



U.S. Department of Justice

Ronald C. Machen Jr.
United States Attorney

District of Columbia

June 21, 2013

Steven D. O'Brien, Esq.
General Counsel
The Gallup Organization
901 F Street, N.W.
Washington, D.C. 20004

Re: The Gallup Organization

Dear Mr. O'Brien:

On the understandings specified below, the United States Attorney's Office for the District of Columbia ("Government") will not criminally prosecute The Gallup Organization, also known as Gallup, Inc. ("Company"), a corporation organized under the laws of the state of Delaware and headquartered in the District of Columbia, for any crimes (except for criminal tax violations, as to which the Government does not make any agreement) related to violations arising from or related to the Company's negotiation and offer of employment to Timothy W. Cannon while he was participating personally and substantially as an employee of the Federal Emergency Management Agency ("FEMA") in a contract administered by the Company, as well as to the Company's subsequent representations to Government investigators related to the Company's withdrawal of Mr. Cannon's employment offer, as described in Attachment A attached hereto, which is incorporated herein by reference. The Government enters into this Non-Prosecution Agreement ("Agreement") based, in part, on remedial efforts already undertaken and to be undertaken during the pendency of this Agreement by the Company, including enhancements to its corporate compliance, internal control standards, and ethics program as described in the administrative agreement between the United States Department of Homeland Security and the Company, attached hereto as Attachment B, which is incorporated herein by reference.

It is understood that the Company admits, accepts, and acknowledges responsibility for the conduct set forth in Attachment A and agrees not to make any public statement contradicting Attachment A.

This Agreement does not provide any protection against prosecution for any crimes except as set forth above, and applies only to the Company and not to any other entities or to any individuals. The Company expressly understands that the protections provided under this Agreement shall not apply to any acquirer or successor entity unless and until such acquirer or

successor formally adopts and executes this Agreement, with the written consent of the Government.

This Agreement shall have a term beginning from the date that this Agreement is executed through April 19, 2016, except as specifically provided herein or in the administrative agreement attached hereto as Attachment B. It is understood that for the term of this Agreement, the Company shall: (a) commit no felony under U.S. federal law; (b) truthfully and completely disclose non-privileged information to the Government, upon request, with respect to the activities of the Company, its officers, directors, employees, and others concerning all matters related to this Agreement or the administrative agreement attached hereto as Attachment B, which information can be used for any purpose, except as otherwise limited in this Agreement; (c) bring to the Government's attention all conduct by, or criminal investigations of, the Company, any of its employees, or its subsidiaries relating to any felony under U.S. federal law that comes to the attention of the Company's senior management, as well as any administrative proceeding or civil action brought by any governmental authority that alleges fraud or corruption by or against the Company; and (d) comply fully with the administrative agreement attached hereto as Attachment B.

Until the date upon which all investigations and any prosecution arising out of the conduct described in this Agreement are concluded, whether or not they are concluded within the term of this Agreement, the Company shall, subject to applicable laws or regulations: (a) cooperate fully with the Government and any law enforcement agency designated by the Government regarding matters arising out of the conduct covered by this Agreement; (b) assist the Government in any investigation or prosecution arising out of the conduct covered by this Agreement by providing logistical and technical support for any meeting, interview, grand jury proceeding, or any trial or other court proceeding; (c) use its best efforts promptly to secure the attendance and truthful statements or testimony of any director, officer, employee, or agent of the Company at any meeting or interview or before the grand jury or at any trial or other court proceeding regarding matters arising out of the conduct covered by this Agreement; and (d) provide the Government, upon request, all non-privileged information, documents, records, or other tangible evidence regarding matters arising out of the conduct covered by this Agreement about which the Government or any designated law enforcement agency inquires.

It is understood that the Company has agreed to pay a monetary penalty of \$50,000. This sum shall be payable to the United States Treasury pursuant to written instructions to be provided by the Government following the execution of this Agreement. The Company agrees that this sum will be due to the United States within ten (10) calendar days after receiving the written instructions. The Company acknowledges that no tax deduction may be sought in connection with this payment.

It is understood that the Company will strengthen its corporate compliance, internal control standards, and ethics program, as set forth in Attachment B. It is further understood that, upon request of the Government, the Company will send to the Government copies of any reports the Company submits under the administrative agreement set forth in Attachment B.

It is understood that, if the Government in its sole discretion determines that the Company, after the signing of this Agreement, has committed any felony under U.S. federal law,

or that the Company, its directors, officers, employees, or agents, after the signing of this Agreement, have deliberately given false, incomplete, or misleading testimony or information in connection with this Agreement, or the Company otherwise has violated any provision of this Agreement, including, but not limited to, failing to comply completely with the administrative agreement attached hereto as Attachment B, the Company shall thereafter be subject to prosecution for any violation of U.S. federal law about which the Government has knowledge, including, but not limited to, perjury and obstruction of justice. Any such prosecution that is not time-barred by the applicable statute of limitations as of the date this Agreement is executed may be commenced against the Company during the term of this Agreement plus one year. Thus, by signing this Agreement, the Company agrees that the statute of limitations with respect to any prosecution that is not time-barred as of the date this Agreement is executed shall be tolled during the term of this Agreement plus one year.

It is understood that, if the Government in its sole discretion determines that the Company, after the signing of this Agreement, has committed any felony under U.S. federal law, or that the Company, its directors, officers, employees, or agents, after the signing of this Agreement, have deliberately given false, incomplete, or misleading testimony or information in connection with this Agreement, or that the Company otherwise has violated any provision of this Agreement, including, but not limited to, failing to comply completely with the administrative agreement attached hereto as Attachment B: (a) all statements made or agreed to by the Company, its directors, officers, employees, or agents to the Government or to other designated law enforcement agents, including, but not limited to, the statements set forth in Attachment A hereto, and any testimony given by the Company, its directors, officers, employees, or agents before a grand jury or other tribunal, whether before or after the execution of this Agreement, and any leads from such statements or testimony, shall be admissible in evidence in any criminal proceeding brought against the Company; and (b) the Company shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, or any other federal rule that (i) such statements, or (ii) any leads or indirect/derivative use therefrom are inadmissible or should be suppressed. By signing this Agreement, the Company waives all rights in the foregoing respects.

In the event that the Government determines that the Company has breached this Agreement, the Government agrees to provide the Company with written notice of such breach prior to instituting any prosecution resulting from such breach. The Company shall, within thirty (30) calendar days of receipt of such notice, have the opportunity to respond to the Government in writing to explain the nature and circumstances of such breach, as well as the actions the Company has taken to address and remediate the situation, which explanation the Government shall consider in determining whether to institute a prosecution.

It is further understood that this Agreement does not bind any federal, state, local, or foreign prosecuting authority other than the Government as defined herein. The Government will, however, bring the cooperation of the Company to the attention of other prosecuting and investigative offices, if requested by the Company.

It is further understood that the Company and the Government may disclose this Agreement to the public.

With respect to this matter, from the date of execution of this Agreement forward, this Agreement supersedes all prior, if any, understandings, promises and/or conditions between the Government and the Company. No additional promises, agreements, or conditions have been entered into other than those set forth in this Agreement and none will be entered into unless in writing and signed by all parties.

FOR THE UNITED STATES OF AMERICA

By: Ronald C. Machen Jr / rmm
RONALD C. MACHEN JR.
United States Attorney for the District of Columbia

7/12/13
Date

By: DAV
DAVID S. JOHNSON
Assistant United States Attorney

7/12/13
Date

FOR THE GALLUP ORGANIZATION

I, Steven D. O'Brien, represent that the board of directors of The Gallup Organization, also known as Gallup, Inc. ("Gallup"), has authorized me to execute this Agreement on behalf of Gallup. I further represent that I have discussed the terms and conditions of this Agreement with the directors and officers of Gallup.

By: SDO'Brien
STEVEN D. O'BRIEN
General Counsel
The Gallup Organization

7-11-13
Date

ATTACHMENT A

STATEMENT OF FACTS

This Statement of Facts is incorporated by reference as part of the non-prosecution agreement, dated June 21, 2013, between the United States Attorney's Office for the District of Columbia ("Government") and The Gallup Organization, also known as Gallup, Inc. ("Gallup" or "Company"). Gallup states and agrees that the following facts are true and correct:

At all relevant times:

1. The Federal Emergency Management Agency ("FEMA") was a part of the United States Department of Homeland Security ("DHS"), which was an agency within the executive branch of the Government of the United States. FEMA provided a comprehensive emergency management system to protect the nation from hazards, including natural disasters and acts of terrorism. FEMA had more than 4,000 full-time employees.

2. From July 1, 2007, to February 27, 2009, Timothy W. Cannon ("Cannon") was the Director of FEMA's Human Capital Division, which handled human resources and personnel matters at FEMA. Cannon's office was located at FEMA headquarters in Washington, D.C. Cannon previously worked at the Library of Congress from April 2002 to June 2007.

3. Gallup was a company incorporated in the state of Delaware that provided polling and consulting services to public and private entities. Gallup's Government Division, also known as Gallup Government Consulting, handled Gallup's contracts with federal, state, and local governments. Gallup's headquarters and Government Division both were located in Washington, D.C.

4. Cannon first applied for employment at Gallup in approximately 2004, when Cannon was an employee of the Library of Congress. Gallup rejected Cannon's first employment application.

5. On July 1, 2007, Cannon became the Director of the Human Capital Division at FEMA.

6. In 2007, Cannon and Gallup had discussions about FEMA hiring Gallup to provide consulting services on human resources matters at FEMA through a project that would eventually be called the "BEST Workforce Initiative."

7. On March 22, 2008, Gallup's chief executive officer ("CEO") met with Cannon and the Deputy Administrator at FEMA. Afterwards on that same day, Gallup's CEO e-mailed the managing partner of Gallup's Government Division about Cannon. Gallup's CEO stated that Cannon "said he has done everything to get a job at Gallup because he believes so much in our products . . . said he wants to do a real good job at FEMA and that maybe [sic] he would try again . . ."

8. On April 11, 2008, during an e-mail discussion about the potential FEMA contract, Gallup's CEO asked a partner in Gallup's Government Division, "What size of fish will this be?" The partner replied, "The FEMA deal is \$6M over 5 years." To which Gallup's CEO responded, "[Y]es . . . this is a very good fish . . ."

9. On April 22, 2008, the managing partner of Gallup's Government Division sent an e-mail to another Gallup employee stating, "[Gallup's CEO] wants to hire this guy. Tim Cannon."

10. On April 25, 2008, the managing partner of Gallup's Government Division inquired through internal company e-mails whether Cannon had previously applied for employment at Gallup. The responses included an e-mail from one of Cannon's prior

interviewers at Gallup, who confirmed that Cannon had applied for a position and further stated that Cannon was a “nonfit” for that position. The response was forwarded to Gallup’s CEO, who then responded, “. . . [I]f he gets us a big deal at FEMA . . . i [sic] think we should hire him . . . because he will be a ‘client’ hire . . . which might be good[.]” Later in the same e-mail chain, Gallup’s CEO asked, “[I]s the ink dry yet on our deal with fema [sic] [?]” The managing partner replied, “[N]o might be mid-May.” Gallup’s CEO then stated, “[W]e should wait of course to see if we win a big quality deal here[.]”

11. On July 17, 2008, the managing partner of Gallup’s Government Division sent an e-mail discussing Gallup’s revenue and profit for the year. Gallup’s CEO responded, “The bad news is of course that our pipeline is the lowest it has been in some time, including government . . . we have to find fish fast or we are going to get ourselves in trouble[.]”

12. On August 12, 2008, utilizing an interagency agreement between FEMA and the United States Office of Personnel Management (“OPM”), Gallup was selected to administer the BEST Workforce Initiative at FEMA. Under the agreement, Gallup would conduct polls of FEMA employees and provide consulting services to FEMA as a subcontractor to Company A, which had an existing contract with OPM. The contract to administer the BEST Workforce Initiative was valued at approximately \$6 million over five years. Gallup would receive payments from FEMA through Company A. The BEST Workforce Initiative included the Great Manager Program, under which Gallup would provide training to FEMA managers.

13. On September 26, 2008, Cannon circulated an e-mail to FEMA officials extending an invitation to attend Gallup’s 2008 Government Summit. A Gallup employee who was “blind” copied on Cannon’s e-mail forwarded it to other Gallup employees, including the managing partner of Gallup’s Government Division. The managing partner responded, “We’ve got to give him an award or something. He is Gallup’s MVP outside of Gallup.” Another

Gallup employee who also received the e-mail added, "He should be recognised [sic] the same way we recognise [sic] our partners since he has sold us to FEMA and will sell us to DHS in the future. No doubt that we would not be at FEMA if not for this guy."

14. On November 18, 2008, Cannon sent an e-mail to Gallup's CEO in which Cannon noted that the Great Manager Program was getting "rave reviews." Gallup's CEO forwarded this e-mail to other Gallup employees. On November 18, 2008, the managing partner of Gallup's Government Division advised Gallup's CEO, "I talked to Tim today. He asked for a job." Gallup's CEO then stated, "What about ethics . . . are we okay with all of that . . . he is a significant client . . . am sure you know the rules . . . gee he seems like a winner to me . . . I don't think these guys are as expensive as one might think . . . and he has a military background[.]"

15. On December 16, 2008, Cannon e-mailed the Deputy Administrator and the Assistant Administrator for Management at FEMA to request additional funding for the BEST Workforce Initiative, including between \$450,000 and \$500,000 to expand the Great Manager Program to FEMA's regional offices.

16. On January 6, 2009, in an e-mail to a Gallup employee about the Great Manager Program, Cannon stated, ". . . [A]h yes, I got another 500k put on the contract. Cool huh?"

17. On January 12, 2009, Cannon had an employment interview with Gallup in Washington, D.C. At the interview, Cannon and Gallup discussed salary terms for Cannon.

18. On January 16, 2009, Cannon and a partner in Gallup's Government Division traded e-mails concerning additional funding for the BEST Workforce Initiative. The partner inquired, "Did they transfer the funds into your account yet?" Cannon responded, "Working on the funds transfer"

19. On January 21, 2009, Cannon signed and approved a Requisition and Commitment for Services and Supplies form, known as a FEMA Form 40-1, for \$500,000 in

“[a]dditional funding to cover 9 additional Great Manager Training sessions in the BEST Workforce Program[.]” On that same day, the Assistant Administrator for Management at FEMA circulated an e-mail officially announcing the nine additional Great Manager Program courses for FEMA’s regional offices.

20. In January and February 2009, Cannon signed two other FEMA Forms 40-1 to expand the Great Manager Program, this time to the “Preparedness Directorate [sic]” at FEMA. On January 30, 2009, Cannon signed and approved a FEMA Form 40-1 for \$1,000,000 in additional funding, and on February 3, 2009, Cannon signed and approved a FEMA Form 40-1 for \$100,000 in additional funding. Both FEMA Forms 40-1 stated that they were for the “BEST Workforce Program administered by [Company A]/Gallup.”

21. On February 4, 2009, the managing partner of Gallup’s Government Division sent an e-mail to Gallup’s CEO concerning Cannon’s prospective employment at Gallup. In the e-mail, the managing partner stated, “We’ve got him lined up to start first week in April. Need to get offer letter off to him by end of week. He is very excited.” Gallup’s CEO inquired about Cannon’s compensation at Gallup. The managing partner responded, “We talked yesterday about \$175,000.”

22. On February 9, 2009, Gallup sent an employment offer letter, dated February 5, 2009, by e-mail to Cannon. The letter offered Cannon “the opportunity to join Gallup as a Partner with our Government Division in Washington, D.C.[.]” and guaranteed Cannon a minimum annual salary of \$175,000 for the first two years of employment. Cannon responded to the e-mail the same day, stating, “I am very excited about joining Gallup and I look forward to working with you”

23. Following Cannon’s acceptance of Gallup’s employment offer, Cannon continued to oversee and work on the BEST Workforce Initiative at FEMA.

24. Cannon retired from FEMA effective on February 27, 2009.

25. On February 27, 2009, Cannon requested that the managing partner of Gallup's Government Division provide him with an offer letter dated after February 27, 2009. By doing so and upon receipt of the re-dated letter, Cannon could make it falsely appear that he received Gallup's employment offer after he had resigned from FEMA.

26. On February 27, 2009, the managing partner of Gallup's Government Division left a voicemail for Gallup's executive administrator asking to have Cannon's offer letter re-sent with the March 2, 2009, date. On March 2, 2009, the executive administrator responded to confirm, "Everything else the same, just updated to reflect that we drew it up today." To which the managing partner responded, "Yep – all the same – just different date."

27. On March 2, 2009, Gallup sent the updated version of the offer letter, with the new date of March 2, 2009, to Cannon. Cannon signed this updated version of the offer letter on March 3, 2009, and returned it to Gallup. On March 9, 2009, a Gallup employee entered the following into a Gallup database containing employment records for Cannon, "Had to wait on offer/acceptance until his job was officially finished."

28. In March 2009, the executive director of Gallup's Government Division voiced concerns internally about Cannon's hiring. In an e-mail dated March 10, 2009, the executive director stated, "[W]e need to have him provide an Ethics Advisory Opinion letter from his current agency as soon as possible . . . In Tim's case he has been working for FEMA and he should have contacted the agency's ethics official when first applying/pursuing a job at Gallup." The managing director of Gallup's Government Division was copied on this e-mail.

29. On March 19, 2009, a talent resources coordinator at Gallup sent the following in an e-mail to others at Gallup in the management chain, "Tim Cannon has completed his background check and he meets company standards. Tim is cleared for hiring!"

30. On March 25, 2009, the managing partner of Gallup's Government Division stated in an email to the executive director of Gallup's Government Division, "Well, I just got a call from and am getting more red flags about Tim Cannon. Apparently, word is getting around about his departure and joining Gallup. There is speculation among is [sic] co-workers that this is improper. They are pretty mad. This may get in the way of future business with FEMA. . . . This, plus the bankruptcy, plus appearance of ethics violations, both on Gallup and FEMA side. This is not good. . . . I think we are getting too many sign[s], and I do not think this will work."

31. On March 27, 2009, Gallup informed Cannon that Gallup's offer of employment was being withdrawn. Gallup told Cannon that Cannon did not meet the background check requirements. On the previous day, a Gallup employee entered the following into a Gallup database containing employment records for Cannon, "Tim was not able to secure a necessary letter allowing him to pursue work with a company providing services to the government[.]"

32. On April 1, 2009, a FEMA official (not Cannon) working on the BEST Workforce Initiative gave Gallup a positive rating during a phone interview. On April 3, 2009, the managing partner of Gallup's Government Division, who received a copy of the positive rating, remarked in an e-mail to the executive director of Gallup's Government Division, "[M]mm . . . yes, [this other FEMA official] wants to work at Gallup too!"

33. On September 17, 2009, Cannon sent an e-mail to Gallup's CEO advising that Cannon had joined a consulting firm and asking to have lunch. On September 18, 2009, Gallup's CEO forwarded that e-mail to other Gallup employees, including the managing partner of Gallup's Government Division, stating, "This is a guy that was our sponsor at FEMA . . . he is so Gallup gung ho . . . when he was applying we broke some of the rules of the US Gov on the 'how' we do it . . . so we had to let him go . . ."

34. On January 6, 2010, Gallup's CEO e-mailed other Gallup employees, including the managing partner of Gallup's Government Division, to update them on Cannon's status. The e-mail advised others that Cannon now "works for one of these minority owned firms . . . so I guess they can win business that we can't . . . and then they can partner with us to do a significant amount of it"

35. As part of the Government's criminal investigation related to Gallup's negotiation and offer of employment to Cannon, Gallup and the Government had discussions concerning the circumstances of Gallup's withdrawal of Cannon's employment offer.

36. By letter dated July 29, 2012, Gallup advised the Government that "the bankruptcy was a determining factor in deciding to rescind Mr. Cannon's employment offer Mr. Cannon's failure to timely provide an ethics letter also factored into the decision to rescind the offer because it indicated a lack of responsibility."

37. On July 31, 2012, Gallup represented in written correspondence with the Government that Gallup's Vice President of Law and Associate Counsel ("Vice President of Law") made "the decision that Gallup could not hire Mr. Cannon because of Mr. Cannon's bankruptcy." To support this claim, Gallup offered to make the Vice President of Law available for an interview by the Government. On August 7, 2012, Gallup's Vice President of Law was interviewed by agents of the Federal Bureau of Investigation, the General Services Administration Office of Inspector General, and the DHS Office of Inspector General at the law offices of Gallup's outside counsel in Washington, D.C. During the interview, Gallup's Vice President of Law stated on behalf of the Company that the Vice President of Law, alone, made the decision at Gallup to withdraw Cannon's employment offer and that this decision was based solely on Cannon's prior bankruptcy.

38. In fact, Gallup's decision to withdraw Cannon's employment offer was not based solely on Cannon's prior bankruptcy, as represented by Gallup's Vice President of Law on behalf of the Company. The basis for this decision included the "appearance of ethics violations, both on Gallup and FEMA side[,]” *see* ¶ 30 (statement of the managing partner of Gallup's Government Division), Cannon's inability "to secure a necessary letter allowing him to pursue work with a company providing services to the government[,]” *see* ¶ 31 (statement entered into a Gallup database containing employment records for Cannon), and a belief that "when [Cannon] was applying we broke some of the rules of the US Gov on the 'how' we do it . . . so we had to let him go[,]” *see* ¶ 33 (statement of Gallup's CEO).