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January 29, 2009

Via Electronic Transmission

The Honorable Peter Orszag
Director
The Office of Management and Budget
725 17th Street NW
Washington, D.C. 20503

Dear Director Orszag:

I write today to express my concerns with the recent decision to grant a waiver for Mr. William J. Lynn, exempting him from the strict new ethics rules outlined in President Obama's Executive Order titled "Ethics Commitments by Executive Branch Personnel," signed on January 21, 2009.

Mr. Lynn has been nominated by the President to serve as the Deputy Secretary of Defense. He is currently employed as a senior vice president at a major Department of Defense (DOD) contractor - Raytheon Company. Until very recently, he was also registered as Raytheon's principal lobbyist to the DOD.

Throughout the presidential campaign, President Obama repeatedly promised the American voters that he would "close the revolving door" in order to greatly limit the role of lobbyists in his administration. He warned lobbyists, they "won't find a job in my White House" and [lobbyists] "will not run my White House, and they will not drown out the voices of the American people." He also stated: "If you are a lobbyist entering my administration, you will not be able to work on matters you lobbied on or in the agencies you lobbied during the previous two years [underlining added for emphasis]." Further, President Obama explained why it was important to close the revolving door: "Lobbyists spend millions of dollars to get their way. The status quo sets in..... They use their money and influence to stop us from reforming [government policies]". He added, "... together, we will tell the Washington lobbyists that their days of setting the agenda are over."

President Obama's message was crystal clear: allowing lobbyists to pass freely through the revolving door was simply not in the public interest. He espoused that lobbyists in government "are a problem" because they block needed reforms - reforms that Mr. Obama promised to the American people.

President Obama's promises to "close the revolving door" seemed to be a top priority. He meant what he said. He kept his promise. In fact, within 24 hours of being sworn in, President Obama signed a new Executive Order titled, "Ethics Commitments by Executive Branch Personnel" to cement his campaign pledge into an official order. Paragraphs two and three of Section One - entitled "Revolving Door Ban" - appeared to solidify President Obama's pledge to "close the revolving door."

However, exactly two days after signing the Executive Order, you exercised authority delegated to you under Section 3 of the Executive Order and issued a waiver to Mr. Lynn, which effectively gutted the ethical heart of the President's "Revolving Door Ban." I find it difficult to reconcile Mr. Lynn's nomination to be the Deputy Secretary of Defense with the purpose and intent of the Executive Order.

Mr. Lynn was a registered Raytheon lobbyist for six years. His lobbying reports clearly indicate that he lobbied extensively on a very broad range of DOD programs and issues in both the House and Senate and at the Department of Defense. If confirmed, Mr. Lynn would become the top operations manager in the Pentagon. He would be the final approval authority on most - if not all - contract, program and budget decisions. Surely, a number of Raytheon issues would come across his desk. Mr. Lynn's conflict of interest has been characterized by some as an "impossible conflict." The Chairman of the Armed Services Committee, Senator Levin, has stated that Mr. Lynn will have to recuse himself from those decisions for one year. Since Raytheon is a big defense contractor, those recusal requirements could limit Mr. Lynn's effectiveness as Deputy Secretary of Defense.

Based upon President Obama's statements made during the presidential campaign and leading up to and following the signing of the Executive Order, I simply cannot comprehend how this particular lobbyist could be nominated to fill such a key position at DOD overseeing procurement matters, much less be granted a waiver from the ethical limitations listed in the Executive Order.

Additionally, I have serious questions about the message that this waiver sends to other lobbyists seeking employment in President Obama's administration. Despite strong language limiting the role of lobbyists in the Executive Order, it appears to me that Mr. Lynn's nomination and the waiver granted to him leaves "the barn door wide open" for other potential nominees with lobbying backgrounds to circumvent the Executive Order. This is a giant loophole that places the burden of granting waivers strictly with the Director of the Office of Management and Budget (OMB). As such, I believe a detailed explanation of the reason for granting the waiver is warranted in order to ensure that the granting of future waivers is done in a fully transparent manner and given the sunshine such an important decision deserves.

The waiver provision in the Executive Order provides that the OMB Director may grant a waiver for two reasons, (1) "that the literal application of the restriction is inconsistent with the purposes of the restriction" or (2) "that it is in the public interest to grant the waiver". These provisions are general and provide wide latitude in determining when a waiver is applicable. For instance, in Mr. Lynn's case, the waiver simply states:

“After consultation with Counsel to the President, I hereby waive the requirements of Paragraphs 2 and 3 of the Ethics Pledge of Mr. William Lynn. I have determined that it is in the public interest [underlining added for emphasis] to grant the waiver given Mr. Lynn’s qualifications for his position and the current national security situation. I understand that Mr. Lynn will otherwise comply with the remainder of the pledge and with all preexisting government ethics rules.”

While I am glad to see that the waiver does not appear to fully circumvent the Executive Order or other existing government ethics rules, the broad language used in determining that the waiver is in the “public interest” is a concern. Little detail is provided as to why the waiver is necessary. Only general criteria used in the analysis and justification for the waiver are given. Accordingly, I strongly urge OMB to publicly set forth a list of criteria utilized to examine whether a waiver would be in “the public interest.” Further, OMB should also publicly set forth criteria examined to determine when “literal application of the restriction is inconsistent with the purposes of the restriction.” By making these criteria public, it will go a long way toward making OMB decisions transparent and providing the American people with a full accounting of why waivers to the Executive Order are necessary. I strongly encourage OMB to do this as soon as possible to ensure those decisions do not merely become an arbitrary basis to circumvent the Executive Order.

Additionally, I respectfully request that OMB provide responses to the following questions:

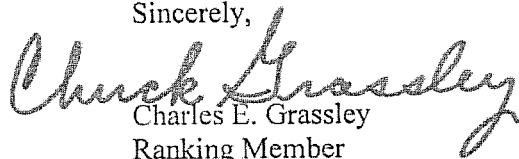
- (1) What criteria did OMB use to determine that Mr. Lynn’s waiver was necessary to further “the public interest”?
- (2) Does OMB believe there are no inherent conflicts of interest to have Mr. Lynn serve as the Deputy Secretary of Defense overseeing procurement from a company he formerly lobbied for? If not, why not?
- (3) Given President Obama’s position on lobbyists serving in government positions, did anyone in OMB ask the President or his Counsel to consider whether other candidates for the position would be better qualified before granting the Lynn waiver?
- (4) Does OMB believe Mr. Lynn’s requirement that he recuse himself in certain instances under provisions of the Executive Order not impacted by the waiver will hinder him from doing the job? Why or why not?

The idea behind President Obama's promise to close the revolving door and ban lobbyists from his administration had one purpose: to protect the public interest. The new rules are designed to protect the taxpayers against wasteful and unnecessary expenditures and policies that might be advocated by "special interests" inside the government. By granting Mr. Lynn's waiver, it appears that OMB has undermined the principal purpose of the new ethics rules -- to protect the public interest. It seems like the OMB waiver embraces the lobbyist culture that President Obama promised to change. As Director of OMB, your decisions set the tone for the entire federal bureaucracy. By making the waiver process more public, OMB would send a clear and unambiguous message: transparency is first and foremost when it comes to dealing with ethics rules.

Please bring transparency and accountability to Mr. Lynn's waiver and all future waivers of the Executive Order by providing details about why waivers have been granted and the criteria used to determine them.

I would very much appreciate a prompt answer to my questions.

Sincerely,


Charles E. Grassley
Ranking Member

Cc: Mr. Rahm Emanuel
Chief of Staff