

# United States Senate

WASHINGTON, DC 20510

April 9, 2019

The Honorable David Bernhardt  
Acting Secretary  
United States Department of the Interior  
1849 C Street, NW  
Washington D.C. 20240

Dear Acting Secretary Bernhardt:

As senior Members of the Homeland Security and Governmental Affairs Committee, we write in response to a recent Government Accountability Office (GAO) report titled: “Government-wide Political Appointee Data and Some Ethics Oversight Procedures at Interior and SBA Could be Improved.” The report highlights serious concerns with the Department of the Interior ethics program and the Department’s oversight of political appointees’ adherence to ethical guidelines.

GAO found numerous shortcomings in the Department’s ethics program, largely stemming from long-standing human capital and workforce continuity challenges. As of November 2018, 29% of full time positions in the ethics program were vacant. These vacancies and staff turnover had negative effects on the program’s ability to complete its primary responsibilities. For example, Department officials stated that there was not enough management support, training, or resources provided to properly review financial disclosure forms, which help ethics officials identify and prevent conflicts of interest. During 2017, one official was responsible for reviewing over 300 public financial disclosure forms. GAO also found that, as of October 2018, the Department’s ethics office could not produce documentation of policies and procedures for its ethics program—raising questions of how the office is able to operate.<sup>1</sup>

Further, since January 2017, the Department of the Interior Office of the Inspector General (OIG) initiated five investigations into potential ethics violations involving the former Secretary of the Interior, Ryan Zinke.<sup>2</sup> In addition to the GAO investigation, outside nonpartisan, non-profit, watchdog groups have also asked the OIG to conduct formal investigations into several senior members of the Department for potentially breaking their commitment to avoid conflicts of interest in violation of their ethics pledges.<sup>3</sup> Most recently, outside ethics watchdogs and Members of Congress have asked the OIG to review your conduct relating to federal ethics rules and outside lobbying activity.<sup>4</sup>

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<sup>1</sup> Government Accountability Office, *Federal Ethics Programs: Government-wide Political Appointee Data and Some Ethics Oversight Procedures at Interior and SBA Could Be Improved* (GAO-19-249), at 7, 22 and 23 (March 2019) (<https://www.gao.gov/assets/700/697593.pdf>).

<sup>2</sup> *Id.* at 7.

<sup>3</sup> Letter from Brendan M. Fischer and Delaney N. Marsco, Campaign Legal Center, to Mary L. Kendall, Deputy Inspector General, Department of the Interior Office of Inspector General (Feb. 20, 2019) (<https://www.documentcloud.org/documents/5744136-Campaign-Legal-Center-Letter-to-Interior.html>).

<sup>4</sup> *Ethics watchdog, Democratic senators call for probe of Interior chief Bernhardt’s work on water policy*, Washington Post (Feb. 28, 2019) (<https://www.washingtonpost.com/climate-environment/2019/02/28/ethics-watchdog-democratic-senators-call-probe-interior-chief-bernhardts-work-water-policy/>).

On February 1, 2019 you issued an agency-wide memorandum concerning the Department's ethics program. That memorandum notes your intent to "dramatically transform a culture of ethics avoidance into one of ethical compliance." The memorandum also includes information about your intent to hire new employees at Headquarters and across the Department to improve the ethics program.<sup>5</sup> The GAO report, multiple OIG investigations, and outside watchdog concerns lead us to question the leadership commitment to ethics within the Department.

To better understand the progress that the Department has made in implementing a fully functional ethics program, we ask that please respond to the following by May 1, 2019:

1. Please provide updated information on the career ethics officials you pledged to hire by the end of fiscal year 2019.
  - a) What is the current and planned staffing level of the Department of the Interior ethics program, including the total number of employees and full-time equivalent employees (FTEs)? Please include the current vacancy rate and the number of employees and FTEs the Department intends to hire.
  - b) Please provide the number of individuals hired from November 2018 to present, as well as their titles and job responsibilities.
  - c) Please provide the number, title(s), and job responsibilities of any ethics roles the Department is still seeking to fill. Please note whether any positions have become vacant since November 2018.
2. In its report, GAO recommended that the Department conduct strategic planning for its ethics workforce and document the policies and procedures for its ethics program. Please identify the steps and associated timelines for responding to these recommendations.
  - a) Please also provide information on any strategic workforce planning underway to address ethics issues in the Department, including documentation to support these initiatives.
3. It has been publicly reported that you issued a memorandum on April 2, 2019 regarding a new effort to "transform the ethics program" at the Department of the Interior.<sup>6</sup> Please confirm that this memorandum was issued and, if so, provide a copy.
  - a) It was also reported that this memorandum directed the Department's lead ethics officer to develop a plan to consolidate the ethics offices of individual bureaus into a single Department-wide office. Please detail any efforts to consolidate the Department's ethics offices into a single office, including the rationale for this change, a timeline for implementation, and metrics that the Department will use to track the effects of this transition.
4. The White House has a critical role in helping agencies address ethics requirements that pertain to political appointees. To better understand the support and oversight that the

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<sup>5</sup> Memorandum from David Bernhardt, Acting Secretary of Interior, to All Department of the Interior Employees, A Message from Acting Secretary Bernhardt (Feb. 1, 2019) (<https://www.doi.gov/sites/doi.gov/files/message-from-acting-secretary-bernhardt-2019-02-01.pdf>).

<sup>6</sup> *Bernhardt pushes ethics reforms amid complaints*, E&E News (Apr 3, 2019) (<https://www.eenews.net/stories/1060141877>).

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Interior Department has received from the White House, please provide the following information:

- a) Please provide any guidance that the Department has received from the White House or the Office of Management and Budget regarding ethics policies and requirements for political appointees.
- b) Please provide any policies, procedures, and guidance at the Department, as well as any policies, procedures, and guidance from the White House that have been shared with the Department, pertaining to information-sharing between the Department and the White House regarding political appointees, ethics pledges and waivers, or related ethics issues.
- c) Please provide an accounting of information-sharing with the White House, including the number of times that Department ethics officials have communicated with the White House regarding political appointees' ethics pledges or ethics waivers each month over the course of the past year.
- d) Please provide any information that the White House has shared with the Department regarding the White House's tracking and use of data on political appointees, including by the White House Counsel's Office and Office of Presidential Personnel.

Please have your staff contact [REDACTED]

[REDACTED]

with any questions and with any official correspondence related to this request. Thank you for your attention to this matter, and we look forward to your response.

Sincerely,



Thomas R. Carper  
U.S. Senator



Gary C. Peters  
Ranking Member  
Senate Committee on Homeland Security  
and Governmental Affairs

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de C. J. J.