

August 10, 2018

AnnaLou Tirol, Esq.  
Acting Chief  
Public Integrity Section, Criminal Division  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, DC 20530

Re: Ethics agreement violations by Commerce Secretary Wilbur Ross

Dear Acting Chief Tirol:

Democracy 21 calls on the Public Integrity Section of the Justice Department to undertake an investigation of whether Commerce Secretary Wilbur Ross has committed criminal violations of 18 U.S.C. § 208 and/or 18 U.S.C. § 1001 by filing false ethics compliance agreements with the Office of Government Ethics (OGE), by failing to abide by the commitments he made in those agreements and by falsely certifying that he had complied with the agreements.

On November 1, 2017, Secretary Ross filed with OGE a “Certification of Ethics Agreement Compliance,” which supplemented earlier such Certifications he had filed on June 5, 2017 and September 5, 2017.

In this [Certification](#), a copy of which is attached, Secretary Ross stated, *inter alia*, that he had “completed all of the divestitures indicated in my ethics agreement.” Certification at 1. The Certification form signed by Secretary Ross states, “Any intentional false or misleading statement or response provided in this certification is a violation of law punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001.”

By [letter](#) on July 12, 2018, a copy of which is attached, David J. Apol, the Acting Director and General Counsel of OGE, informed Secretary Ross that the November 1, 2017 Certification filed by him was false.

According to Acting Director Apol:

As you know, various financial disclosure forms and compliance documents that you have submitted to OGE in the past year have contained various omissions and inaccurate statements. For example, you represented in your Certificate of Ethics Agreement Compliance, signed November 1, 2017, that you had completed divestitures indicated in your Ethics Agreement, dated January 15, 2017.

However, you later submitted a transaction report on December 21, 2017 that included two sales of Invesco Ltd stock which took place on December 19 and 20, 2017, well after the date of your compliance document and the date by which you agreed to divest this asset. You also opened new short positions on various holdings that you committed to divesting in your Ethics Agreement, in contravention of that agreement.

Apol Letter at 1 (emphasis added). With regard to Secretary Ross's taking of new short positions, Acting Director Apol said that those transactions "appear to have been an ineffective attempt to remedy your actual or apparent failure to timely divest assets per your Ethics Agreement." *Id.* (emphasis added).

Thus, according to Acting Director Apol, Secretary Ross apparently made two false certifications in his November 1, 2017 Certificate of Ethics Agreement Compliance.

First, he falsely certified on November 1, 2017 that he had complied with his ethics agreement to divest his shares of Invesco Ltd stock, when in fact it appears he did not divest those shares until December 19 and 20, 2017, more than six weeks later.

Second, Secretary Ross falsely certified that he had divested other financial holdings that, after he so certified, he subsequently sold off with short sales in order to remedy his "failure to timely divest assets per your Ethics Agreement."

Secretary Ross has informed Acting Director Apol that these false certifications were "inadvertent," Letter at 2, and OGE has apparently decided not to look behind this representation. But this is a serious matter which, on its face, raises the issue of whether Secretary Ross violated section 1001 of the criminal code by submitting a false certification to OGE, *i.e.*, by "knowingly and willfully" making a "materially false, fictitious or fraudulent statement" within the jurisdiction of the executive branch of Government.

There is no basis on which to accept at face value Secretary Ross's self-serving claim that his false certifications were "inadvertent." Material misrepresentations made by a high-level government official on a formal certification subject to the strictures of section 1001 cannot be swept under the rug by a simple claim that the misrepresentations were unintended. If the obligation to tell the truth to the government were so easily dispensed with, there would be little meaning left to section 1001. The Justice Department should investigate whether the misrepresentations made by Secretary Ross were in fact knowing and willful, in violation of section 1001.

Acting Director Apol further states that the fact that Secretary Ross held personal financial interests after he had certified such assets had been divested could have placed him in "in a position to run afoul of the primary conflict of interest law, 18 U.S.C. § 208." Letter at 2.

While Acting Director Apol notes that the designated ethics officer of the Commerce Department has made a preliminary review of the matter and has not found information indicating a violation of the conflict of interest statute occurred, again, closer scrutiny of this

issue is clearly warranted. Given the fact that Secretary Ross falsely certified that he had divested himself of personal financial interests which, it turned out, he had not in fact divested, it is certainly possible that he also took official actions as Secretary that benefited those personal financial interests, in violation of the conflict of interest provisions of section 208.

Acting Director Apol in his letter to Secretary Ross noted this very possibility, stating that “your failure to divest created the potential for a serious criminal violation on your part. . . .” Letter at 2. The Justice Department should investigate whether any such “serious criminal violation” occurred and should not rely on what has apparently been only a preliminary review of the matter by the agency ethics officer.

Acting Director Apol concludes, “The American public needs to have confidence that Government officials take their ethical commitments seriously, and exercise the required care to ensure complete compliance with those commitments.” *Id.*

In this matter—where OGE has concluded that Secretary Ross has made false certifications to OGE and to the public about his compliance with his ethical obligations and commitments—that confidence requires a thorough investigation by the Justice Department to enforce the applicable criminal provisions of law, if warranted.

Democracy 21 calls on the Public Integrity section to investigate whether Secretary Ross has committed criminal violations of 18 U.S.C. § 208 and/or 18 U.S.C. § 1001.

Sincerely,

A handwritten signature in cursive script, appearing to read "Fred Wertheimer", with a long horizontal line extending to the right.

Fred Wertheimer  
President

Copy to:  
Peggy E. Gustafson, Inspector General, Department of Commerce