

Congress of the United States
Washington, DC 20515

May 15, 2013

The Honorable Michelle J. DePass
Assistant Administrator
Office of International and Tribal Affairs
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Ms. DePass:

It has come to our attention that during your tenure as a senior political appointee at the Environmental Protection Agency, you may have simultaneously been a compensated employee of the Ford Foundation. If so, you may have violated a federal statute prohibiting such an arrangement, as well as the written pledge you submitted when you started at the EPA.¹ Accordingly, we respectfully request your cooperation to address this matter. In addition, documents we have obtained indicate that you have also violated EPA's explicit policy prohibiting the use of non-official e-mail accounts to conduct agency business.²

The Committees have obtained documents indicating that you used a Ford Foundation BlackBerry device and e-mail address to correspond with "Richard Windsor," the e-mail alias of former EPA Administrator Lisa Jackson, regarding a new hire at the EPA.³ The e-mail in question was sent on June 19, 2009, nearly one month after you were confirmed to assume your current position at EPA.⁴ On the same day, you replied to an e-mail from Lisa Jackson from what appears to be a Ford Foundation computer, as the e-mail contains your full signature as Program Officer at The Ford Foundation and refers scheduling questions to your Administrative Assistant at a fordfound.org e-mail address.

The fact that you appear to have been using an e-mail account, BlackBerry device, and possibly other resources from a prior employer is problematic for several reasons. First, if you

¹ See 18 U.S.C. § 209; see also letter from Michelle DePass, Nominee for Assistant Adm'r for the Office of Int'l and Tribal Affairs, U.S. Env'tl. Prot. Agency, to Patricia K. Hirsch, Designated Agency Ethics Official, U.S. Env'tl. Prot. Agency (Mar. 24, 2009) [Hereinafter Ethics Letter].

² Letter from Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works, Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to James B. Martin, Reg'l Adm'r, U.S. Env'tl. Prot. Agency Region 8 (Jan. 29, 2013); see also Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, Hon. David Vitter, Ranking Member, S. Comm. on Env't & Pub. Works, to Jared Blumenfeld, Reg'l Adm'r, U.S. Env'tl. Prot. Agency Region 9 (Mar. 18, 2013); see also ENVTL. PROT. AGENCY, *Frequent Questions about E-Mail and Records* <http://www.epa.gov/records/faqs/email.htm> (last accessed May 2, 2013).

³ E-mail from Michelle DePass, Assistant Adm'r, U.S. Env'tl. Prot. Agency, to Richard Windsor (June 19, 2009, 08:03 AM), http://www.epw.senate.gov/public/index.cfm?FuseAction=Files.View&FileStore_id=4c4ad4b7-ad91-4f4b-9d0e-1653b6e1c6d1.

⁴ Michelle DePass was confirmed by a voice vote in the U.S. Senate on May 12, 2009. See THOMAS, Presidential Nominations: 111th Cong. (2009-2010), <http://thomas.loc.gov/cgi-bin/ntquery/z?nomis:111PN0021500>.

were receiving pay or benefits from a former employer while employed at the EPA, you may have violated 18 U.S.C. § 209. This statute prohibits a federal employee from receiving any outside, additional or supplemental compensation from a private source for his or her official government duties.⁵ While it is unclear whether you were receiving a salary in addition to your \$67,468 severance package,⁶ it appears that you were using Ford Foundation resources after you were confirmed to serve as a high level official within the EPA.⁷ Moreover, you used these resources to correspond with Administrator Jackson, your employer at the time, to carry out your responsibilities at the Agency.

The law was designed to prevent a conflict of interest “in the strictest sense;” that is, an “employee does not have to *do* anything improper in his office to violate the statute,” but rather his or her special status as a government employee “makes an unexceptionable act wrongful – wrongful because of the potential dangers in serving two paymasters.”⁸ If you received benefits from the Ford Foundation that you used to execute your official duties is sufficient to consider your actions inconsistent with your duty as a federal employee.

In addition, these documents strongly suggest that you may have violated your pledge, which stated your intention to resign from the Ford Foundation upon confirmation. Specifically, on March 24, 2009, you pledged:

Upon confirmation, I will resign my position as Program Officer of the Ford Foundation. Pursuant to its standard employment agreement, the Foundation will pay me a severance payment of up to \$67,468.⁹ Until I have received this payment, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the ability or willingness of the Foundation to make this payment to me, unless I first obtain a written waiver, pursuant to 18 U.S.C. Sec. 208(b)(1). In addition, for a period of one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which the Foundation is a party or represents a party, unless I am allowed to participate, pursuant to 5 C.F.R. Sec. 2635.502(d).¹⁰

If, however, you were still affiliated with the Ford Foundation on June 19, 2009, as the e-mails indicate, you may have violated the spirit, as well as the letter, of your pledge. Finally, it is clear

⁵ See 18 U.S.C. § 209.

⁶ See *supra* note 1, Ethics Letter; *Id.* “[T]he regulations of the Office of Government Ethics also provide for a two-year recusal requirement which bars an official in the executive branch from participating in a particular matter in which a “former employer” is or represents a party when that former employer had made an “extraordinary payment” to the official prior to entering government. An ‘extraordinary payment’ is one in excess of \$10,000 in value made by an employer after the employer has learned that the employee is to enter government service.”

⁷ *Supra* note 4.

⁸ CONG. RESEARCH SERV., *Entering the Executive Branch of Government: Potential Conflicts of Interest with Previous Employments and Affiliations*, RL31822 (Sept. 14, 2010), http://www.crs.gov/pages/Reports.aspx?PRODCODE=RL31822&Source=search#_Toc271728124.

⁹ See *supra* note 7. It is unclear to the Committees why you were recused for only one year, as your severance payment exceeds the statutory threshold six-fold.

¹⁰ See *supra* note 1, Ethics Letter.

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that by corresponding about Agency matters using your fordfound.org e-mail account, you violated the EPA's policy prohibiting the use of a non-official e-mail account for official business.¹¹

Therefore, we request that you produce to the Committees all e-mail correspondence sent to, received from, or copied to your fordfound.org e-mail account or any other non-official e-mail account referring or relating to official business from May 12, 2009 to the present.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. The U.S. Senate Committee on Environment and Public Works focuses on federal energy and environmental policy and our nation's transportation and infrastructure systems. An attachment to this letter provides additional information about responding to the Committees' request.

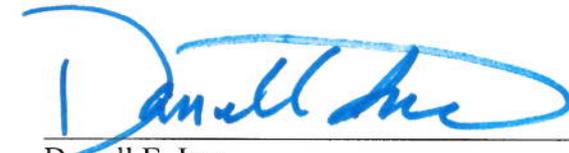
We ask that you provide the requested documents and information as soon as possible, but by no later than noon on Wednesday, May 29, 2013. When producing documents to the Oversight Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. When producing documents to the Environment and Public Works Committee, please deliver production sets to 415 Hart Senate Office Building. The Committees prefer, if possible, to receive all documents in electronic format.

Thank you for your prompt attention to this matter. If you have any questions, please contact Kristina Moore of the Senate Committee on Environment and Public Works at (202) 224-6176 or Tyler Grimm of the House of Representatives Committee on Oversight and Government Reform at (202) 225-5074.

Sincerely,



David Vitter
Ranking Member
Committee on Environment and
Public Works
U.S. Senate



Darrell E. Issa
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives

¹¹ See *supra* note 2.

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cc: The Honorable Barbara Boxer, Chairman
Committee on Environment and Public Works
U.S. Senate

The Honorable Elijah Cummings, Ranking Minority Member
Committee on Oversight and Government Reform
U.S. House of Representatives