

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051
MINORITY (202) 225-5074

<http://oversight.house.gov>

September 16, 2019

The Honorable Elaine L. Chao
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Dear Madam Secretary:

The Committee is investigating several allegations relating to your service as Secretary of Transportation, including troubling questions about whether you are using your office to benefit yourself and your family.

Use of Official Position to Benefit Family Company

Federal regulations prohibit federal employees from using their public offices for “the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.” These regulations also prohibit federal employees from using their public offices “to endorse any product, service, or enterprise” or “in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another.”¹

Several reports indicate that you have used your official position to benefit Foremost Group, a shipping company owned by your father and sisters that is headquartered in New York and operates a fleet that transports materials to and from China. These reports suggest that you used your official position to elevate Foremost Group’s influence and status with the Chinese government, which has extended hundreds of millions of dollars in low-interest loans to the company for the purchase of foreign-flagged ships.²

In addition, you have appeared alongside your father, the founder of Foremost Group, in at least a dozen Chinese media interviews—many of which were behind the official seal of the Department of Transportation (DOT). During some of these interviews, your father touted your

¹ 5 C.F.R. § 2635.702.

² See, e.g., *A “Bridge” to China, and Her Family’s Business, in the Trump Cabinet*, New York Times (June 2, 2019) (online at www.nytimes.com/2019/06/02/us/politics/elaine-chao-china.html).

influence within the United States government and boasted about his access to President Trump on Air Force One.³

DOT reportedly was forced to cancel an official trip you were planning to take to China in October 2017 after ethics officials at the Department of State challenged your attempts to include your family members in official meetings with the Chinese government.⁴

Questions have also been raised about your involvement in the decisions to deprioritize or reduce funding for DOT programs that benefit U.S.-flagged vessels in the foreign trade, decisions that could benefit your family's company, which owns entirely foreign-flag ships.

For example, in its budget requests for fiscal years 2018 and 2019, DOT requested that Congress cut more than \$80 million from the Maritime Security Program.⁵ This program is vital to retaining the 60 U.S.-flagged ships enrolled in the program by providing annual stipends in exchange for guaranteed U.S. military access to the ships for sealift capacity.⁶ DOT also failed to enforce the requirements of the Cargo Preference Program, which requires the use of U.S.-flagged ships for a portion of federally-funded cargo.⁷ DOT's 2018 and 2019 budget requests also sought to cut millions of dollars in funding for federal grants and loan guarantees to domestic shipyards and shipbuilders.⁸

Given the decline in the number of U.S.-flagged vessels in foreign trade, DOT's approach to these programs may threaten national security by increasing the likelihood that our military will be dependent on foreign-flagged vessels during times of war or emergency.

³ *Did Elaine Chao's DOT Interviews Help Her Family's Business?*, Politico (May 6, 2018) (online at www.politico.com/story/2018/05/06/elaine-chao-father-james-transportation-department-569686).

⁴ *A "Bridge" to China, and Her Family's Business, in the Trump Cabinet*, New York Times (June 2, 2019) (online at www.nytimes.com/2019/06/02/us/politics/elaine-chao-china.html).

⁵ Department of Transportation, *Maritime Administration Budget Estimates, Fiscal Year 2019* (Feb. 12, 2018) (online at www.transportation.gov/sites/dot.gov/files/docs/mission/budget/304521/marad-fy-2019-cj-final-508-compliant.pdf); Department of Transportation, *Maritime Administration Budget Estimates, Fiscal Year 2018* (May 23, 2017) (online at www.transportation.gov/sites/dot.gov/files/docs/mission/budget/281151/marad-fy-018-cj-budget.pdf).

⁶ See 46 U.S.C. § 53102.

⁷ *A "Bridge" to China, and Her Family's Business, in the Trump Cabinet*, New York Times (June 2, 2019) (online at www.nytimes.com/2019/06/02/us/politics/elaine-chao-china.html).

⁸ Department of Transportation, *Maritime Administration Budget Estimates, Fiscal Year 2019* (Feb. 12, 2018) (online at www.transportation.gov/sites/dot.gov/files/docs/mission/budget/304521/marad-fy-2019-cj-final-508-compliant.pdf); Department of Transportation, *Maritime Administration Budget Estimates, Fiscal Year 2018* (May 23, 2017) (online at www.transportation.gov/sites/dot.gov/files/docs/mission/budget/281151/marad-fy-018-cj-budget.pdf).

Failure to Divest from Vulcan Materials

The Committee is also investigating your failure to divest of stock in one of the nation's largest construction companies, Vulcan Materials Company (Vulcan), where you served on the Board of Directors for nearly two years immediately before becoming Secretary of Transportation.

Vulcan's annual revenue depends heavily on infrastructure funding allocated by DOT.⁹ Vulcan granted you approximately 3,000 "deferred stock units" for serving as a director, giving you a significant and direct personal financial interest in the company.¹⁰

On January 5, 2017, prior to your confirmation hearing, you promised to address this clear conflict of interest by entering into an ethics agreement under which you would cash out your stock holdings in Vulcan by April 2018. You wrote:

Pursuant to the terms of the company's Directors' Deferred Stock Unit Plan, I will receive a *cash* payout for all of my vested deferred stock units in April of the year following the year of my separation from service. The cash payout will be determined based on the closing price of the company's common stock at the time payment is made that April. Until the deferred stock units are redeemed, I will continue to receive deferred stock unit equivalents, which track dividends on the company's common stock. Until I receive the cash payment of my vested deferred stock units, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of Vulcan Materials, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1).¹¹

Similarly, you claimed on your Financial Disclosure Report for nominees under 5 U.S.C. app. § 101: "I will receive a cash payout of all of my vested deferred stock units in April of the year following the year of my separation from service."¹²

⁹ See Securities and Exchange Commission, *Vulcan Materials Company, 2018 Annual Report* (Feb. 26, 2019) (online at www.sec.gov/Archives/edgar/data/1396009/000139600919000021/vmc-20181231x10k.htm).

¹⁰ Securities and Exchange Commission, *Vulcan Materials Company, 2017 Proxy Statement* (Mar. 27, 2017) (online at www.sec.gov/Archives/edgar/data/1396009/000119312517097587/d293838ddef14a.htm).

¹¹ Letter from Elaine L. Chao to Judith S. Kaleta, Designated Agency Ethics Official, Department of Transportation (Jan. 5, 2017) (online at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/00E7BDF991DEEA3B852580C1002C7A31/\\$FILE/Chao,%20Elaine%20L.%20%20finalAMENDEDEA.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/00E7BDF991DEEA3B852580C1002C7A31/$FILE/Chao,%20Elaine%20L.%20%20finalAMENDEDEA.pdf)) (emphasis added).

¹² Elaine L. Chao, *Public Financial Disclosure Report* (signed by Secretary Chao on Dec. 6, 2016) (online at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/293C77FB757687A4852580A3002C5885/\\$FILE/Chao,%20Elaine%20L.%20%20final278.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/293C77FB757687A4852580A3002C5885/$FILE/Chao,%20Elaine%20L.%20%20final278.pdf)).

However, you failed to comply with these requirements. Vulcan's filings with the Securities and Exchange Commission make clear that your deferred stock units would be "settled in *shares* of [Vulcan] common stock when the restrictions expire."¹³ In April 2018, your deferred stock units were exchanged for approximately 3,000 shares of Vulcan common stock, worth more than \$300,000.¹⁴ Your continued ownership of shares of stock meant that you continued to have a financial interest in the success of the company.

You did not immediately sell these shares to comply with your ethics agreement. You also did not disclose this exchange as required under 5 C.F.R. § 2634.201(f). On May 15, 2018, you signed an annual Public Financial Disclosure Report that represented that you "will receive a cash payout for all of my vested deferred stock units" by April 2018.¹⁵ By the time you signed that report, you had already received Vulcan common stock rather than cash.

You did not sell your shares in Vulcan until June 3, 2019—after the *Wall Street Journal* published an article about your failure to divest from the company.¹⁶

Ten days later, on June 13, 2019, DOT sent a letter to the Office of Government Ethics (OGE) admitting that your nominee Public Financial Disclosure Report, May 2018 Public Financial Disclosure Report, and ethics agreement contained what it characterized as "inadvertent misstatements of fact."¹⁷

The Committee is examining your misstatements of fact, your actions that may have benefitted the company in which you continued to hold shares, and your compliance with ethics and financial disclosure requirements.

¹³ See, e.g., Securities and Exchange Commission, *Vulcan Materials Company, 2017 Proxy Statement* (Mar. 27, 2017) (online at www.sec.gov/Archives/edgar/data/1396009/000119312517097587/d293838ddef14a.htm) (emphasis added).

¹⁴ See Mitchell A. McConnell Jr., *United States Senate Annual Financial Disclosure Report* (May 15, 2019); see also *Transportation Secretary Still Owns Stock She Pledged to Divest*, *Wall Street Journal* (May 28, 2019) (online at www.wsj.com/articles/transportation-secretary-still-owns-stock-she-pledged-to-divest-11559035921).

¹⁵ Elaine L. Chao, *Public Financial Disclosure Report* (signed by Secretary Chao on May 15, 2018) (online at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/7E2C30610832DBFF852582C20027D91E/\\$FILE/Elaine-L-Chao-2018-278.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/7E2C30610832DBFF852582C20027D91E/$FILE/Elaine-L-Chao-2018-278.pdf)).

¹⁶ Letter from Secretary Elaine Chao, Department of Transportation, to Judith S. Kaleta, Deputy General Counsel and Designated Agency Ethics Official, Department of Transportation (June 12, 2019) (online at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/0194E45162BC30A2852584350027D98A/\\$FILE/Elaine-L-Chao-2019-278.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/0194E45162BC30A2852584350027D98A/$FILE/Elaine-L-Chao-2019-278.pdf)) (stating that she sold her shares in Vulcan).

¹⁷ Letter from Judith S. Kaleta, Deputy General Counsel and Designated Agency Ethics Official, Department of Transportation, to Emory A. Rounds III, Director, Office of Government Ethics (June 13, 2019) (online at [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/0194E45162BC30A2852584350027D98A/\\$FILE/Elaine-L-Chao-2019-278.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/0194E45162BC30A2852584350027D98A/$FILE/Elaine-L-Chao-2019-278.pdf)).

Requests for Documents and Information

For the reasons set forth above, the Committee requests that you provide the following information and documents by September 30, 2019:

1. All communications from January 20, 2017, to the present between you or any employee at DOT and Angela Chao, James Chao, or any other current or former employee or representative of Foremost Group about official meetings, travel, or other agency business;
2. All communications from January 20, 2017, to the present, to or from any DOT employees about Foremost Group;
3. Communications or documents related to your cancelled October 2017 official trip to China, including, but not limited to:
 - a. communications with the Department of State; and
 - b. communications with Foremost Group;
4. Unredacted copies of all documents and communications released by DOT in response to the November 16, 2017, Freedom of Information Act request by the New York Times (tracking number 2018-0058);
5. For your official trip to China in April 2018:
 - a. all participants for each meeting held on the trip; and
 - b. all individuals who traveled with you during the trip;
6. A list of all media interviews you have conducted alongside members of your family since January 20, 2019, and any DOT documents or communications related to those interviews;
7. A list of all occasions on which members of your family traveled on government-owned aircraft or in government-owned vehicles and any DOT documents or communications related to that travel;
8. All communications from January 20, 2017, to the present by employees or officials in the Office of the Secretary of Transportation (S-1) or Office of the Undersecretary of Transportation for Policy (S-3) about cargo preference requirements, the Maritime Security Program, or the U.S. Flag Merchant Fleet;
9. All communications from January 20, 2017, to the present, by employees or officials in the Maritime Administration regarding Foremost Group;

10. From January 20, 2017, to the present, the number of enforcement actions brought by DOT for violations of cargo preference requirements and the total amount of civil penalties collected from such enforcement actions;
11. All documents and communications relating to how DOT implemented your recusal from all business related to Vulcan;
12. All documents and communications, including Integrity software system audit trails, related to your nominee Public Financial Disclosure Report, your annual Public Financial Disclosure Report filed in 2018, and your annual Public Financial Disclosure Report filed in 2019;
13. All drafts of your annual Public Financial Disclosure Report filed in 2019;
14. Whether the Public Financial Disclosure Report filed in 2019 was ever filed in "draft" form within Integrity software system prior to the release of a final signed version of that report to OGE;
15. All internal and external DOT communications and documents from November 8, 2016, to the present relating to your holdings in Vulcan, including communications between DOT ethics officials, your staff and DOT ethics officials, and DOT employees and OGE;
16. All communications from January 20, 2017, to the present, between DOT employees and Vulcan;
17. Signed and dated copies of all waivers or authorizations issued to you under Executive Order 13770, 18 U.S.C. § 208(b)(1), 5 C.F.R. § 2635.502(d), and 5 C.F.R. § 2635.503(c); and
18. Description of the extent to which you have used a personal email address to communicate with your family or employees of Foremost Group about official DOT business or travel.

In responding to the Committee's requests, please do not redact or withhold documents or communications about your family or your family's business on personal privacy grounds unless such information is entirely unrelated to any official business of the federal government and entirely unrelated to the Foremost Group. For example, do not redact or withhold communications related to your family joining you on official DOT travel. For any redaction that you do include in a document, please include a redaction log that provides enough specificity to allow the Committee to evaluate the validity of the redaction.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. The Committee also has broad oversight and legislative jurisdiction over

government ethics throughout the Executive Branch. The Committee's investigation may lead to legislation, including but not limited to increasing penalties for filing inaccurate financial statements and enhancing disclosure and reporting requirements.¹⁸ The Committee has passed numerous legislative proposals to strengthen federal ethics laws for federal employees.¹⁹

An attachment to this letter provides additional instructions for responding to the Committee's request. Please contact Committee staff at (202) 225-5051 if you have any questions about this request.

Sincerely,



Elijah E. Cummings
Chairman



Raja Krishnamoorthi
Chairman
Subcommittee on Economic and Consumer
Policy

Enclosure

cc: The Honorable Jim Jordan, Ranking Member

The Honorable Michael Cloud, Ranking Member
Subcommittee on Economic and Consumer Policy

¹⁸ See, e.g., 5 U.S.C. App. 4 § 101; 18 U.S.C. §§ 201-209, 216.

¹⁹ See, e.g., H.R. 1, For the People Act; H. R. 745, Executive Branch Comprehensive Ethics Enforcement Act.

Responding to 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 Committees.
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 Committees' 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 Committees 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 Committees 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 Committees' 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 on Oversight and Reform, 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. When documents are produced to the Committee on Financial Services, production sets shall be delivered to the Majority Staff in Room 2129 of the Rayburn House Office Building and the Minority Staff in Room 4340 of the O'Neill House Office Building. When documents are produced to the Permanent Select Committee on Intelligence, production sets shall be delivered to Majority and Minority Staff in Room HVC-304 of the Capital Visitor Center.
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.