

Congress of the United States
Washington, DC 20515

September 28, 2020

Mr. Jeffrey D. Engelberg
Director
Eastman Kodak Company
343 State Street
Rochester, NY 14650

Dear Mr. Engelberg:

On August 4, 2020, we wrote to James Continenza, Executive Chairman of the Eastman Kodak Company (Kodak) seeking documents and information related to a proposed \$765 million federal loan to Kodak to support the production of active pharmaceutical ingredients for generic drugs, as well as securities trading activity by Kodak executives and board members before this loan award was publicly announced.¹ In response to our letter, counsel for Kodak stated that the company does not have possession of all responsive documents and communications related to members of Kodak's board of directors. Accordingly, we write to request that you, as a member of Kodak's board of directors, produce documents and information related to this matter.

On July 28, 2020, the U.S. International Development Finance Corporation (DFC) announced the administration's plans to award a \$765 million federal loan to Kodak to support the production of pharmaceutical ingredients through a new Kodak subsidiary, Kodak Pharmaceuticals. Kodak has no public record of manufacturing pharmaceutical ingredients.²

While Kodak was reportedly engaged in confidential negotiations for the loan award, the company awarded stock options to Mr. Continenza and members of Kodak's board of directors, and company executives and board members purchased Kodak stock.³ Specifically, on May 20, the company awarded 240,000 stock options to board members, which were worth approximately \$4 million as of July 31, although the value of those shares later declined.⁴ On

¹ Letter from Chairman James E. Clyburn et al. to Mr. James Continenza, Chief Executive Officer, Eastman Kodak Company (Aug. 4, 2020) (online at coronavirus.house.gov/sites/democrats.coronavirus.house.gov/files/2020-08-04.Clyburn%20CBM%20Waters%20to%20Kodak%20re%20Loan%201.pdf).

² U.S. International Development Finance Corporation, *Press Release: DFC to Sign Letter of Interest for Investment in Kodak's Expansion into Pharmaceuticals* (July 28, 2020) (online at www.dfc.gov/media/press-releases/dfc-sign-letter-interest-investment-kodaks-expansion-pharmaceuticals).

³ *Kodak C.E.O. Got Stock Options Day Before News of Loan Sent Stock Soaring*, New York Times (July 31, 2020) (online at www.nytimes.com/2020/07/31/business/kodak-ceo-stock-options.html); *A Closer Look at the Kodak Chairman's Stock Purchases as Shares Rally 1,500%*, Benzinga (July 29, 2020) (online at www.benzinga.com/news/20/07/16833683/a-closer-look-at-the-kodak-chairmans-stock-purchases-as-shares-rally-1-500).

⁴ *Kodak Share Price Crashes Over 30% After US Government Loan for \$765 Million Gets Put on Ice*,

June 23, Kodak CEO James Continenza purchased roughly 46,700 additional shares of Kodak and board member Philippe Katz purchased 5,000 shares.⁵ On July 27, the day before news of the loan became public, Kodak's board awarded Mr. Continenza 1.75 million stock options. According to one report, these options were granted as part of an "understanding" with the board of directors "that had previously neither been listed in Mr. Continenza's employment contract nor made public."⁶

On August 7, three days after we launched our investigation, DFC put the deal on hold, announcing: "Recent allegations of wrongdoing raise serious concerns. We will not proceed any further unless these allegations are cleared."⁷ On September 15, a law firm representing both Kodak and a special committee of the Kodak board of directors, released a report regarding the proposed loan. Although the report by Kodak's lawyers denied the company violated securities law, it acknowledged "several flaws in the process" and "significant concerns from a corporate governance perspective."⁸ The report leaves many unanswered questions about the actions of Kodak's executives and directors in connection with this loan and about the decision to award the loan to Kodak.

Companies and individuals that receive federal funds in response to the coronavirus crisis must follow the law and not engage in abusive practices. DFC's decision to award this loan to Kodak despite its lack of pharmaceutical experience and the potential windfall gained by board members and executives raise serious questions that must be thoroughly examined.

For all these reasons, we request that you produce the following documents and information by October 12, 2020, covering the period from January 1, 2020, to the present.

1. All documents and communications related to DFC's loan to Kodak or Kodak's interest in manufacturing pharmaceutical ingredients, including but not limited to the following:
 - a. All reports, presentations, or other documents shared with members of Kodak's board;

Business Insider (Aug. 10, 2020) (online at markets.businessinsider.com/news/stocks/kodak-stock-price-crashes-reports-765m-loan-gov-hold-2020-8-1029487105#); *Kodak C.E.O. Got Stock Options Day Before News of Loan Sent Stock Soaring*, New York Times (July 31, 2020) (online at www.nytimes.com/2020/07/31/business/kodak-ceo-stock-options.html).

⁵ *Kodak Executive Chairman Addresses Jump in Trading Activity Before Government Deal Was Announced*, CNBC (July 29, 2020) (online at www.cnbc.com/2020/07/29/kodak-executive-chairman-addresses-jump-in-trading-activity-before-government-deal-was-announced.html).

⁶ *Eastman Kodak's Top Executive Reportedly Got Trump Deal Windfall on an 'Understanding'*, CNBC (Aug. 3, 2020) (online at www.cnbc.com/2020/08/01/eastman-kodaks-top-executive-reportedly-got-trump-deal-windfall-on-an-understanding.html).

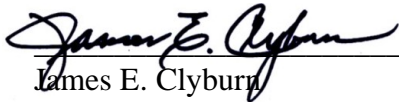
⁷ @DFCgov, *Twitter* (Aug. 7, 2020) (online at <https://twitter.com/DFCgov/status/1291853877168558086>).

⁸ Eastman Kodak Company, *Kodak Comments on Completion of Special Committee Independent Review* (Sept. 15, 2020) (online at www.kodak.com/en/company/press-release/comments-on-special-committee-review).

- b. All communications with any Kodak director, executive, or employee; and
 - c. All communications with any federal government official, employee, or advisor.
2. All documents and communications related to the issuance of Kodak stock, options, or other securities to any Kodak officer or director, including but not limited to the award of options to members of Kodak's board of directors on May 20, 2020, and to Chief Executive Officer James Continenza on July 27, 2020.
 3. All documents and communications related to the purchase or exercise of Kodak stock, options, or other securities by any Kodak officer or director.
 4. A list of all meetings or phone conferences that you participated in with any federal employee, official, agent, representative, or volunteer, including but not limited to any White House, Department of Health and Human Services, Department of Defense, or DFC employee, regarding DFC's loan to Kodak or Kodak's interest in manufacturing pharmaceutical ingredients. Please include the date and time of the meeting or phone conference, names of all participants, and a brief description of the topics discussed.

An attachment to this letter provides additional instructions for responding to the Committees' request. If you have any questions regarding this request, please contact Committee staff at (202) 225-4400.

Sincerely,



James E. Clyburn
Chairman
Select Subcommittee on the Coronavirus
Crisis



Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Maxine Waters
Chairwoman
Committee on Financial Services

Enclosure

cc: The Honorable Steve Scalise, Ranking Member
Select Subcommittee on the Coronavirus Crisis

Mr. Jeffrey D. Engelberg
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The Honorable James R. Comer, Ranking Member
Committee on Oversight and Reform

The Honorable Patrick McHenry, Ranking Member
Committee on Financial Services

Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.