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GOVERNMENT ETHICS - **IRS Boss Snagged Clinton Waiver**

By John Berlau

Two weeks ago when Insight was reporting potential conflicts of interest involving **IRS** Commissioner Charles O. Rossotti's large holdings in a company that does millions of dollars' worth of business with his own agency (see "A Taxing Dilemma," April 23), the **IRS** said not to worry. Rossotti is recused from dealing with the huge government contracts of American Management Systems (AMS), the company that he cofounded and of which he remains the major shareholder, said Frank Keith, the **IRS**' national director of communications. "The commissioner has executed a viable and rigorous recusal pro-cess to separate himself from any dealings with AMS," Keith insisted.

Now Insight has learned that in December 2000 the **Clinton** administration blew a very large hole in the wall that is supposed to separate Rossotti, whom **Clinton** appointed as commissioner in 1997, from dealing with his old company. Along with the last-minute pardons and "midnight regulations" that the administration rushed through in its last two months, it also issued a **waiver** of conflict-of-interest rules that allows Rossotti to participate in decisions that directly could affect the AMS bottom line. Insight has obtained a copy of that **waiver**.

Signed on Dec. 11, 2000, by **Clinton's** deputy Treasury secretary, Stuart Eizenstat, the **waiver** allows Rossotti to join in discussions and decisions about the **IRS**' Custodial Accounting Project, which uses an automated financial-management system and software provided by AMS. "I have determined that your disqualifying financial interest in the Custodial Accounting Project [CAP], which arises from your ownership interest in American Management Systems Inc. [AMS], is not so substantial as to be deemed likely to affect the integrity of the services that the government may expect to receive from you with respect to the CAP," Eizenstat wrote. **Clinton's** man noted that, without this **waiver**, federal law "would preclude [Rossotti] from participating in the CAP because certain decisions would have a direct and predictable effect on your financial interest in

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AMS."

Eizenstat, now a partner at the hugely powerful Washington law firm of Covington & Burling, did not return Insight's telephone calls asking why the **waiver** was necessary.

The conflict-of-interest **waiver** allows Rossotti to participate in "budget and resource-allocation issues, the prioritization of the CAP and high-level design and architecture issues." It gives him the power to decide how much money will go to the project and, indirectly, to AMS, say experts.

At press time, the **IRS** had not returned Insight's telephone calls for comment about the newly revealed **waiver** and other issues that have surfaced.

And this is no minor matter, say ethics specialists. Rossotti called the Custodial Accounting Project "critical" to **IRS**' ongoing computer-system modernization in testimony to a House subcommittee on April 4. The **IRS** has asked Congress for $50 million for the project in fiscal 2002 alone. Overall, the Bush administration's budget gives the **IRS** an 8 percent funding increase in 2002, double the 4 percent average re-quested for all agencies. The additional funds reflect the computer modernization.

Because so much of this money could flow to AMS - scheduled to be paid more than $17 million this year by the **IRS**, according to **IRS** spokesman Keith - some have expressed concern. "I always want to be certain that government officials are avoiding conflicts of interests, but I won't jump to any conclusions," Rep. Ernest Istook Jr., R-Okla., chairman of the House Appropriations subcommittee that oversees **IRS** funding, tells Insight through a spokeswoman.

Officials of some of the watchdog groups that insisted Treasury Secretary Paul O'Neill divest his $100 million worth of Alcoa stock (see "The $100 Million Misunderstanding," April 2-9) now say that Rossotti's situation is more serious than O'Neill's would have been had he not agreed to sell the stock. "The point there [with Alcoa] was that there was very little the Treasury Department could do that would not impact Alcoa, and I think eventually Secretary O'Neill came around to that conclusion," says Larry Noble, executive director of the Washington-based Center for Responsive Politics. "I think the same principles apply [to Rossotti], a little bit more directly here in the sense that the **IRS** is doing business with AMS."

Charles Lewis, the executive director and founder of the Center for Public Integrity who called strongly for O'Neill to divest, says Rossotti should follow O'Neill's lead. "If O'Neill should have divested, then clearly this guy should divest," Lewis tells Insight. "The O'Neill stuff that came up about Alcoa was really speculative about things that might involve Alcoa. This is an instance with Rossotti where the company has direct dealings with the government [agency], and it's headed by their former chairman. ... This is much more specific, much more real, because this is a direct vendor with the agency, and he's not taken any of the various steps one would take to create an arms-length distance."

Lewis also is disturbed that the **Clinton**-Eizenstat **waiver** could make the potential for conflict even greater. "Rossotti has gotten a **waiver** and can in fact be involved in conversations about his old company," he says. "He clearly has a problem."

The founder of the Center for Public Integrity worries that "there could be the perception that this company is flourishing because their former chairman is the head of the **IRS** and that they're getting favorable treatment inside the **IRS**." Lewis also is concerned that Rossotti's large holdings might tilt **IRS** employees to favor AMS. "They all know about his association and substantial source of his personal wealth, and that's not a fact lost on bureaucrats whose job it is to survive and know these things."

And apparently AMS hasn't hesitated to throw its weight around the agency. According to Tax Notes, a well-respected weekly journal that covers tax policy, AMS Chairman and then-CEO Paul Brands and other AMS executives met with **IRS** officials in May and "expressed concern that the **IRS** was reluctant to procure upgrades and new releases of AMS' financial software." The AMS executives accused the **IRS** officials of being slow to make decisions about purchases of AMS products because Rossotti was commissioner, but did not "provide any specific instances of such actions by **IRS** personnel," according to the article written by veteran tax reporter George Guttman.

AMS has not returned Insight's many phone calls about the Tax Notes article or other matters related to potential or alleged conflicts of interest in these matters.

Lewis admits it's possible that AMS actually could be getting less-favorable treatment than other **IRS** vendors because of Rossotti's millions of dollars worth of holdings, but he thinks that's unlikely. "I don't have any evidence of heartrending hardships brought on companies whose executives joined the administration of whichever party," Lewis says.

Some see the extensions AMS keeps getting to a contract from the late 1980s to provide the **IRS** with an automated financial system as evidence that it may have been getting special treatment from the agency. The **IRS** had stressed that the $17 million in one-year contracts the agency signed with AMS last year were "add-ons" to the existing contract and did not violate Rossotti's pledge to divest if AMS pursued new business with the **IRS**. But insiders wonder why the **IRS** keeps buying these add-ons without taking new bids or offers from AMS' competitors.

"It could be that what they're doing is extending contracts as a way to get around the problem of issuing new contracts or going out for bids," says Noble of the Center for Responsive Politics.

Meredith McGehee, senior vice-president of the government-ethics advocacy group Common Cause, says these appearance issues will continue to haunt Rossotti as long as he refuses to divest. "When you have the commissioner of a very high-profile agency holding stock in a company that's doing business with that agency, obviously it raises concerns," McGehee tells Insight. Mentioning the allegations of **IRS**' hiring of state tax chiefs as a reward for steering business to AMS, McGehee says, "I would not ever be able to tell what the truth is. But the point is the questions are being raised, and having the questions raised is part of what damages the public confidence here."

Insight meanwhile has learned that John LaFaver, the Kansas secretary of revenue who contracted with AMS and then was hired by Rossotti as the **IRS**' deputy commissioner of modernization, has left for the private sector. He recently became vice president for state and local solutions at AMS, which had used his favorable comments about the company in a marketing brochure while noting his status at the **IRS**. Reached at AMS headquarters in Fairfax, Va., LaFaver tells Insight, "I don't think I'm going to comment." He says he doesn't remember whether he made the endorsement of AMS as Kansas revenue secretary or **IRS** deputy commissioner.

As Insight previously reported, Karla Pierce, LaFaver's successor who defended AMS when lawmakers were blaming the company for a rash of late tax refunds and erroneous delinquent notices, recently was hired as director of organizational transformation for the **IRS**' modernization project by the agency's lead contractor, Computer Science Corp. (CSC). After the deadline for Insight's first article, CSC sent a statement saying that "CSC was impressed by her significant accomplishments as secretary" of revenue in Kansas. But nowhere did the statement deny allegations that Rossotti used input or influence to get Pierce the job.

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