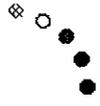


NLWJC - Kagan

DPC - Box 013 - Folder 013

**DPC [Domestic Policy Council] -
Agency Contact Policy**



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11/24/98 05:41:10 PM

Record Type: Record

To: All WHO Users, All OPD Users, All OVP Users

cc:

Subject: Contacts With Agencies

MEMORANDUM FOR WHITE HOUSE STAFF

FROM: CHARLES F. C. RUFF
COUNSEL TO THE PRESIDENT

DANIEL MARCUS
SENIOR COUNSEL

SUBJECT: Contacts With Agencies

This memorandum reiterates White House policies on contacts between White House Staff and federal agencies. Please review these policies and become familiar with them. A "quick reference" guide summarizing this memorandum is attached for your convenience. Do not hesitate to call the Counsel's Office if you have any questions.

BASIC PRINCIPLES

Some contacts between White House staff and federal agencies are permitted, and some are prohibited. Unless you are certain that a particular contact is permissible, consult with the Counsel's Office before making the contact. In general, the starting points for deciding whether a contact is appropriate will be:

- the type of agency involved (executive branch or independent), and
- the subject matter of the contact (policy or legislation, investigation or enforcement action, contract or grant, or rulemaking).

I. CONTACTS WITH EXECUTIVE BRANCH AGENCIES

Which agencies are covered by this section?

The principal Executive Branch agencies are the Cabinet Departments:

- The Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, State, Transportation, the Treasury, and Veterans Affairs. Regulatory agencies within these Departments -- e.g., FDA, OSHA, the Surface Transportation Board, and the Comptroller of the Currency -- are also covered.

Executive Branch agencies also include the Environmental Protection Agency, the Small Business

Administration, the Equal Employment Opportunity Commission, and the Social Security Administration.

Boards and commissions are generally considered Executive Branch agencies if their members are appointed, and removable without cause, by the President.

As discussed in Section II, separate policies apply to contacts with so-called "independent" agencies, such as the FCC, the FTC, the CFTC, and the SEC.

Policy, legislation and administrative matters

General Rule: White House staff may communicate with Executive Branch agencies about policy, legislation or administrative matters.

Special Rule for DOJ: Because policy, legislative and administrative issues at the Department of Justice may touch upon law enforcement or other litigation-related matters pending at the Department, you should advise the Counsel's Office before you commence communications with DOJ on **any** subject, including policy matters. Once our office has agreed that your contact with DOJ on a particular subject is appropriate, you need not later inform us of subsequent communications on the **same** matter.

Special Rule for the IRS: Because of the sensitive investigation and enforcement powers of the IRS, and the confidential personal information the IRS handles, it is White House policy that **no member of the White House Staff should have any communication of any type with the IRS without prior approval of the Counsel**, except on their own tax matters. Note that any communication about tax policy or legislation normally can be directed to the Assistant Secretary of the Treasury for Tax Policy rather than the IRS.

Investigations, enforcement actions and adjudications

White House staff should **not** contact Executive Branch agencies concerning investigations, enforcement actions, or adjudications. This prohibition means White House staff should not ask an agency even for a status report about a pending matter of this type, or ask an agency official to meet with a private party or Member of Congress to discuss such a pending matter.

-- "Investigations" are matters related to investigating or reviewing potential or actual administrative, criminal, or civil charges for alleged violations of law or regulations by specific individuals or entities.

-- "Enforcement actions" are matters related to pursuing administrative, criminal, or civil charges for alleged violations of law or regulations by specific individuals or entities.

-- "Adjudications" are matters decided at an administrative or judicial hearing, or other proceeding, in which a department or agency determines the rights of particular individuals or entities. **Licensing decisions should be treated as adjudications.**

While there may be rare, special circumstances when it is appropriate for the White House to communicate with an agency about a pending investigation, enforcement action, or adjudication, only the Counsel's Office should undertake such communications. In the case of the Justice Department, any such communication must be initiated by the White House Counsel, the Deputy Counsels, or the Senior Counsel. There may be other matters in which the White House is participating directly (for example, civil litigation involving the Freedom of Information Act or other EOP decisions). The Counsel's Office will advise on a case-by-case basis regarding appropriate contacts in these types of matters.

Outside inquiries: If you receive a written or oral inquiry or request from an outside party -- including a Member of Congress -- concerning an investigation, enforcement action, or adjudication pending at an Executive Branch agency, **contact the Counsel's Office for guidance on how to proceed.** Normally, it will be appropriate to cite general White House policy against contacts on such matters, and to suggest that any inquiries concerning

the pending matter be made directly to the relevant agency, if appropriate.

Contacts from agencies: By the same token, if anyone at any Executive Branch agency contacts you about any pending investigation, enforcement action, or adjudication (other than a routine background check), you should promptly advise the Counsel's Office, which will determine how to proceed and will report back to you as appropriate.

Contracts and grants

Many if not most government contracts and grants are awarded by Executive Branch agencies on the basis of competition or objective criteria specified by statute or regulation. In such cases, the rule of **no contact** described above for investigations, enforcement actions, and adjudications applies. Pure status inquiries may be permissible, but you should check first with the Counsel's Office.

In other cases, an Executive Branch agency may have discretion to determine the recipient of a grant on the basis of policy choices. In such cases, White House staff who wish to contact an agency about the grant should seek advice from the Counsel's Office as to whether the contact is appropriate.

In no event, however, should a White House staff member contact an Executive Branch agency about a contract or grant matter in which the staff member (or a relative, friend, or business associate of the staff member) has a personal financial interest.

Rulemaking matters

1. Status checks are generally permitted: White House staff may contact Executive Branch agencies regarding a pending rulemaking matter if the purpose of the communication is not to influence the outcome of a pending rulemaking proceeding (e.g., a status inquiry). You should state at the outset of the contact that you do not wish to influence the merits or the timing of the agency's decision, but merely are seeking information on its status.

2. Other contacts must be cleared in advance with your supervisor: If the purpose of the contact is to influence the outcome of a pending rulemaking, White House staff should, **prior to making the contact**, (a) obtain approval from the Assistant or Deputy Assistant to the President who is their principal supervisor, and (b) coordinate the contact with the Administrator of OIRA, who will advise on the appropriateness of the contact.

3. No "passing on" oral comments from outsiders: Input from the public -- that is, persons not employed by the Executive Branch, Congress, or the federal judiciary -- must be submitted in writing if it is to be incorporated into the rulemaking process. Thus, White House staff should not communicate non-written comments **from the public** to agencies, OIRA or anyone else involved in the rulemaking process. White House staff should forward oral comments **from Members of Congress or other federal employees** to the Administrator of OIRA.

If anyone other than a federal employee asks to meet with you regarding a pending rulemaking, or if you are considering organizing an outreach meeting with the public on a policy initiative that involves a pending rulemaking, you should **coordinate with the Administrator of OIRA and with the Counsel's office**. They will determine whether the meeting can occur and whether it must be made part of the administrative record.

4. Forward written comments from outsiders: You should forward any written communications from the public, or Members of Congress or other federal employees, on pending rulemaking to the relevant department or agency for inclusion in the public docket. A copy of any such written communications should also be forwarded to the Administrator of OIRA.

II. CONTACTS WITH INDEPENDENT AGENCIES

Which agencies are covered by this section?

Congress has created a number of so-called independent agencies. These agencies are called "independent" because of the quasi-judicial powers they have been delegated by Congress, and because commissioners or board members are removable by the President only for specific "cause."

The principal independent agencies are the Federal Communications Commission, the Federal Trade Commission, and the Securities and Exchange Commission. Other independent agencies include:

Commodity Futures Trading Comm.	National Credit Union Administration
Consumer Product Safety Comm.	National Labor Relations Board
Federal Deposit Insurance Comm.	National Transportation Safety Board
Federal Election Comm.	Occupational Safety and Health Review Comm.
Federal Reserve Board	United States International Trade Comm.

Investigations, enforcement actions, adjudications, contracts and grants

White House staff should **not** contact any independent agency concerning a pending investigation, enforcement, action or adjudication. The same rule applies to contracts and grants.

Refer any inquiries concerning an investigation, enforcement action, adjudication, contract, or grant at an independent agency to the Counsel's Office.

While there may be rare, special circumstances when it is appropriate to communicate with an independent agency about an investigation, enforcement action, contract, or grant, **only the Counsel's Office may undertake such communications.**

Rulemaking proceedings

Congress has assigned certain rulemaking jurisdiction to independent agencies such as the FCC and the SEC. White House staff should **not** communicate with independent agencies about rulemaking matters without specific, advance approval from the Counsel's Office. Even checks are not permitted without advance approval.

Refer any inquiries concerning rulemaking by an independent agency to the Counsel's Office.

Policy, legislation, and administrative matters

Any other communications with independent agencies, including discussions of policy or legislation, should be approved in advance by the Counsel's Office to ensure that the communication is appropriate and that no special rules apply. (Advance approval can be provided for categories of contacts.) The sole exception to this policy is communication on routine administrative matters (e.g., obtaining an address or phone number, or requesting publicly available documents).

WHITE HOUSE CONTACTS POLICY: A QUICK SUMMARY

CONTACTS WITH EXECUTIVE BRANCH AGENCIES

TYPE OF CONTACT	GENERALLY PERMITTED?	STEPS TO TAKE
Contact executive branch agency about policy, legislation or administrative matter	Yes (except for IRS) -- but advise Counsel's Office before contact with DOJ	No need to consult with Counsel's Office prior to contact (but advise Counsel's Office before contact with DOJ)
Contact executive branch agency about investigation, enforcement action, adjudication, contract or grant	NO	Seek guidance from the Counsel's Office. Refer written or oral inquiries about such matters to the Counsel's Office.
Contact executive branch agency about a rulemaking for purpose of influencing outcome of a rulemaking proceeding.	YES (except for IRS), IF prior approval of White House supervisor and the Administrator of OIRA. But do not "pass on" comments from outsiders, except when outsider comments are in writing. Send such written comments to the relevant agency for inclusion in the public docket, with a copy to OIRA. Coordinate meetings with outsiders about pending rulemaking through OIRA and White House Counsel. And advise Counsel's Office before contact with DOJ.	Obtain prior approval of the Assistant or the Deputy Assistant to the President who supervises you, and the Administrator of OIRA. NOTE: White House staff may not forward to agencies non-written comments from members of the public on rulemaking matters. Written comments should be forwarded to Administrator of OIRA.
Contact executive branch solely for status report on pending rulemaking proceeding.	YES (except for IRS)	No need to consult with Counsel's Office prior to contact (but advise Counsel's Office before contact with DOJ)
Contact independent agency about investigation, enforcement action, adjudication, contract or grant	NO	Refer any inquiries about such matters to the Counsel's Office.
Contact independent agency about rulemaking matter	NO	Refer any inquiries about such matters to the Counsel's Office

Contact independent agency about policy, legislation or administrative matter	NO, unless approved in advance by White House Counsel's Office	Consult with White House Counsel's Office before any such contact. (Sole exception is routine administrative matters -- e.g. obtaining public documents or phone nos.)
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Executive Branch Agencies

Department of Agriculture
 Department of Commerce
 Department of Defense
 Department of Education
 Department of Energy
 Department of Health and Human Services
 Department of Housing and Urban Development
 Department of Interior
 Department of Justice
 Department of Labor
 Department of State
 Department of Transportation
 Department of Treasury
 Department of Veterans Affairs
 Equal Employment Opportunity Commission
 Environmental Protection Agency
 Small Business Administration
 Social Security Administration

Independent Agencies

Federal Communications Commission
 Federal Trade Commission
 Securities and Exchange Commission
 Commodity Futures Trading Commission
 Consumer Products Safety Commission
 Federal Deposit Insurance Corporation
 Federal Election Commission
 Federal Maritime Commission
 Federal Reserve Board
 National Credit Union Administration
 National Labor Relations Board
 National Transportation Safety Board
 Nuclear Regulatory Commission
 Occupational Safety & Health Review Comm.
 U.S. International Trade Commission

THE WHITE HOUSE
WASHINGTON

September 16, 1997

MEMORANDUM FOR WHITE HOUSE STAFF

FROM: CHARLES F. C. RUFF
COUNSEL TO THE PRESIDENTROBERT N. WEINER
SENIOR COUNSEL TO THE WHITE HOUSE COUNSEL

SUBJECT: CONTACTS WITH AGENCIES

This memorandum reiterates White House policies on contacts between White House staff and federal agencies. Please review these policies and become familiar with them. A "quick reference" guide summarizing this memorandum is attached for your convenience. Please call the Counsel's Office if you have any questions.

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- the type of agency involved (executive branch or independent), and
- the subject matter of the contact (policy or legislation, investigation or enforcement action, or rulemaking).

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The principal Executive Branch agencies are the Cabinet Departments:

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Executive Branch agencies also include the Environmental Protection Agency, the Small Business Administration, the Surface Transportation Board, and the Equal Employment Opportunity Commission.

Boards and commissions are generally considered Executive Branch agencies if their members are appointed, and removable without cause, by the President.

As discussed in Section II, separate policies apply to contacts with so-called "independent" agencies, such as the FCC, the FTC and the SEC.

Policy, legislation and administrative matters

General Rules: White House staff may communicate with Executive Branch agencies about policy, legislation or administrative matters.

Special Rules for DOJ: Because policy, legislative and administrative issues at the Department of Justice may touch upon law enforcement or other litigation-related matters pending at the Department, you should advise the Counsel's Office before you commence communications with DOJ on any subject, including policy matters. Once you have informed our office about your contact with DOJ on a particular subject, you need not later inform us of communications on the same matter.

Special Rules for the IRS: Because of the sensitive investigative and enforcement powers of the IRS, and the confidential personal information the IRS handles, it is White House policy that **no member of the White House staff should have any communication of any type with the IRS without prior approval of the Counsel**, except on their own tax matters. Note that any communication about tax policy or legislation normally can be directed to the Assistant Secretary of the Treasury for Tax Policy.

Investigations, enforcement actions and adjudications

White House staff should **not** contact Executive Branch agencies concerning investigations, enforcement actions, or adjudications. This prohibition means White House staff should not ask an agency even for a status report about a pending matter of this type, or ask an agency official to meet with a private party or Member of Congress to discuss such a pending matter.

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Outside inquiries: If you receive a written or oral inquiry or request from an outside party -- including a Member of Congress -- concerning an investigation, enforcement action, or adjudication pending at an Executive Branch agency, **contact the Counsel's Office for guidance on how to**

proceed. Normally, it will be appropriate to cite general White House policy against contacts on such matters, and to suggest that any inquiries concerning the pending matter be made directly to the relevant agency, if appropriate.

Contacts from agencies: By the same token, if anyone at any Executive Branch agency contacts you about any pending investigation, enforcement action, or adjudication (other than a routine background check), **you should promptly advise the Counsel's Office**, which will determine how to proceed and will report back to you as appropriate.

Rulemaking matters

1. **Status checks are generally permitted:** White House staff may contact Executive Branch agencies regarding a pending rulemaking matter if the purpose of the communication is not to influence the outcome of a pending rulemaking proceeding (*e.g.*, a status inquiry). You should state at the outset of the contact that you do not wish to influence the merits or the timing of the agency's decision, but merely are seeking information on its status.
2. **Other contacts must be cleared in advance with your supervisors:** If the purpose of the contact is to influence the outcome of a pending rulemaking, White House staff should, prior to making the contact, (a) obtain approval from the Assistant or Deputy Assistant to the President who is their principal supervisor, and (b) coordinate the contact with the Administrator of OIRA, who will advise on the appropriateness of the contact.
3. **No "passing on" oral comments from outsiders:** Input from the public -- that is, persons not employed by the Executive Branch, Congress or the federal judiciary -- must be submitted in writing if it is to be incorporated into the rulemaking process. Thus, White House staff should not communicate non-written comments **from the public** to agencies, OIRA or anyone else involved in the rulemaking process. White House staff should forward non-written comments **from Members of Congress or other federal employees** to the Administrator of OIRA.

If anyone other than a federal employee asks to meet with you regarding a pending rulemaking, or if you are considering organizing an outreach meeting with the public on a policy initiative that involves a pending rulemaking, you should **coordinate with the Administrator of OIRA and with this office**. They will determine whether the meeting can occur and whether it must be made part of the administrative record.

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“cause.”

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Other independent agencies include:

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While there may be rare, special circumstances when it is appropriate to communicate with an independent agency about an investigation, enforcement action or adjudication, **only the Counsel’s Office may undertake such communications.**

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Congress has assigned certain rulemaking jurisdiction to independent agencies such as the FCC, the FTC and the SEC. White House staff should **not** communicate with independent agencies about rulemaking matters without specific advance, approval from the Counsel’s Office. Status checks are not permitted without advance approval.

Refer any inquiries concerning rulemaking by an independent agency to the Counsel’s Office.

Policy, legislation and administrative matters

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Contact executive branch agency about a rulemaking for purpose of influencing outcome of a rulemaking proceeding.	YES (except for IRS), IF prior approval of White House supervisor and the Administrator of OIRA. But do not "pass on" comments from outsiders, except when outsider comments are in writing. Send such written comments to the relevant agency for inclusion in the public docket, with a copy to OIRA. Coordinate meetings with outsiders about pending rulemaking through OIRA and White House Counsel. And advise Counsel's Office before contact with DOJ.	Obtain prior approval of the Assistant or the Deputy Assistant to the President who supervises you, and the Administrator of OIRA. NOTE: White House staff may not forward to agencies non-written comments from members of the public on rulemaking matters. Written comments should be forwarded to Administrator of OIRA.
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 Department of Housing and Urban Development
 Department of Interior
 Department of Justice
 Department of Labor
 Department of State
 Department of Transportation
 Department of the Treasury
 Department of Veterans Affairs
 Equal Employment Opportunity Commission
 Environmental Protection Agency
 Small Business Administration
 Surface Transportation Board

Independent Agencies

Federal Communications Commission
 Federal Trade Commission
 Securities and Exchange Commission
 Commodities Futures Trading Commission
 Consumer Products Safety Commission
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 Federal Election Commission
 Federal Maritime Commission
 Federal Reserve Board
 National Credit Union Administration
 National Labor Relations Board
 National Transportation Safety Board
 Nuclear Regulatory Commission
 Occupational Safety & Health Rev. Comm.
 U.S. International Trade Commission