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Communications with the White House
Concerning Open Investigations]

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DEPARTMENT OF THE TREASURY
OFFICE OF THE GENERAL COUNSEL

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Concerning Open Investigations

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BY ORDER OF THE SECRETARY OF THE TREASURY

TREASURY ORDER 107-05

DATE: March 02, 1995

REAFFIRMED: December 2, 1999

SUNSET REVIEW: December 02, 2004

SUBJECT: Communications with the White House Regarding Open Investigations, Adjudications or Civil and Criminal Enforcement Actions

By virtue of my authority as Secretary of the Treasury, including the authority contained in 31 U.S.C. 321(b) and 5 U.S.C. 301 and 302, I hereby issue the following procedures for communications between the Department of the Treasury and the White House regarding open Department investigations, adjudications or civil or criminal enforcement actions.

1. GENERAL PROCEDURES.

a. General Policy. In order to ensure the President's ability to perform his constitutional obligation to Take care that the laws be faithfully executed, it is the policy of the Treasury Department to provide the White House with information on open investigations, adjudications, or civil (including administrative or regulatory) or criminal enforcement actions pending before or within any regulatory or law enforcement agency within the Department, where important for the performance of the President's duties, where appropriate from a law enforcement and regulatory perspective and where consistent with these procedures.

b. Referral Procedures. The below listed procedures are established to ensure the flow of appropriate information between the Department and the White House. Central to these procedures is the need for consultation with Department senior policy officials¹, including the General Counsel. The General Counsel is authorized to issue more detailed guidance should he or she determine it to be necessary.

(1) Action to be Taken by Department Employees/Senior Policy Officials. If a Department employee determines that a matter involving an open investigation, adjudication, or enforcement action under his or her jurisdiction should be communicated to the White House, he or she shall inform, through the appropriate Department senior policy official, the General Counsel about this matter.

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¹*Department senior policy officials shall include those Treasury officials at the Assistant Secretary level and above as set forth in Treasury Order 10145 and the organization chart attached thereto.*

(2) Action to be Taken by Treasury Bureau Employees/Bureau Heads. If an employee of a Treasury law enforcement or financial regulatory bureau or the Office of Foreign Assets Control ("Treasury Bureaus") believes that a matter involving an open investigation, adjudication or enforcement action under his or her jurisdiction should be communicated to

the White House, he or she shall contact, through the Treasury Bureau head, the Department senior policy official to whom that Treasury Bureau head directly reports. If the senior policy official concurs with that recommendation, he or she shall then inform the General Counsel about this matter.

(3) General Counsel Review and Final Determination. The General Counsel shall provide the Department senior policy official with his or her recommendation concerning the advisability of disclosing the information to the White House. The General Counsel is authorized to preclude transmittal of the information on legal or ethical grounds. If the General Counsel believes that disclosure should not be made based on other than legal or ethical grounds, the General Counsel shall inform the appropriate senior policy official of this recommendation.

(4) Other Final Determinations. Unless precluded on legal or ethical grounds by the General Counsel, the Department senior policy official referred to in paragraph l.b.(1) or l.b.(2) shall make the final determination on whether the information should be communicated to the White House. If the Department senior policy official determines that such information should be communicated to the White House, he or she shall request the General Counsel to make the initial communication.

c. Communications.

(1) Initial Contact with White House. Initial communications between the White House and the Treasury Department regarding any pending Department investigation, adjudication or criminal or civil enforcement action shall involve only the Counsel to the President or the Deputy Counsel and the General Counsel or the Deputy General Counsel. No Treasury or bureau employee shall initiate communications on these matters with the White House other than as provided in paragraph l.c. Any Treasury or bureau employee in possession of information pertaining to any pending criminal referrals and criminal investigations shall keep the information in strict confidence and shall not disclose the information to any person except in accordance with applicable law, Treasury standards and this Order.

(2) Continuing Contact. After the initial contact, further contact on a matter deemed appropriate for communications pursuant to this Order shall be directed to the White House Counsel's Office by the General Counsel, the Deputy General Counsel or the appropriate senior policy official designated by the General Counsel or any other lawyer in the Office of the General Counsel, as designated by the General Counsel.

d. Writing Requirements. All proposals and decisions involving open Department investigations, adjudications or enforcement actions discussed herein that either propose or result in communications with the White House shall be detailed in contemporaneous, written memoranda.

(1) Treasury Bureau Heads and Department Senior Policy Officials. All requests from Treasury Bureau Heads to Department senior policy officials and from Department senior policy officials to the General Counsel requesting a communication to the White House concerning an open investigation, adjudication or enforcement action shall be in writing. Such memoranda shall explain why the communication of information is important for the performance of the President's duties and appropriate from a law enforcement perspective.

(2) General Counsel. The General Counsel shall also issue in writing his or her legal or ethical recommendation to the appropriate Department senior policy official in response to such request for communication with the White House.

(3) Emergency Situations. If an emergency situation is present, the memoranda requested by paragraph 1.d. may be prepared as soon as practicable thereafter.

e. Information Requests by the White House. Requests by the White House for information concerning open Department investigations, adjudications or civil or criminal enforcement actions shall be referred in all cases to the General Counsel. The General Counsel shall ensure that such requests are processed consistent with the provisions of this Order and any applicable White House guidance.

2. OPEN INVESTIGATIONS, ADJUDICATIONS OR ENFORCEMENT ACTIONS DIRECTLY INVOLVING THE WHITE HOUSE.

a. Contacts Directly Involving the White House. If the President, the Vice-President, a member of their families, a senior advisor or an employee of an office which the Chief of Staff (or any similar successor position) directly supervises, is an actual or potential subject, target or witness of an open investigation, adjudication or enforcement action under the jurisdiction of the Treasury Bureaus, the determination of whether it is appropriate to disclose this information to the White House shall be made in accordance with this Order taking into consideration, among other things, the following:

(1) whether disclosure would detrimentally affect the fundamental operation of an agency or other organization in the executive branch of the federal government;

(2) whether disclosure of the information would promote or reduce the public confidence and trust in the integrity of elected officials and public servants or the Department's regulatory and law enforcement activities;

(3) whether there exists an immediate threat of harm or injury to White House persons or property which disclosure will help to avoid;

(4) whether the matter involves any sensitive or urgent national security or foreign policy concern that should be brought to the White House's attention;

(5) whether disclosure of the information would interfere or assist with the Department's law enforcement and regulatory mission or an ongoing law enforcement or regulatory activity; and

(6) whether non-disclosure could cause the White House to convey inaccurate or misleading information to the public.

b. Secretary/Deputy Secretary Consultation. The Deputy Secretary shall be informed prior to any Department communications with the White House involving the matters subject to paragraph 2. The Deputy Secretary, in turn, may consult with the Secretary. The Secretary or Deputy Secretary may consult with the Attorney General or any other appropriate senior government official concerning the advisability of such disclosure or non-disclosure.

c. Procedures. Subject to the procedures specified in paragraph 2., the procedures described in paragraph 1. herein shall apply to the communications described in paragraph 2.

3. SCOPE. In the day-to-day functioning of the Department, there exist activities necessary to carry out the Department's law enforcement and regulatory mission. These may include routine law enforcement

contacts, including administrative and regulatory contacts, designed to collect information through document requests, interviews, depositions or otherwise. Nothing in this Order shall be construed to amend the Department's current approach with respect to its handling of these routine activities.

In addition, the procedures set forth in this Order do not apply to the following circumstances.

- a. Any communication subject to a specific statutory provision prohibiting or governing the disclosure of the information. (am, e.gr., 12 U.S.C. 1462a(b)(3) and 26 U.S.C. 6103.)
- b. Communications between the Secret Service and the White House concerning the Service's protective responsibilities.
- c. Communications between a Treasury Bureau and the National Security Council concerning open investigations or cases, if such disclosure is necessary for the conduct, determination or coordination of national security or foreign policy issues.
- d. Communications between the Department and the White House appropriate to properly respond to inquiries or requests for information or documents in the form of (i) civil and criminal discovery requests; (ii) subpoenas, including but not limited to, grand jury and congressional; (iii) other congressional requests for documents and information; and (iv) any other requests for information and documents authorized by law; provided that the exception created by paragraph 3.d. shall not apply to requests for information pertaining to those officials and individuals identified in paragraph 2. who are the subject, target or witness in an open investigation, adjudication or enforcement action.
- e. Communications between the Department and the White House appropriate to formulate an Administration position with respect to judicial review or settlement of pending litigation.
- f. Tax, security and background checks on prospective Federal employees and appointees, including Executive and Judicial Branch appointments under consideration by the President or the Department.
- g. Communications between the Inspector General or his or her authorized officials and the White House in furtherance of the duties and responsibilities of the Inspector General undertaken pursuant to the Inspector General Act of 1978, 5 U.S.C.A. App. 3.

Robert E. Rubin

Secretary of the Treasury