contact with Executive Branch departments and agencies outside of the Executive Office of the President ("EOP"). This memorandum supersedes my prior memorandum dated January 20, 2021.

It is important that you review these restrictions in their entirety. To summarize the most important points:

- ***Matters Involving Specific Parties:*** You should not contact any department or agency about a specific adjudication (including a licensing, permitting or approval proceeding, or similar regulatory action), benefit determination, investigation, or litigation, enforcement, procurement, or funding matter involving specific parties. If you think such contact is necessary, the Counsel's Office will determine whether such contact is permissible and, if so, who should make the contact.
 - Without exception, you should not contact any agency or department about a procurement or funding matter in which you, a relative, friend, or business associate has a personal financial interest.

- The restrictions concerning contact with agencies and departments about specific adjudications and other particularized decisions affecting specific parties apply with special force to the independent agencies.
- Specific procedures apply to contact with agencies or departments with national security, homeland security, or intelligence functions. Communication with these agencies and departments must be made through designated individuals in the Counsel's Office or designated members of the National Security Council Staff, as described in more detail below.
- ***Communications with the Department of Justice:*** Specific procedures apply to communications with the Department of Justice (DOJ) in order to ensure that DOJ exercises its investigatory and prosecutorial functions free from the fact or appearance of improper political influence. DOJ plays many different roles—including as a prosecutorial and law enforcement agency, legal advisor to the President and Executive Branch departments and agencies, litigator that defends U.S. government policies and actions, and policymaker on a range of issues. The proper White House approach to the Department depends on which DOJ function is involved. Review the specific policies carefully, but note that with certain exceptions described below, initial contacts with DOJ should be made by the Counsel's Office.
- ***Policy, Administrative and Communications Matters:*** Communications with agencies or departments other than DOJ relating to pure policy, administrative, communications, or presidential appointment matters generally are permissible without prior consultation with or approval from the Counsel's Office.
 - Special considerations apply to independent agencies. Communication with independent boards and commissions about purely policy matters, including policy formation and development, as well as administrative, communications, or presidential appointment matters, is appropriate and permissible. But many independent agencies have their own rules about *ex parte* contacts, and it is important to understand when communications even by the White House will become part of an agency's official administrative record. Furthermore, because such communication can be misconstrued, you should consult with Counsel's Office before initiating communication with the independent agencies.
- With the exception of routine, vetting-related requests made by the Office of Presidential Personnel and information requested solely to facilitate clearance into the White House complex, you should not contact an agency or department seeking personally identifiable information about particular individuals (including tax information).

If you have any questions, please contact the Counsel’s Office for guidance. Moreover, unless you are certain that a particular agency contact is permissible, you should consult with the Counsel’s Office before proceeding.

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A. Contact with Executive Agencies Generally

1. Covered Agencies

These guidelines cover Cabinet Departments, other agencies within the Executive Branch, procurement agencies throughout the federal government, and Boards and Commissions. These guidelines do not apply to contacts within and among EOP components.

2. Permissible Contacts

Many White House offices have important policy coordination or other roles in connection with agencies and departments. So long as a contemplated contact involves purely policy, administrative, or political appointment matters—that is, so long as no adjudicative, investigative, litigation, enforcement, procurement, or funding matters involving specific parties are at issue—White House staff generally may contact agencies and departments. In addition, this policy is not intended to restrict contacts between Communications and Public Affairs offices related to press communications. Other contacts may be permitted in some circumstances subject to limitations noted below. As explained below, however, the Counsel’s Office generally should be consulted before any contact with the Department of Justice or independent agencies is initiated, because special considerations may apply.

Communications regarding individual personnel matters for presidential appointees (such as performance or disciplinary issues) should ordinarily be handled directly by the Office of Presidential Personnel and the Counsel’s Office.

3. Limits on Contacts

There are distinctive limitations relating to contacts with agencies and departments about the merits of specific adjudications, benefit determinations, investigations, litigation matters, enforcement actions, procurement decisions, and funding matters involving specific parties, as well as matters involving personal privacy or tax information. Each of these is discussed below.

- a. *Adjudications, Benefits Determinations, Investigations, Litigation Matters, and Enforcement Actions involving Specific Parties*

White House staff should not contact agencies or departments about the merits of a specific adjudication (including a licensing, permitting or approval proceeding or similar regulatory action), benefit determination, investigation, litigation, or enforcement matter involving specific parties. Depending upon the agency involved and the nature of the proceeding, such contacts may be prohibited by law, implicate due process concerns, trigger disclosure requirements, or create an appearance of inappropriate influence—all of which could prompt litigation or investigations, or generally undermine public confidence in the integrity of government decision-making. If you believe that you have a reason to make an inquiry concerning one of these types of matters, contact the Counsel's Office, which will determine whether it is appropriate to make an inquiry and, if so, who should make the contact.

In addition, you should contact the Counsel's Office for guidance even if the contemplated contact with an agency or department about such specific-party matters is unrelated to the merits, such as a question about status, timing, or procedure, because such contact could be misinterpreted and lead to the appearance of inappropriate influence.

It may be appropriate to contact agencies about specific litigation matters involving the government as defendant. Here, however, it is important that the Department of Justice be included in deliberations about litigation. Therefore, contact the Counsel's Office before initiating communication with a department or agency about litigation against the government.

Should you receive inquiries in regard to such specific-party matters, including inquiries from Members of Congress or their staff, you should direct the inquiring party to contact the agency involved and express no opinion on the issue. If you receive a request for a contact at an agency in order to allow a private party to discuss one of these matters with the agency, you may provide such a contact, but you must make it clear to the requestor that he or she may not suggest to the agency in any way that the White House has a view on the matter or on whether the agency will discuss the matter with the requestor.

In certain circumstances, it may be appropriate for agencies to provide information about the status of adjudications, investigations, litigation matters, and enforcement actions to White House officials. Certain White House offices receive regular status reports from executive agencies, often

in the form of weekly reports, and in some circumstances it may be appropriate for White House offices, after consultation with the Counsel's Office, to receive regular status reports from agencies that include updates on certain pending matters. In addition, when vetting persons or entities, it may be permissible for White House staff to contact agencies regarding any pending investigations or enforcement actions involving the person being vetted. Such contacts should be undertaken under procedures developed in consultation with the Counsel's Office, so please consult with the Counsel's Office before inquiring on the status of a matter for the first time.

b. Rulemakings

Rulemaking is a major vehicle through which many agencies develop policy. Thus, as a general matter, it is permissible to contact an agency about a contemplated rulemaking. While agency contacts about a rulemaking are permissible, once a rule has been formally transmitted for review to the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB), OIRA is obligated by Executive Order to document communications with outside parties. Thus, you should not communicate with outside parties interested in a rule in any way that allows outside parties to circumvent OIRA procedures.

c. Funding Matters

i. Procurement

Federal law requires, with certain limited exceptions, that agencies and departments promote and provide for full and open competition in soliciting offers for and awarding government contracts. In addition, there are some legal restrictions on an agency's ability to share information relating to specific procurement matters. Contacts between White House staff and agencies and departments relating to specific procurement matters can give rise to the appearance that these standards are not being honored, which in turn can lead to bid protests and other litigation or investigations regarding the awarding of government contracts. There may be limited circumstances, however, under which the White House may have a legitimate interest in information about specific procurement matters.

To avoid both interference or the appearance of interference with the competitive process for awarding government contracts, White House staff should contact the Counsel's Office before contacting agencies about specific pending procurement matters. The Counsel's Office will determine whether it is appropriate to make such an inquiry, and if so, will determine who should make the contact.

If you receive an inquiry from a third party, including a Member of Congress or congressional staff, about a specific pending procurement matter, you should refer the inquiring party to the agency making the procurement decision. As discussed above, it is permissible for you to provide an agency contact to the inquiring party, provided that you make it clear to the inquiring party that he or she cannot represent to the agency in any way that the White House has any view on the matter.

ii. Other Funding Decisions

OMB guidance encourages agencies and departments to use competitive or merit-based processes in making grants and cooperative agreements. There may also be additional statutory or regulatory requirements that are applicable to specific grant programs or agencies. White House contact with agencies and departments about funding decisions can give rise to the appearance that funding decisions are not being made pursuant to these standards. At the same time, there may be an appropriate role for the White House in discussing with an agency or department the process for making funding decisions and how competitive, merit-based funding programs, such as grants, can be used to further broad policy goals.

Communications with an agency or department about general process issues and matters of policy in connection with funding programs will generally be appropriate. If you have any doubt whether a proposed process or policy discussion with an agency about a funding program is appropriate, please contact the Counsel's Office for further guidance before proceeding.

To avoid any inappropriate influence or the appearance of such influence on agency funding decisions, White House staff should not contact an agency or department about the merits of a particular grant or other funding decision involving specific parties. If you believe that you have a legitimate need for information about the merits of a specific funding

decision, please contact the Counsel's Office, which will determine whether it is appropriate to make an inquiry, and if so, who should make the contact.

If you receive an inquiry from a third party, including a Member of Congress, about the merits of a specific funding decision, you should refer the inquiring party to the agency making the funding decision. As discussed above, it is permissible for you to provide an agency contact to the inquiring party, provided that you make it clear to the inquiring party that he or she cannot represent to the agency in any way that the White House has any view on the matter.

On occasion, an inquiry from a third party, including a Member of Congress or congressional staff, about a specific funding decision can implicate a broader policy issue or questions about the process for or timing of decisions. Under these circumstances, it may be permissible for you to contact the agency, provided that you make it clear to the agency that the White House is not expressing a view on the merits of a specific decision. Please contact the Counsel's Office for further guidance in this circumstance.

White House staff should never contact any Executive Branch agency or department about a procurement or funding matter (including contracts, grants, and other funding mechanisms such as loans) in which he or she, or a relative, friend, or business associate, has a financial interest. It is also impermissible to ask another staff member to initiate such contacts on your behalf.

d. Inquiries Implicating Personal Privacy and Tax Information

Under the Privacy Act of 1974, 5 U.S.C. § 552a, federal agencies are restricted in their ability to disclose information about United States citizens or lawful permanent residents contained in their files. Thus, with the exception of routine vetting-related requests made by the Office of Presidential Personnel and information requested solely to facilitate clearance into the White House complex, White House staff should confer with the Counsel's Office before making inquiries of agencies with respect to personally identifiable information about particular United States citizens or lawful permanent residents.

The sensitive nature of the work performed by some of the component agencies of the Department of the Treasury, particularly the Internal Revenue Service, demands heightened caution. In particular, a federal statute strictly limits the circumstances under which the IRS may release tax return information; thus, if at any point you think you may need to obtain tax return information you should not contact the IRS but should instead consult with the Counsel's Office regarding the appropriate procedures to be used.

Requests for information or statistical data of a routine nature and comments regarding policy, legislation, budgeting, administrative, and appointment matters may be handled directly between White House staff and the appropriate Treasury Department official.

B. Contact with Independent Agencies

A number of agencies have statutory structures, jurisdiction, or authority that provide them with some degree of independence from the President's authority. A non-exhaustive list of independent agencies includes: the Commodity Futures Trading Commission, Consumer Financial Protection Bureau, Consumer Product Safety Commission, Federal Communications Commission, Federal Deposit Insurance Corporation, Federal Election Commission, Federal Labor Relations Authority, Federal Maritime Commission, Federal Reserve Board, Federal Trade Commission, National Credit Union Administration, National Labor Relations Board, National Transportation Safety Board, Nuclear Regulatory Commission, Occupational Safety and Health Review Commission, Securities and Exchange Commission, and U.S. International Trade Commission. If you have any questions about whether an agency should be considered "independent" with respect to a particular matter, please contact the Counsel's Office for further guidance.

Notwithstanding these agencies' independence, it is generally permissible for White House staff to contact independent agencies about administrative, political appointment, and communications or purely policy matters, including policy formation and development. You should be aware, however, that many independent agencies, including the FCC and FTC, have strict rules that require them to publicly report contacts they receive about certain policy matters, even from the White House, including even contacts concerning rulemakings. Furthermore, communications regarding individual personnel matters for presidential appointees (such as those raising performance or disciplinary issues) should ordinarily be handled by the Office of Presidential Personnel and the Counsel's Office. If you have any doubt about whether a proposed discussion with an

independent agency is appropriate or might trigger public disclosure requirements, you should contact the Counsel's Office for further guidance before proceeding.

You should not contact independent agencies concerning adjudications and other particularized agency decisions without approval from the Counsel's Office. The restrictions concerning contact with agencies and departments about such matters apply with special force to the independent agencies.

Moreover, because independent agencies are governed by distinctive statutory requirements and accordingly may raise distinctive concerns about inappropriate influence, you should consult with the Counsel's Office prior to contacting an independent agency about a prospective or pending regulatory action. The Counsel's Office will work with you to determine whether, and if so, when and how communication with the independent agency is appropriate.

C. Communications with the Department of Justice

The Department of Justice's stated mission includes "ensur[ing] fair and impartial administration of justice for all Americans." In order to ensure that DOJ exercises its investigatory and prosecutorial functions free from the fact or appearance of improper political influence, the Attorney General has developed guidelines for Department of Justice officials. The Attorney General traditionally has instructed DOJ staff that, with regard to pending cases or litigations, all contacts from the Department to the White House should be initially routed through the Attorney General, the Deputy Attorney General, the Associate Attorney General, or the Solicitor General.

The President has made clear that restoring the appropriate independence of the Department of Justice is a critical priority. Accordingly, White House personnel must adhere to the following guidelines:

1. Investigations and Litigation

Outside of the national security context addressed below, and absent rare and exceptional circumstances, White House personnel will not discuss specific pending criminal or affirmative civil investigations or cases with DOJ. White House personnel may never engage in any communication with DOJ regarding a particular contemplated or pending investigation with the intent to improperly influence the Department of Justice.

Except in relation to national security matters, the only White House personnel who may initiate communications between the White House and DOJ that concern particular contemplated or pending investigations or cases, whether criminal or civil, are the President, the Vice President, the Counsel to the President, or a Deputy Counsel to the President. Therefore, if you believe there is reason for the White House to inquire of or notify DOJ about a particular contemplated or pending investigation or litigation, you may not do so yourself, but instead must bring the matter to the attention of one of the officials named above, either directly or through another attorney in the Counsel's Office. If appropriate, one of the officials named above may designate additional individuals who may engage in ongoing contacts with designated individuals at the Department of Justice on that matter.

Any initial contacts from DOJ on investigations or litigation should come to the White House through the Counsel's Office. If DOJ requests the views of the White House on any litigation, you must consult with the Counsel's Office before responding, and any response must be made in consultation with the Counsel's Office.

2. Communications Relating to National Security

In matters relating to national security, there will be circumstances in which the need for frequent or expeditious communications makes it inappropriate to follow the approach noted above. DOJ also participates in interagency policy deliberations within the established NSC policy process. Thus, for national security matters, the guidelines outlined in Part D of this memorandum shall govern.

3. Permissible Communications

It is generally appropriate for White House personnel to communicate with DOJ concerning matters of policy, legislation, political appointments, public affairs, intergovernmental relations, or administrative matters that do not relate to a particular contemplated or pending investigation or case. The offices of legislative affairs, communications, and press may communicate with their DOJ counterparts on matters within their areas of responsibility that do not involve particular pending or contemplated criminal or civil law enforcement investigations or cases, and the Presidential Personnel Office may communicate with the White House liaison at DOJ on political appointments, without going through the Counsel's Office.

Otherwise, outside of the national security context addressed in Part D of this memorandum, initial contacts with DOJ generally should be through the Counsel's Office and will be routed through the offices of the Attorney General, Deputy Attorney General, or Associate Attorney General. This provision does not apply to established interagency policy deliberation processes in which DOJ participates as one of many departments, such as standing Principals Committees of the Domestic Policy Council and National Economic Council. In addition, ongoing communication on policy matters is encouraged to ensure that DOJ plays a robust role as appropriate in interagency policy development.

4. Requests for Formal Legal Opinions from the Office of Legal Counsel

The White House often relies upon the Office of Legal Counsel (OLC) to issue formal legal opinions, and all such requests must be made with professional care, solely with reference to the merits of the question, and in the ordinary course of resolving important legal questions confronting the Executive Branch. Thus, all requests from the White House to OLC for formal legal opinions must be authorized by one of the following: (1) the President; (2) the Counsel to the President; or (3) a Deputy Counsel to the President. All such requests shall be directed to the Attorney General, the Assistant Attorney General for OLC, or their designees. Where appropriate, one of the officials named above may designate individuals who may engage in ongoing contacts with OLC concerning a formal legal opinion.

5. Consultation

Requests for other legal advice from DOJ—whether informal advice from OLC, litigation assessments, or otherwise—must be made through the Counsel's Office.

If you have questions or do not believe that a potential contact fits into any of these categories, you must consult the Counsel's Office for guidance. Moreover, unless you are certain that a particular contact is permissible, you must consult the Counsel's Office before proceeding.

D. Intelligence and National Security Matters

Contacts with agencies with national security, homeland security, and intelligence functions (including, for example, the Office of the Director of National Intelligence, Central Intelligence Agency, National Security Agency, Defense Intelligence Agency,

and the national security and intelligence components of the Departments of Justice, Homeland Security, Energy, and State, and of the Federal Bureau of Investigation) should be handled according to the following rules:

1. Rules for White House Staff Other than the National Security Council (NSC) Staff

Contacts with any of the agencies listed above or any other agency regarding national security, homeland security, or operational matters should be made by appropriate members of the National Security Council Staff or the Counsel's Office. All other White House officials must coordinate with a member of the NSC Staff or the Counsel's Office, who can make the contact on their behalf. Furthermore, if an inquiry relates to a pending investigation or law enforcement matter, all contacts must follow the procedures set forth in section D.2.

2. Rules for Authorized Officials Within the NSC Staff

Apart from the Counsel to the President, a Deputy Counsel to the President, and the Deputy Counsel to the President who serves as the NSC Legal Advisor, the following officials are the only officials authorized to have initial communications directly with departments and agencies regarding pending investigations and law enforcement matters relating to national security, homeland security, or intelligence:

Assistant to the President for National Security Affairs;
Assistant to the President for Homeland Security and Counterterrorism;
Assistant to the President and Principal Deputy National Security Advisor;
Deputy National Security Advisor and Chief of Staff to the NSC Staff;
Deputy Homeland Security Advisor;
Senior Director for Combating Terrorism of the NSC Staff;
Directors within the Office of Combating Terrorism of the NSC Staff;
Senior Director for Intelligence Programs of the NSC Staff;
Director for Counterintelligence Programs of the NSC Staff; and
Deputy Legal Advisors for the NSC.

If appropriate, one of the officials named above may designate additional individuals who may engage in ongoing or continuing contacts with designated individuals at the Department of Justice on a matter.

Even the listed officials, however, should not contact the Internal Revenue Service without approval from the Counsel's Office given special considerations involving tax records. In addition, where a matter has already entered the adversarial system, such as an active criminal prosecution or civil litigation matter, the listed officials shall not themselves make contact with the Department of Justice, but should instead consult with the Counsel's Office regarding whether contact is permissible and, if so, the appropriate procedures to be used.

Before making a contact—or promptly after such contact is made if prior notification is impossible—regarding pending investigations and law enforcement matters relating to national security, homeland security, or intelligence, the officials listed above should notify the Counsel to the President, a Deputy Counsel to the President, or the Deputy Counsel to the President serving as the NSC Legal Advisor. Coordination with the Office of the Counsel to the President is particularly important when issues of individual privacy of United States citizens and lawful permanent residents are concerned. In addition, members of the NSC Staff shall ensure that the NSC Legal Advisor is invited to attend all meetings at which it can be reasonably predicted that particular pending investigations or cases will be discussed.

As noted above, National Security Council staff may communicate directly with DOJ representatives in the established National Security Council interagency policy deliberation process.

E. Procedures Governing Presidential Review of International Aviation Decisions

Executive Order 12,597 (May 13, 1987) prohibits individuals within the White House from discussing certain international aviation decisions—specifically, cases decided by the Department of Transportation under the Federal Aviation Act—with outside parties, and requires such individuals to refer written communications on these cases from outside parties to the appropriate office outside of the White House. If you receive such a communication, you should refuse to discuss the matter without further instruction from the Counsel's Office, and you should forward any written communications you receive on such cases to the Counsel's Office for referral.