



October 30, 2020

The Honorable Peggy E. Gustafson
Inspector General
U.S. Department of Commerce
1401 Constitution Avenue N.W.
Washington, DC 20230
Via email hotline@oig.doc.gov

Dear the Honorable Peggy E. Gustafson:

Campaign Legal Center (“CLC”) respectfully requests a review of a former employee of the U.S. Department of Commerce for possible violations of financial disclosure requirements under the Ethics in Government Act of 1978 and ethics rules provided by Executive Order 13770: Ethics Commitments by Executive Branch Appointees (“ethics pledge”).

From January 23, 2017 until January 6, 2018, Eric D. Branstad served as the Senior White House Advisor at the U.S. Department of Commerce. As a senior employee of the executive branch, Branstad was required to submit personal financial disclosure reports. His reports contain omissions that appear to be knowing and willful, in violation of the Ethics in Government Act. In addition, after leaving government in 2018, Branstad lobbied the Department of Commerce, despite an Executive Order prohibiting senior executive branch appointees from engaging for at least five years in lobbying activities with respect to their former agency. He appeared to conceal this activity by not providing the required disclosure of his prior position on his lobbyist registration. He also did not report his lobbying activity until nearly 18 months after it began.¹

¹ Mara Hvistendahl & Lee Fang, *China’s Man in Washington: Move Over Hunter Biden. Meet Eric Branstad, the China Ambassador’s Son Who Got Rich in Trump’s Swamp*. THE INTERCEPT (Oct. 15, 2020), <https://theintercept.com/2020/10/15/eric-branstad-trump-china-ambassador/>; Mercury Public Affairs, LLC, Amended Q1 2019 Lobbying Report (July 22, 2020), <https://disclosurespreview.house.gov/ld/ldxmlrelease/2019/1A/301203431.xml>; Mercury Public Affairs, LLC, Amended Q2 2019 Lobbying Report (July 22, 2020),

Branstad's activities raise questions about the integrity of decision-making at the Department of Commerce, and he should not be permitted to have future lobbying contacts with the agency in violation of the ethics pledge. An Inspector General investigation is needed to review Branstad's compliance with all federal disclosure and ethics requirements that applied to him during and after his employment with the Department of Commerce. If he violated the law, and is not held accountable for that violation, it establishes a precedent that current and future political appointees can leave public service and disregard their ethics obligations for personal gain.

I. Financial Disclosure Violations

Pursuant to the Ethics in Government Act of 1978, new senior employees of the executive branch must file financial disclosure statements, which require the employee to identify any source that paid more than \$5,000 for their personal services in any calendar year during the reporting period.²

The U.S. Office of Government Ethics ("OGE") explains that executive branch employees must "[r]eport such payments both from employers and from any clients to whom they personally provided services . . . [and] *must report a source even if the source made its payment to your employer and not to you.*"³ "If a filer has reportable income or a reportable agreement or arrangement with a political entity, that information is required to be reported in the appropriate part of the financial disclosure form[] . . . [including] as a source of income in Part 4 if the income was greater than \$5,000 in any calendar year during the reporting period."⁴ Employees who knowingly and willfully violate financial disclosure requirements are subject to civil and criminal penalties, including up to \$62,000 in fines.⁵

<https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=702FC02D-130C-4472-BB33-3DA00C3AB9A3&filingTypeID=64>; Mercury Public Affairs, LLC, Amended Q3 2019 Lobbying Report (July 22, 2020),
<https://disclosurespreview.house.gov/ld/ldxmlrelease/2019/3A/301203436.xml>; Mercury Public Affairs, LLC, Amended Q4 2019 Lobbying Report (July 22, 2020),
<https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=2E2FE678-D328-4B22-9416-46A5A9EB8C30&filingTypeID=82>;

² 5 U.S.C. app. § 102(a)(1).

³ *Your Positions Held Outside United States Government*, U.S. Office of Gov't Ethics, <https://www.oge.gov/Web/278eGuide.nsf/Chapters/Your%20Positions%20Held%20Outside%20United%20States%20Government?opendocument> (last visited Oct. 26, 2020) (emphasis added).

⁴ U.S. OFF. OF GOV'T ETHICS, *Clarification of the Meaning of "Political Entity" for Financial Disclosure Purposes*, LA-18-13 at 2, [https://oge.gov/Web/OGE.nsf/Legal%20Advisories/1FC232D7B22EC05A852585BA005BEC2C/\\$FILE/LA-18-13.pdf?open](https://oge.gov/Web/OGE.nsf/Legal%20Advisories/1FC232D7B22EC05A852585BA005BEC2C/$FILE/LA-18-13.pdf?open).

⁵ 5 C.F.R. § 2634.701.

Branstad Failed to Include His Income from the Donald J. Trump for President Campaign on His Financial Disclosure Report

Branstad indicated in his LinkedIn profile⁶ that, prior to the 2016 election, he served as the Iowa State Director for the Donald J. Trump for President Campaign. He did not include the income from the Trump campaign in his financial disclosure of sources of income exceeding \$5,000. Given his representation of the work he performed for the Trump campaign, this omission appears to be a knowing and willful violation of federal law.

Based on the Trump campaign's FEC reporting, the work Branstad performed for the Trump campaign was apparently done through his role at Matchpoint Strategies.⁷ The Trump campaign never reported paying Branstad directly, except for a small number of travel reimbursements. Instead, the campaign reported substantial, salary-sized payments to Matchpoint for "field consulting" and "political strategy services."⁸ These services are consistent with Branstad's description of the work he performed personally for the Trump campaign as a political strategist and consultant.⁹

Branstad Appears to Have Knowingly and Willfully Violated Financial Disclosure Laws by Failing to Identify his Income from the Trump Campaign

Given Branstad's senior role on Trump's 2016 campaign, and the amount and description of the campaign's payments to Matchpoint, there is substantial reason to believe that the campaign was paying Branstad tens of thousands of dollars through Matchpoint. Thus, it appears likely that Branstad knowingly and willfully violated financial disclosure requirements

⁶ Eric David Branstad: Bio, via LinkedIn, PROPUBLICA, <https://projects.propublica.org/trump-town/staffers/eric-david-branstad> (last visited Oct. 26, 2020). As Branstad explained on his LinkedIn profile, "Mr. Branstad served as the Iowa State Director of the Donald J. Trump for President Campaign . . . Two months before election day, Mr. Branstad was tasked with developing a strategy to win Wisconsin, a neighboring battleground state . . . Preceding the campaign, Mr. Branstad was a founding partner of a Des Moines-based consulting firm called Matchpoint Strategies."

⁷ See Fed. Election Comm'n, Disbursements from Donald J. Trump for President, Inc. to Eric D. Branstad and Matchpoint Strategies, https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00003418&committee_id=C00580100&recipient_name=branstad&recipient_name=matchpoint&two_year_transaction_period=2016&two_year_transaction_period=2018&two_year_transaction_period=2020&min_date=01%2F01%2F2015&max_date=12%2F31%2F2020.

⁸ *Id.*

⁹ Again, based on his own representations, Branstad was personally "tasked with developing a strategy to win Wisconsin" for the Trump campaign. Eric David Branstad: Bio, via LinkedIn, PROPUBLICA, <https://projects.propublica.org/trump-town/staffers/eric-david-branstad>.

by failing to disclose the Trump campaign as a substantial source of his income.¹⁰

II. Violation of the Executive Branch Ethics Pledge

Executive Order 13770: Ethics Commitments by Executive Branch Appointees delineates a list of ethics requirements that “every appointee in every executive agency” must adhere to during and after their government service.¹¹ Among those requirements, the ethics pledge provides: “I will not, within 5 years after the termination of my employment as an appointee in any executive agency in which I am appointed to serve, engage in lobbying activities with respect to that agency.”¹²

As an appointed Senior White House Advisor at the Department of Commerce, Branstad is subject to the executive branch ethics pledge.

Lobbying Disclosures Indicate that Branstad Violated the Ethics Pledge by Lobbying the Department of Commerce Within Five Years of Termination of His Employment

In January 2018, Branstad left the Department of Commerce. One year later he began lobbying for Mercury Public Affairs on behalf of Interdigital Administrative Solutions. However, his lobbyist reports appear to reveal attempts to conceal an ethics pledge violation.

First, Branstad was required to disclose on his lobbyist registration whether he “has served as a covered executive branch official or a covered legislative branch official in the 20 years before the date on which the employee first acted as a lobbyist on behalf of the client, [and] the position in which such employee served.”¹³ His political appointment in the executive

¹⁰ As a separate matter, the Trump campaign did not begin payments to Matchpoint until August 2016. Presumably Branstad had other source of income that year, but no other clients or employers are listed in his disclosure report. Thus, it appears that Branstad also omitted other sources of income, paid to him either through his role at Matchpoint or by other employers.

¹¹ See Exec. Order No. 13770, 82 FR 9333 (2017).

¹² *Id.* at 9333.

¹³ 2 U.S.C. § 1603(b)(6); See, e.g., Mercury Public Affairs, LLC, New Client Lobbying Registration for Interdigital Administrative Solutions (Mar 18, 2019), <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=00481CEA-0F8E-481F-A7C6-6BA6B75398A8&filingTypeID=1>; Mercury Public Affairs, LLC, Amended Q1 2019 Lobbying Report (July 22, 2020), <https://disclosurespreview.house.gov/ld/ldxmlrelease/2019/1A/301203431.xml>; Mercury Public Affairs, LLC, Amended Q2 2019 Lobbying Report (July 22, 2020), <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=702FC02D-130C-4472-BB33-3DA00C3AB9A3&filingTypeID=64>; Mercury Public Affairs, LLC, Amended Q3

branch is a covered position,¹⁴ but he did not disclose it. As a result, the ethics pledge violation was not clear from the face of the lobbyist reports.

Second, he did not disclose his lobbying activity with respect to the Department of Commerce in the quarterly reports as required. Specifically, he began lobbying the Department of Commerce in February 2019 and continued until June 2020, but he did not disclose this until his lobbying firm filed amended disclosures in July 2020. These disclosures finally reported that Branstad lobbied his former agency for over one year.¹⁵

Third, Branstad took steps to remove his name from subsequent lobbying reports around the time when a news agency began asking him about a potential ethics pledge violation.¹⁶ The next quarterly reports that were due in October 2020 removed Branstad's name from the listed lobbyists before the Department of Commerce, although his lobbying firm continues the same lobbying activity.

Based on the information included in his lobbying firm's reports, Branstad violated his ethics pledge, which prohibits him from lobbying the Department of Commerce for five years after leaving government. The only exception is for lobbying activities involving "any agency process for rulemaking, adjudication or licensing."¹⁷ An investigation by your office, therefore, is necessary to determine whether Branstad's lobbying activities violate the ethics pledge.¹⁸

2019 Lobbying Report (July 22, 2020), <https://disclosurespreview.house.gov/ld/ldxmlrelease/2019/3A/301203436.xml>; Mercury Public Affairs, LLC, Amended Q4 2019 Lobbying Report (July 22, 2020), <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=2E2FE678-D328-4B22-9416-46A5A9EB8C30&filingTypeID=82>; Mercury Public Affairs, LLC, Amended Q1 2020 Lobbying Report (July 22, 2020), <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=E88A6743-202E-4574-BEF0-42A5E9804AC5&filingTypeID=55>; Mercury Public Affairs, LLC, Amended Q2 2020 Lobbying Report (July 22, 2020), <https://disclosurespreview.house.gov/ld/ldxmlrelease/2020/2A/301203442.xml> ("lobbying reports").

¹⁴ 2 U.S.C. §1602(3).

¹⁵ See lobbying reports, *supra* note 13.

¹⁶ See Hvistendahl & Fang, *supra* note 1; Mercury Public Affairs, LLC, Q3 2020 Lobbying Report (July 22, 2020), <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=CBA6DF32-4644-4F97-AE71-7F2D9BAFBFA&filingTypeID=69> (omitting Branstad from list of lobbyists).

¹⁷ Exec. Order No. 13770, 82 FR at 9335.

¹⁸ As another matter, in 2018, shortly after leaving his position at the Department of Commerce, Branstad undertook extensive business dealings in China while he was employed by the lobbying group Mercury Public Affairs. This raises questions about whether Branstad should have registered under the Foreign Agents Registration Act and whether his conduct

III. Conclusion

CLC respectfully asks that you review Branstad's financial disclosure reports and subsequent lobbying activities, which appear to have violated not only financial disclosure requirements but the executive branch ethics pledge. Thank you for your consideration.

Sincerely,

_____/s/_____

Kedric L. Payne
General Counsel and Senior Director,
Ethics

_____/s/_____

Delaney N. Marsco
Legal Counsel, Ethics

violates 18 U.S.C. § 207(f), governing restrictions on former federal employees representing, aiding, or advising foreign entities. *See* Hvistendahl & Fang, *supra* note 1.