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**Re: Request Under Freedom of Information Act  
(Expedited Processing & Fee Waiver/Limitation Requested)**

To Whom It May Concern:

The American Civil Liberties Union and the American Civil Liberties Union Foundation (together, the “ACLU”)<sup>1</sup> submit this Freedom of Information Act (“FOIA”) request (the “Request”) for records pertaining to financial and

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<sup>1</sup> The American Civil Liberties Union Foundation is a 501(c)(3) organization that provides legal representation free of charge to individuals and organizations in civil rights and civil liberties cases, educates the public about the civil rights and civil liberties implications of pending and proposed state and federal legislation, provides analyses of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators. The American Civil Liberties Union is a separate non-profit, 501(c)(4) membership organization that educates the public about the civil liberties implications of pending and proposed state and federal legislation, provides analysis of pending and proposed legislation, directly lobbies legislators, and mobilizes its members to lobby their legislators.

other ethical conflicts of interest in connection with the presidential transition of President-Elect Donald J. Trump.

## I. Background

The election of Donald J. Trump to be the 45th President of the United States has raised unprecedented questions of enormous public concern surrounding the President-Elect's various business entanglements and the risks that his potential financial, family, and other ethical conflicts of interest present to the longstanding American value of the impartiality of government decisionmaking. Compounding these pressing and complex questions, during both the presidential campaign and the presidential transition, the President-Elect has failed to provide detailed answers concerning how he intends to address the looming conflicts in order to assure the American public that his oath, duties, and sympathies will not be at risk of compromise during his presidency. The FOIA—one of America's most critical guarantors of government transparency and the central mechanism by which ordinary Americans can provide ongoing public checks and balances on elected officials in the political branches—demands that government records illuminating these issues be released forthwith in order to contribute to the ongoing public debate concerning the President-Elect's assumption of the powers of the presidency and the public trust.

Since the November 8 election, a crescendo of public concern surrounding the vast number of potential ethical issues facing the President-Elect has built across the political spectrum and even inside the government itself.<sup>2</sup> And even prior to the election, ethics lawyers from the past two presidential administrations voiced alarm at the wide-ranging conflicts presented by the President-Elect's business interests,<sup>3</sup> which span the globe from Pennsylvania Avenue<sup>4</sup> to Indonesia.<sup>5</sup> Beyond these questions of business conflicts, questions have been raised concerning the President-Elect's more than

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<sup>2</sup> See, e.g., Joel B. Pollak, *Donald Trump Should Appoint a Special Auditor for Conflicts-of-Interest*, Breitbart, Nov. 22, 2016, <http://www.breitbart.com/big-government/2016/11/22/conflicts-of-interest-special-auditor-donald-trump-appoint-business/>; Russ Choma, *Donald Trump's Conflicts of Interest Could Pose a Constitutional Problem*, Mother Jones, Nov. 11, 2016, <http://www.motherjones.com/politics/2016/11/trumps-conflicts-interest-could-be-constitutional-problem/>; see also, e.g., Michael D. Shear & Eric Lipton, *Ethics Office Praises Donald Trump for a Move He Hasn't Committed To*, N.Y. Times, Nov. 30, 2016, <http://nyti.ms/2gK988R>; Drew Harwell, *Trump's Conflicts of Interest Are Without Precedent in American Presidential History*, Wash. Post, Nov. 9, 2016, <http://wapo.st/2jmPwsG>.

<sup>3</sup> See Richard Painter & Norman Eisen, *A Trump Presidency Would Be Ethically Compromised*, Wash. Post, Sept. 20, 2016, <http://wpo.st/DScQ2>.

<sup>4</sup> Byron Tau, *Donald Trump's Washington Hotel Lease Back in Spotlight*, Wall St. J., Dec. 14, 2016, <http://on.wsj.com/2jmGb3Z>.

<sup>5</sup> See, e.g., Jeremy Venook, *Trump's Interests vs. America's, Vornado Edition*, Atlantic, Jan. 17, 2017, <http://theatln.tc/2jmFZSj>.

half a billion dollars in debts,<sup>6</sup> the numerous pending civil lawsuits against him,<sup>7</sup> and the potential that his administration's staffing choices will violate anti-nepotism laws that date back more than half a century.<sup>8</sup> While the President-Elect has indicated his general intention to address these ethical issues,<sup>9</sup> he has also publicly minimized them,<sup>10</sup> and ethics experts have widely criticized the plan his transition team unveiled last week as inadequate.<sup>11</sup> Meanwhile, the President-Elect's potential ethical conflicts are the subject of pending legislation in Congress.<sup>12</sup>

The myriad conflict-of-interest issues presented by Donald J. Trump's assumption of the presidency threaten to undermine the public's confidence in government, the global community's trust in our nation's chief executive, and potentially our national security. The FOIA entitles the American public to information relevant to the presidential transition that will enable democratic oversight and public accountability over the President-Elect's conduct and conflicts. In an effort to facilitate the public's indispensable role in checking the power of our public officials, to supplement the public record with information about the President-Elect's efforts to address these various concerns, and to assess the government's legal and policy assessments of the President-Elect's unprecedented number and nature of potential ethical conflicts, the ACLU seeks such information through this FOIA Request.

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<sup>6</sup> Jean Eaglesham & Lisa Schwartz, *Trump's Debts Are Widely Held on Wall Street, Creating New Potential Conflicts*, Wall St. J., Jan. 5, 2017, <http://on.wsj.com/2jxObD2>.

<sup>7</sup> Nick Penzenstadler & John Kelly, *How 75 Pending Lawsuits Could Distract a Donald Trump Presidency*, USA Today, Oct. 25, 2016, <http://usat.ly/2eOeq2d>.

<sup>8</sup> Aaron Blake, *Donald Trump's 'First Attempt to Ignore the Law'*, Wash. Post, Jan. 10, 2017, <http://wapo.st/2icq4F6>; Maxwell Tani, *Report: Jared Kushner to Join White House as Senior Adviser in Test of Nepotism Laws*, Business Insider, Jan. 9, 2017, <http://read.bi/2iwwK26>.

<sup>9</sup> Donald J. Trump (@realDonaldTrump), Twitter (Nov. 30, 2016, 6:59 AM), <https://twitter.com/realDonaldTrump/status/803931490514075648>; see also Shear & Lipton, *supra* note 2 ((quoting Reince Priebus, the President-Elect's Chief of Staff) "You should know that he's got the best people in the world working on it.").

<sup>10</sup> Rebecca Savransky, *Trump on Concerns About Business: "It's Not A Big Deal"*, Hill, Dec. 28, 2016, <http://thehill.com/homenews/campaign/312065-trump-on-business-its-not-a-big-deal> ("It's not a big deal. You people are making that a big deal, the business, because look, No. 1, when I won, they all knew I had a big business all over the place," Trump told reporters Wednesday outside his Mar-a-Lago resort in Florida.); *Donald Trump's New York Times Interview: Full Transcript*, N.Y. Times, Nov. 23, 2016, <http://nyti.ms/2gk8qQo> ("Even though the president of the United States—I hope whoever is writing this story, it's written fairly—the president of the United States is allowed to have whatever conflicts he wants—he or she wants.").

<sup>11</sup> Richard W. Painter, Laurence H. Tribe, Norman L. Eisen & Joshua Matz, *Emoluments: Trump's Coming Ethics Trouble*, Atlantic, Jan. 18, 2017, <http://theatlantic.com/2joNkC3>; Maggie Haberman, Julie Hirschfeld Davis & Eric Lipton, *Sons to Run Trump Business Via Trust; Ethicists Still See Conflict*, N.Y. Times, Jan. 11, 2017, <http://nyti.ms/2ikCazj>.

<sup>12</sup> Elana Schor, *Democratic Bill Would End Trump's Conflict-of-Interest Exemptions*, Politico, Jan. 9, 2017, <http://politi.co/2jmHj7M>.

## II. Requested Records

The ACLU seeks the release of the following records created on or between November 9, 2016 and January 20, 2017:

- (1) **Legal opinions, memoranda, or advisories addressing actual or potential financial or other ethical conflicts of interest, including interpretations of the U.S. Constitution, federal criminal laws, or government regulations.** Such laws and regulations include, but are not limited to:
  - the Foreign Emoluments Clause of the U.S. Constitution, Art. I, § 9, cl. 8;
  - the Domestic Emoluments Clause of the U.S. Constitution, Art. II, § 1, cl. 7;
  - the criminal conflicts-of-interest statutes, 18 U.S.C. §§ 202–03, 205, 207–09;
  - the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. part 2635;
  - executive branch–wide regulations on public and confidential financial disclosure, outside employment limitations, ethics training, certain financial interests, and post-government employment, 5 C.F.R. parts 2634, 2636–38, 2640–41;
  - the Government Employees Training Act, 5 U.S.C. § 4111;
  - prohibitions on gifts of travel from non-federal sources, 31 U.S.C. § 1353;
  - procurement-integrity restrictions, 41 U.S.C. § 423;
  - prohibitions on nepotism, 5 U.S.C. § 3110;
  - regulations on divestment of financial interests and certificates of divestiture, 5 C.F.R. part 2634, subpart J;
- (2) **Policy, educational, or program-management memoranda, advisories, or evaluations addressing actual or potential financial or other ethical conflicts of interest.**

- (3) **Communications—including but not limited to emails, letters, social-media posts, Twitter direct messages—to, from, or about the presidential transition addressing actual or potential financial or other ethical conflicts of interest.**

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), the ACLU requests that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, the ACLU requests that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency’s possession, and that the records be provided in separate, Bates-stamped files.

### **III. Application for Expedited Processing**

The ACLU requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E).<sup>13</sup> There is a “compelling need” for these records, as defined in the statute, because the information requested is “urgen[tly]” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity.” 5 U.S.C. § 552(a)(6)(E)(v)(II).

- A. *The ACLU is an organization primarily engaged in disseminating information in order to inform the public about actual or alleged government activity.*

The ACLU is “primarily engaged in disseminating information” within the meaning of the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II).<sup>14</sup> Obtaining information about government activity, analyzing that information, and widely publishing and disseminating that information to the press and public are critical and substantial components of the ACLU’s work and are among its primary activities. *See ACLU v. DOJ*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding non-profit public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” to be “primarily engaged in disseminating information”).<sup>15</sup>

The ACLU regularly publishes *STAND*, a print magazine that reports on

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<sup>13</sup> *See also* 5 C.F.R. § 2604.301(e); 28 C.F.R. § 16.5(e); 41 C.F.R. § 105-60.402-2(c).

<sup>14</sup> *See also* 5 C.F.R. § 2604.301(e)(2)(ii); 28 C.F.R. § 16.5(e)(ii); 41 C.F.R. § 105-60.402-2(c)(2).

<sup>15</sup> Courts have found that the ACLU as well as other organizations with similar missions that engage in information-dissemination activities similar to the ACLU are “primarily engaged in disseminating information.” *See, e.g., Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005); *ACLU*, 321 F. Supp. 2d at 29 n.5; *Elec. Privacy Info. Ctr. v. DOD*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003).

and analyzes civil liberties-related current events. The magazine is disseminated to over 620,000 people. The ACLU also publishes regular updates and alerts via email to approximately 1.9 million subscribers (both ACLU members and non-members). These updates are additionally broadcast to 1.5 million social media followers (members and non-members). The magazine as well as the email and social-media alerts often include descriptions and analysis of information obtained through FOIA requests.

The ACLU also regularly issues press releases to call attention to documents obtained through FOIA requests, as well as other breaking news,<sup>16</sup> and ACLU attorneys are interviewed frequently for news stories about documents released through ACLU FOIA requests.<sup>17</sup>

Similarly, the ACLU publishes reports about government conduct and civil liberties issues based on its analysis of information derived from various sources, including information obtained from the government through FOIA requests. This material is broadly circulated to the public and widely available to everyone for no cost or, sometimes, for a small fee. ACLU national projects regularly publish and disseminate reports that include a description and analysis of government documents obtained through FOIA requests.<sup>18</sup> The ACLU also

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<sup>16</sup> See, e.g., Press Release, American Civil Liberties Union, U.S. Releases Drone Strike ‘Playbook’ in Response to ACLU Lawsuit (Aug. 6, 2016), <https://www.aclu.org/news/us-releases-drone-strike-playbook-response-aclu-lawsuit>; Press Release, American Civil Liberties Union, Secret Documents Describe Graphic Abuse and Admit Mistakes (June 14, 2016), <https://www.aclu.org/news/cia-releases-dozens-torture-documents-response-aclu-lawsuit>; Press Release, American Civil Liberties Union, U.S. Releases Targeted Killing Memo in Response to Long-Running ACLU Lawsuit (June 23, 2014), <https://www.aclu.org/national-security/us-releases-targeted-killing-memo-response-long-running-aclu-lawsuit>; Press Release, American Civil Liberties Union, Justice Department White Paper Details Rationale for Targeted Killing of Americans (Feb. 4, 2013), <https://www.aclu.org/national-security/justice-department-white-paper-details-rationale-targeted-killing-americans>; Press Release, American Civil Liberties Union, Documents Show FBI Monitored Bay Area Occupy Movement (Sept. 14, 2012), <https://www.aclu.org/news/documents-show-fbi-monitored-bay-area-occupy-movement-insidebayareacom>.

<sup>17</sup> See, e.g., Karen DeYoung, *Newly Declassified Document Sheds Light on How President Approves Drone Strikes*, Wash. Post, Aug. 6, 2016, <http://wapo.st/2jy62cW> (quoting former ACLU deputy legal director Jameel Jaffer); Catherine Thorbecke, *What Newly Released CIA Documents Reveal About ‘Torture’ in Its Former Detention Program*, ABC, June 15, 2016, <http://abcn.ws/2jy40d3> (quoting ACLU staff attorney Dror Ladin); Nicky Woolf, *US Marshals Spent \$10M on Equipment for Warrantless Stingray Device*, Guardian, Mar. 17, 2016, <https://www.theguardian.com/world/2016/mar/17/us-marshals-stingray-surveillance-airborne> (quoting ACLU attorney Nate Wessler); David Welna, *Government Suspected of Wanting CIA Torture Report to Remain Secret*, NPR, Dec. 9, 2015, <http://n.pr/2jy2p71> (quoting ACLU project director Hina Shamsi).

<sup>18</sup> See, e.g., ACLU, *ACLU-Obtained Emails Prove that the Federal Bureau of Prisons Covered Up Its Visit to the CIA’s Torture Site* (Nov. 22, 2016, 3:15 PM), <https://www.aclu.org/blog/speak-freely/aclu-obtained-emails-prove-federal-bureau-prisons-covered-its-visit-cias-torture>; ACLU, *Details Abound in Drone ‘Playbook’ – Except for the Ones That Really Matter Most* (Aug. 8, 2016, 5:30 PM), <https://www.aclu.org/blog/speak-freely/details-abound-drone-playbook-except-ones-really-matter-most>; ACLU, *ACLU-*

regularly publishes books, “know your rights” materials, fact sheets, and educational brochures and pamphlets designed to educate the public about civil liberties issues and government policies that implicate civil rights and liberties.

The ACLU publishes a widely read blog where original editorial content reporting on and analyzing civil rights and civil liberties news is posted daily. *See* <https://www.aclu.org/blog>. The ACLU creates and disseminates original editorial and educational content on civil rights and civil liberties news through multi-media projects, including videos, podcasts, and interactive features. *See* <https://www.aclu.org/multimedia>. The ACLU also publishes, analyzes, and disseminates information through its heavily visited website, [www.aclu.org](http://www.aclu.org). The website addresses civil rights and civil liberties issues in depth, provides features on civil rights and civil liberties issues in the news, and contains many thousands of documents relating to the issues on which the ACLU is focused. The ACLU’s website also serves as a clearinghouse for news about ACLU cases, as well as analysis about case developments, and an archive of case-related documents. Through these pages, and with respect to each specific civil liberties issue, the ACLU provides the public with educational material, recent news, analyses of relevant Congressional or executive branch action, government documents obtained through FOIA requests, and further in-depth analytic and educational multi-media features.

The ACLU website includes many features on information obtained through the FOIA.<sup>19</sup> For example, the ACLU’s “Predator Drones FOIA” webpage, <https://www.aclu.org/national-security/predator-drones-foia>, contains commentary about the ACLU’s FOIA request, press releases, analysis of the FOIA documents, numerous blog posts on the issue, documents related to litigation over the FOIA request, frequently asked questions about targeted killing, and links to the documents themselves. Similarly, the ACLU maintains an online “Torture Database,” a compilation of over 100,000 pages of FOIA documents that allows researchers and the public to conduct sophisticated

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Obtained Documents Reveal Breadth of Secretive Stingray Use in Florida (Feb. 22, 2015, 5:30 PM), <https://www.aclu.org/blog/free-future/aclu-obtained-documents-reveal-breadth-secretive-stingray-use-florida>; ACLU, New NSA Documents Shine More Light into Black Box of Executive Order 12333 (Oct. 30, 2014, 3:29 PM), <https://www.aclu.org/blog/new-nsa-documents-shine-more-light-black-box-executive-order-12333>; ACLU, ACLU Eye on the FBI: Documents Reveal Lack of Privacy Safeguards and Guidance in Government’s “Suspicious Activity Report” Systems (Oct. 29, 2013), [https://www.aclu.org/sites/default/files/assets/eye\\_on\\_fbi\\_-\\_sars.pdf](https://www.aclu.org/sites/default/files/assets/eye_on_fbi_-_sars.pdf).

<sup>19</sup> *See, e.g.*, <https://www.aclu.org/blog/free-future/fbi-releases-details-zero-day-exploit-decisionmaking-process>; <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>; <https://www.aclu.org/national-security/anwar-al-awlaki-foia-request>; <https://www.aclu.org/cases/aclu-v-department-defense>; <https://www.aclu.org/mappingthefbi>; <https://www.aclu.org/cases/bagram-foia>; <https://www.aclu.org/national-security/csrt-foia>; <http://www.aclu.org/safefree/nsaspying/30022res20060207.html>; <https://www.aclu.org/patriot-foia>; <https://www.aclu.org/nsl-documents-released-dod?redirect=cpredirect/32088>.

searches of FOIA documents relating to government policies on rendition, detention, and interrogation.<sup>20</sup>

The ACLU has also published a number of charts and explanatory materials that collect, summarize, and analyze information it has obtained through the FOIA. For example, through compilation and analysis of information gathered from various sources—including information obtained from the government through FOIA requests—the ACLU created an original chart that provides the public and news media with a comprehensive summary index of Bush-era Office of Legal Counsel memos relating to interrogation, detention, rendition, and surveillance.<sup>21</sup> Similarly, the ACLU produced a summary of documents released in response to a FOIA request related to the FISA Amendments Act<sup>22</sup>; a chart of original statistics about the Defense Department’s use of National Security Letters based on its own analysis of records obtained through FOIA requests<sup>23</sup>; and an analysis of documents obtained through FOIA requests about FBI surveillance flights over Baltimore.<sup>24</sup>

The ACLU plans to analyze, publish, and disseminate to the public the information gathered through this Request. The records requested are not sought for commercial use and the requesters plan to disseminate the information disclosed as a result of this Request to the public at no cost.

*B. The records sought are urgently needed to inform the public about actual or alleged government activity.*

These records are urgently needed to inform the public about actual or alleged government activity. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II).<sup>25</sup> Specifically, the requested records relate to the next President of the United States’ potential ethical and financial conflicts of interest. As discussed in Part I, *supra*, the President-Elect’s various business entanglements and the risks posed by his potential financial, family, and other ethical conflicts of interest raise unprecedented questions of enormous public concern.

Given the foregoing, the ACLU has satisfied the requirements for expedited processing of this Request.

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<sup>20</sup> <https://www.thetorturedatabase.org>. *See also* <https://www.aclu.org/foia-collection/targeted-killing-foia-database>.

<sup>21</sup> [https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos\\_2009\\_0305.pdf](https://www.aclu.org/sites/default/files/pdfs/safefree/olcmemos_2009_0305.pdf).

<sup>22</sup> <https://www.aclu.org/files/pdfs/natsec/faafoia20101129/20101129Summary.pdf>.

<sup>23</sup> [https://www.aclu.org/sites/default/files/field\\_document/ns1\\_stats.pdf](https://www.aclu.org/sites/default/files/field_document/ns1_stats.pdf).

<sup>24</sup> <https://www.aclu.org/blog/free-future/fbi-documents-reveal-new-information-baltimore-surveillance-flights>.

<sup>25</sup> *See also* 5 C.F.R. § 2604.301(e)(2)(ii); 28 C.F.R. § 16.5(e)(ii); 41 C.F.R. § 105-60.402-2(c)(2).

#### IV. Application for Waiver or Limitation of Fees

The ACLU requests a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).<sup>26</sup> The ACLU also requests a waiver of search fees on the grounds that the ACLU qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II).

*A. The Request is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the ACLU.*

As discussed above, news accounts underscore the substantial public interest in the records sought through this Request. Given the ongoing and widespread media attention to this issue, the records sought will significantly contribute to public understanding of an issue of profound public importance. Especially because little specific information about how the President-Elect and the government plan to address the President-Elect’s ethical and financial conflict issues is publically available, the records sought are certain to contribute significantly to the public’s understanding of these issues.

The ACLU is not filing this Request to further its commercial interest. As described above, any information disclosed by the ACLU as a result of this FOIA Request will be available to the public at no cost. Thus, a fee waiver would fulfill Congress’s legislative intent in amending the FOIA. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.” (quotation marks omitted)).

*B. The ACLU is a representative of the news media and the records are not sought for commercial use.*

The ACLU also requests a waiver of search fees on the grounds that the ACLU qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). The ACLU meets the statutory and regulatory definitions of a “representative of the news media” because it is an “entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct

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<sup>26</sup> See also 5 C.F.R. § 2604.503(c); 28 C.F.R. § 16.10(k)(1); 5 C.F.R. § 294.109(f); 41 C.F.R. § 105-60.402-2(c)(2).

work, and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III)<sup>27</sup>; see also *Nat’l Sec. Archive v. DOD*, 880 F.2d 1381, 1387 (D.C. Cir. 1989) (finding that an organization that gathers information, exercises editorial discretion in selecting and organizing documents, “devises indices and finding aids,” and “distributes the resulting work to the public” is a “representative of the news media” for purposes of the FOIA); *Serv. Women’s Action Network v. DOD*, 888 F. Supp. 2d 282 (D. Conn. 2012) (requesters, including ACLU, were representatives of the news media and thus qualified for fee waivers for FOIA requests to the Department of Defense and Department of Veterans Affairs); *ACLU of Wash. v. DOJ*, No. C09–0642RSL, 2011 WL 887731, at \*10 (W.D. Wash. Mar. 10, 2011) (finding that the ACLU of Washington is an entity that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience”); *ACLU*, 321 F. Supp. 2d at 30 n.5 (finding non-profit public interest group to be “primarily engaged in disseminating information”). The ACLU is therefore a “representative of the news media” for the same reasons it is “primarily engaged in the dissemination of information.”

Furthermore, courts have found other organizations whose mission, function, publishing, and public education activities are similar in kind to the ACLU’s to be “representatives of the news media” as well. See, e.g., *Cause of Action v. IRS*, 125 F. Supp. 3d 145 (D.C. Cir. 2015); *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 10–15 (finding non-profit public interest group that disseminated an electronic newsletter and published books was a “representative of the news media” for purposes of the FOIA); *Nat’l Sec. Archive*, 880 F.2d at 1387; *Judicial Watch, Inc. v. DOJ*, 133 F. Supp. 2d 52, 53–54 (D.D.C. 2000) (finding Judicial Watch, self-described as a “public interest law firm,” a news media requester).<sup>28</sup>

On account of these factors, fees associated with responding to FOIA requests are regularly waived for the ACLU as a “representative of the news media.”<sup>29</sup> As was true in those instances, the ACLU meets the requirements for a fee waiver here.

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<sup>27</sup> See also 5 C.F.R. § 2604.103; 28 C.F.R. § 16.10(b)(6); 5 C.F.R. § 294.103(c); 41 C.F.R. § 105-60.305-1(i).

<sup>28</sup> Courts have found these organizations to be “representatives of the news media” even though they engage in litigation and lobbying activities beyond their dissemination of information / public education activities. See, e.g., *Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d 5; *Nat’l Sec. Archive*, 880 F.2d at 1387; see also *Leadership Conference on Civil Rights*, 404 F. Supp. 2d at 260; *Judicial Watch, Inc.*, 133 F. Supp. 2d at 53–54.

<sup>29</sup> In May 2016, the FBI granted a fee-waiver request regarding a FOIA request submitted to the DOJ for documents related to Countering Violent Extremism Programs. In April 2013, the National Security Division of the DOJ granted a fee-waiver request with respect to a request for documents relating to the FISA Amendments Act. Also in April 2013, the DOJ granted a fee-waiver request regarding a FOIA request for documents related to “national security letters” issued under the Electronic Communications Privacy Act. In August 2013, the FBI granted the

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Pursuant to applicable statutes and regulations, the ACLU expects a determination regarding expedited processing within 10 days. *See* 5 U.S.C. § 552(a)(6)(E)(ii); 5 C.F.R. § 2604.305(a)(3); 28 C.F.R. § 16.5(e); 5 C.F.R. § 294.108(f); 41 C.F.R. § 105-60.305-10(d).

If the Request is denied in whole or in part, the ACLU asks that you justify all deletions by reference to specific exemptions to the FOIA. The ACLU expects the release of all segregable portions of otherwise exempt material. The ACLU reserves the right to appeal a decision to withhold any information or deny a waiver of fees.

Thank you for your prompt attention to this matter. Please furnish the applicable records to:

**AMERICAN CIVIL  
LIBERTIES UNION  
FOUNDATION**

Brett Max Kaufman  
American Civil Liberties Union  
125 Broad Street—18th Floor  
New York, New York 10004

(b)(6) contact info  
[REDACTED]  
[REDACTED]  
[REDACTED]

---

fee-waiver request related to the same FOIA request issued to the DOJ. In June 2011, the DOJ National Security Division granted a fee waiver to the ACLU with respect to a request for documents relating to the interpretation and implementation of a section of the PATRIOT Act. In March 2009, the State Department granted a fee waiver to the ACLU with regard to a FOIA request for documents relating to the detention, interrogation, treatment, or prosecution of suspected terrorists. Likewise, in December 2008, the DOJ granted the ACLU a fee waiver with respect to the same request. In November 2006, the Department of Health and Human Services granted a fee waiver to the ACLU with regard to a FOIA request. In May 2005, the U.S. Department of Commerce granted a fee waiver to the ACLU with respect to its request for information regarding the radio-frequency identification chips in United States passports. In March 2005, the Department of State granted a fee waiver to the ACLU on a request regarding the use of immigration laws to exclude prominent non-citizen scholars and intellectuals from the country because of their political views, statements, or associations. In addition, the Department of Defense did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in April 2007, June 2006, February 2006, and October 2003. The DOJ did not charge the ACLU fees associated with FOIA requests submitted by the ACLU in November 2007, December 2005, and December 2004. Finally, three separate agencies—the Federal Bureau of Investigation, the Office of Intelligence Policy and Review, and the DOJ Office of Information and Privacy—did not charge the ACLU fees associated with a FOIA request submitted by the ACLU in August 2002.

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. See 5 U.S.C. § 552(a)(6)(E)(vi).

Respectfully,



---

Anthony D. Romero  
Executive Director  
American Civil Liberties Union  
Foundation  
125 Broad Street—18th Floor  
New York, New York 10004

AMERICAN CIVIL LIBERTIES  
UNION FOUNDATION

**From:** [Brett Max Kaufman](#)  
**To:** [Jennifer Matis](#)  
**Subject:** RE: Your FOIA Request OGE FOIA FY 17/121  
**Date:** Thursday, February 16, 2017 6:30:24 PM

---

Jennifer,

I confirm your representation of our conversation, and thanks so much for the update on timing. Looking forward to hearing from you next week.

Best,  
Brett.

-----Original Message-----

From: Jennifer Matis [<mailto:jmatis@oge.gov>]  
Sent: Thursday, February 16, 2017 5:26 PM  
To: Brett Max Kaufman  
Subject: RE: Your FOIA Request OGE FOIA FY 17/121

Hello,

Just to follow up on our telephone conversation today, you indicated you are only interested in records produced by the government, which would exclude unsolicited communications sent to OGE from the public through our Contact OGE program, as well as OGE's standardized responses to such communications.

I also wanted to give you an update on the status of your request, as I recognize that you were expecting a response today. As I indicated on the telephone, our response is nearly complete. You can expect to receive a final response by COB Wednesday at the latest.

Thanks,

Jennifer Matis  
OGE FOIA Team

-----Original Message-----

From: Jennifer Matis  
Sent: Tuesday, January 31, 2017 2:33 PM  
To: 'Brett Max Kaufman'  
Subject: RE: Your FOIA Request OGE FOIA FY 17/121

Brett,

To follow up on our telephone conversation today, you clarified that the third part of your request also seeks documents related to Jared Kushner. Therefore, the third part of the request is clarified to include:

(3) Communications-including but not limited to emails, letters, social-media posts, Twitter direct messages-to, from, or about the presidential transition addressing actual or potential financial or other ethical conflicts of interest of Donald J. Trump and/or Jared Kushner.

Thanks,  
Jen

Jennifer Matis  
Assistant Counsel  
Legal, External Affairs and Performance Branch U.S. Office of Government Ethics

202-482-9216  
jennifer.matis@oge.gov

Visit OGE's website: [www.oge.gov](http://www.oge.gov)  
Follow OGE on Twitter: @OfficeGovEthics

-----Original Message-----

From: Brett Max Kaufman [[mailto:\(b\)\(6\) contact info](mailto:(b)(6) contact info)]  
Sent: Monday, January 30, 2017 10:48 AM  
To: Jennifer Matis  
Subject: RE: Your FOIA Request OGE FOIA FY 17/121

Hi Jennifer,

I just gave you a call back but it went to voicemail. Would be happy to talk when you're available—sorry I missed your call on Friday. My number is (b)(6) contact info. Thanks and looking forward to speaking.

Best,  
Brett.

---

From: Jennifer Matis [<mailto:jmatis@oge.gov>]  
Sent: Friday, January 27, 2017 3:45 PM  
To: Brett Max Kaufman  
Subject: Your FOIA Request OGE FOIA FY 17/121

Mr. Kaufman,

This acknowledges receipt of your January 19, 2017, Freedom of Information Act (FOIA) request, which was assigned tracking number OGE FOIA FY 17/121. In your request, you asked for:

(1) Legal opinions, memoranda, or advisories addressing actual or potential financial or other ethical conflicts of interest, including interpretations of the U.S. Constitution, federal criminal laws, or government regulations. Such laws and regulations include, but are not limited to: the Foreign Emoluments Clause of the U.S. Constitution, Art. I, § 9, cl. 8; the Domestic Emoluments Clause of the U.S. Constitution, Art. II, § 1, cl. 7; the criminal conflicts-of-interest statutes, 18 U.S.C. §§ 202- 03, 205, 207- 09; the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. part 2635; executive branch-wide regulations on public and confidential financial disclosure, outside employment limitations, ethics training, certain financial interests, and post-government employment, 5 C.F.R. parts 2634, 2636-38, 2640-41; the Government Employees Training Act, 5 U.S.C. §4111; prohibitions on gifts of travel from non-federal sources, 31 U.S.C. § 1353; procurement-integrity restrictions, 41 U.S.C. § 423; prohibitions on nepotism, 5 U.S.C. § 3110; regulations on divestment of financial interests and certificates of divestiture, 5 C.F.R. part 2634, subpart J;

(2) Policy, educational, or program-management memoranda, advisories, or evaluations addressing actual or potential financial or other ethical conflicts of interest; and

(3) Communications-including but not limited to emails, letters, social-media posts, Twitter direct messages-to, from, or about the presidential transition addressing actual or potential financial or other ethical conflicts of interest.

The time frame for the request is November 9, 2016 and January 20, 2017.

You have also requested expedited processing of your FOIA request under the OGE regulations at 5 C.F.R. § 2604.301(e), which permit expedition when a requester demonstrates a compelling need or urgency for the information (i.e., when there is an imminent threat to the life or physical safety of an individual or an urgency to inform the public about an actual or alleged Federal Government activity). In your request for expedited processing, you state that the records are “urgently needed to inform the public about actual or alleged government activity,”

because “the requested records relate to the next President of the United States' potential ethical and financial conflicts of interest.”

Based on your argument regarding expedited processing, we interpret part (3) of your request to apply specifically to “actual or potential financial or other ethical conflicts of interest” of Donald J. Trump. (I tried to reach you by telephone today to confirm this understanding, but have not yet received a response.) After reviewing your reasons for seeking expedited processing, and based upon the above interpretation of the scope of part (3) of your request, OGE has determined to grant your request for expedited processing.

If our understanding of the scope of your request is incorrect, please contact me as soon as possible with a reasonable description of the additional records sought.

Thanks,  
Jen Matis  
OGE FOIA Team  
jmatis@oge.gov  
202-482-9216

OGE Confidential Notice: This email, including all attachments, may constitute a Federal record or other Government property that is intended only for the use of the individual or entity to which it is addressed. This email also may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable law. If you are not the intended recipient or the employee or agent responsible for delivering the transmission to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this email or its contents is strictly prohibited. If you have received this email in error, please notify the sender by responding to the email and then immediately delete the email.

OGE Confidential Notice: This email, including all attachments, may constitute a Federal record or other Government property that is intended only for the use of the individual or entity to which it is addressed. This email also may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable law. If you are not the intended recipient or the employee or agent responsible for delivering the transmission to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this email or its contents is strictly prohibited. If you have received this email in error, please notify the sender by responding to the email and then immediately delete the email.

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



February 21, 2017

**VIA ELECTRONIC MAIL ONLY**

Brett Max Kaufman  
American Civil Liberties Union  
125 Broad Street, 18th Floor  
New York, NY 10004  
(b)(6) contact info

Tracking No: OGE FOIA FY 17/121

Dear Mr. Kaufman:

This is in reference to your Freedom of Information Act (FOIA) request, which was received by the Office of Government Ethics (OGE) FOIA Office on January 19, 2017. The request seeks the following records created on or between November 9, 2016 and January 20, 2017:

- (1) Legal opinions, memoranda, or advisories addressing actual or potential financial or other ethical conflicts of interest, including interpretations of the U.S. Constitution, federal criminal laws, or government regulations;
- (2) Policy, educational, or program-management memoranda, advisories, or evaluations addressing actual or potential financial or other ethical conflicts of interest; and
- (3) Communications -- including but not limited to emails, letters, social-media posts, Twitter direct messages -- to, from, or about the presidential transition addressing actual or potential financial or other ethical conflicts of interest of Donald J. Trump and/or Jared Kushner.

During a telephone call you clarified that you are only are only interested in records produced by the government, which would exclude unsolicited communications sent to OGE from the public through our Contact OGE program, as well as OGE's standardized responses to such communications. Accordingly, we did not search for such records.



With regard to parts one and two of your request, the responsive records are all of OGE's legal, program, and educational advisories issued during the relevant time frame, which are all publicly available on its website here: <https://www.oge.gov/web/oge.nsf/All%20Advisories>. These advisories can be searched by date, as well as by topic, using the "advanced search" feature. If this is not sufficient for your purposes, please let us know and we will provide hard copies.

With regard to part three of your request, enclosed please find 119 pages of responsive documents, subject to deletions made in accordance with FOIA Exemption 5, 5 U.S.C. § 552(b)(5), as inter- and intra-agency predecisional deliberative process material, and FOIA Exemption 6, 5 U.S.C. § 552(b)(6), as information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The deletions are each marked with a reference "(b)(5)" or "(b)(6)" in the enclosed copies. A draft public financial disclosure report has also been withheld in accordance with Exemption 3, 5 U.S.C. § 552(b)(3), as material specifically exempted from disclosure by another statute. Access to OGE Form 278e reports is only available under the special access provision of the Ethics in Government Act of 1978 (5 U.S.C. appendix, § 105) and OGE's regulations. In addition, to the extent that they may be responsive, there are copies of tweets sent to Donald Trump concerning his conflicts of interest and related records posted in OGE's electronic reading room here:

[https://www.oge.gov/web/OGE.nsf/Resources/Records+w+the+terms+Twitter+Tweet+Trump+etc+\(11-23-16+to+12-1-16\)+\(redacted\)](https://www.oge.gov/web/OGE.nsf/Resources/Records+w+the+terms+Twitter+Tweet+Trump+etc+(11-23-16+to+12-1-16)+(redacted))

OGE is withholding ten pages of notes from OGE staffers to senior management. These notes are withheld pursuant to FOIA Exemption 5 as intra-agency predecisional deliberative process material. Release of these records would discourage open and frank discussion on matters of policy between subordinates and superiors and otherwise harm the deliberative process. Note also that OGE has five pages of reviewer's notes pertaining to the issuance of CDs to the Kushner family. To the extent that these records are responsive, they are withheld in their entirety pursuant to FOIA Exemption 5, as inter- and intra-agency predecisional deliberative process material. The notes are an expression of the individual reviewer's views and not an expression of the agency's official position. As such, the release of these documents could lead to unnecessary confusion, mislead the public about the filer, and otherwise harm the deliberative process. The records are also withheld pursuant to FOIA Exemption 6, as information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

If you have any questions or wish to discuss any aspect of your request, you may contact me by telephone at 202-482-9267. As OGE's FOIA Public Liaison, I am available

for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

The OGE official responsible for this FOIA determination is the undersigned. If you consider this response to be a denial of your request, you may administratively appeal this determination in accordance with the FOIA, as codified at 5 U.S.C. § 552(a)(6)(A), and OGE's updated FOIA regulations, at 5 C.F.R. § 2604.304, to the Program Counsel, U.S. Office of Government Ethics, 1201 New York Avenue, N.W., Suite 500, Washington, DC 20005-3917. Any such appeal must be in writing and must be sent within 90 days of the date you receive this response letter. If you do appeal, you should include copies of your request and this response, together with a statement of why you believe this initial determination is in error. Also, if you appeal, you should clearly indicate on the envelope and in the letter that it is a "Freedom of Information Act Appeal."

Sincerely,

**RACHEL  
DOWELL**

Digitally signed by RACHEL DOWELL  
DN: c=US, o=U.S. Government,  
ou=Office of Government Ethics,  
cn=RACHEL DOWELL,  
0.9.2342.19200300.100.1.1=9549100  
2670133  
Date: 2017.02.21 14:45:36 -05'00'

Rachel K. Dowell  
OGE FOIA Officer

Enclosures

From: [David J. Apol](#)  
To: [Heather A. Jones](#); [Deborah J. Bortot](#)  
Cc: [Elaine Newton](#)  
Subject: FW: Draft SF-278 for Jared Kushner  
Date: Wednesday, January 18, 2017 10:25:59 AM  
Attachments: [OGE Form 278e Excel ver.xls](#)

(b)(3) 278e  
reports are not  
available through  
FOIA



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Anything you want me to add to this before I send?

(b)(5) draft language of a proposed email re CD request



---

Nonresponsive email from outside OGE



Nonresponsive email from outside OGE



**Brandon A. Steele**

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**From:** Deborah J. Bortot  
**Sent:** Wednesday, January 18, 2017 10:41 AM  
**To:** David J. Apol; Heather A. Jones  
**Cc:** Elaine Newton  
**Subject:** RE: Draft SF-278 for Jared Kushner

Dave,

(b) (5) [Redacted]

(b) (5) [Redacted]

Once we get the request, there will be additional questions.

Thanks,  
Deb

---

**From:** David J. Apol  
**Sent:** Wednesday, January 18, 2017 10:26 AM  
**To:** Heather A. Jones; Deborah J. Bortot  
**Cc:** Elaine Newton  
**Subject:** FW: Draft SF-278 for Jared Kushner

Anything you want me to add to this before I send?

(b) (5) [Redacted]

[Redacted]

[Redacted]

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



JAN 26 2017

Stefan C. Passantino  
Deputy Counsel to the President  
The White House Office  
Washington, DC 20500

Dear Mr. Passantino:

In response to your request of January 25, 2017, enclosed are Certificates of Divestiture OGE-2017-002 for Jared C. Kushner, Senior Advisor to the President, White House Office; OGE-2017-003 for Ivanka Trump as trustee for the Ivanka Trump Revocable Trust; OGE-2017-004 for (b)(6) minor child dependent minor child of Jared C. Kushner; OGE-2017-005 for (b)(6) minor child dependent minor child of Jared C. Kushner; and OGE-2017-006 for (b)(6) minor child dependent minor child of Jared C. Kushner. We would appreciate your forwarding the original certificates to Mr. Kushner. Also enclosed is a copy of the certificates for your files.

If there are any questions, you may contact Monica Ashar, Assistant Counsel, at (202) 482-9282.

Sincerely,

A handwritten signature in blue ink, appearing to read "David J. Apol".

David J. Apol  
General Counsel

Enclosures





**CERTIFICATE OF DIVESTITURE**

**Certificate No. OGE-2017-002**

**ELIGIBLE PERSON:** Jared C. Kushner  
White House Office

**DATE OF ISSUANCE:** JAN 26 2017

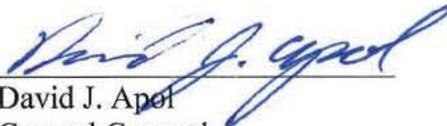
**DIVESTITURE PROPERTY:**

**[The divestiture property is identified in the attachment to this Certificate.]**

This Certificate of Divestiture is issued in accordance with section 1043 of the Internal Revenue Code of 1986 and 5 C.F.R. § 2634.1002 with respect to the specific property described above. I hereby determine that the divestiture of the described property is reasonably necessary to comply with 18 U.S.C. § 208, or other applicable Federal conflict of interest statutes, regulations, rules, or executive orders.

Note that section 1043 of the Internal Revenue Code and the rules of subpart J of 5 C.F.R. Part 2634 provide for nonrecognition of gain in the case of sales to comply with conflict of interest requirements. The rules of Subpart J relate to the issuance of Certificates of Divestiture and the permitted property into which a reinvestment must be made during the 60-day period beginning on the date of such a sale in order for nonrecognition to be permitted. Such reinvestments are called rollovers, and are limited to obligations of the United States and diversified investment funds as defined in 5 C.F.R. § 2634.1003. The substantive and procedural rules relating to the tax aspects of such sales and rollovers pursuant to the statutory scheme are subject to the jurisdiction of the Internal Revenue Service.

Eligible persons should seek the advice of their personal tax advisors for guidance as to the tax aspects of divestiture transactions and whether proposed acquisitions meet the requirements for permitted property. Internal Revenue Service regulations and other guidance should be consulted as to these matters. Internal Revenue Service requirements for reporting dispositions of property and making an election not to recognize gain under section 1043 (IRS Form 8824) must be followed by eligible persons wishing to make such an election.

  
David J. Apol  
General Counsel

cc: Deputy Counsel to the President, White House Office



**Attachment**  
OGE-2017-002

- 100% of all financial interests in JKM Capital, LLC, that you hold as of the date of this Certificate of Divestiture
- 100% of all financial interests in Thrive Partners II GP, LLC, that you hold as of the date of this Certificate of Divestiture
- 100% of all financial interests in Thrive Partners III GP, LLC, that you hold as of the date of this Certificate of Divestiture
- 100% of all financial interests in JK IV, LLC, that you hold as of the date of this Certificate of Divestiture
- 100% of all financial interests in Thrive Partners V GP, LLC, that you hold as of the date of this Certificate of Divestiture
- 112,376 shares, Regal Bank
- 100% of all financial interests in Broadband Proliferation Partners, LLC, that you hold as of the date of this Certificate of Divestiture
- 100% of all financial interests in BFPS Ventures LLC that you hold as of the date of this Certificate of Divestiture



**CERTIFICATE OF DIVESTITURE**

**Certificate No. OGE-2017-003**

**ELIGIBLE PERSON:** Ivanka Trump  
[Trustee of the Ivanka Trump Revocable Trust]  
White House Office

**DATE OF ISSUANCE:** JAN 26 2017

**DIVESTITURE PROPERTY:**

**[The divestiture property is identified in the attachment to this Certificate.]**

This Certificate of Divestiture is issued in accordance with section 1043 of the Internal Revenue Code of 1986 and 5 C.F.R. § 2634.1002 with respect to the specific property described above. I hereby determine that the divestiture of the described property is reasonably necessary to comply with 18 U.S.C. § 208, or other applicable Federal conflict of interest statutes, regulations, rules, or executive orders.

Note that section 1043 of the Internal Revenue Code and the rules of subpart J of 5 C.F.R. Part 2634 provide for nonrecognition of gain in the case of sales to comply with conflict of interest requirements. The rules of Subpart J relate to the issuance of Certificates of Divestiture and the permitted property into which a reinvestment must be made during the 60-day period beginning on the date of such a sale in order for nonrecognition to be permitted. Such reinvestments are called rollovers, and are limited to obligations of the United States and diversified investment funds as defined in 5 C.F.R. § 2634.1003. The substantive and procedural rules relating to the tax aspects of such sales and rollovers pursuant to the statutory scheme are subject to the jurisdiction of the Internal Revenue Service.

Eligible persons should seek the advice of their personal tax advisors for guidance as to the tax aspects of divestiture transactions and whether proposed acquisitions meet the requirements for permitted property. Internal Revenue Service regulations and other guidance should be consulted as to these matters. Internal Revenue Service requirements for reporting dispositions of property and making an election not to recognize gain under section 1043 (IRS Form 8824) must be followed by eligible persons wishing to make such an election.

  
David J. Apol  
General Counsel

cc: Deputy Counsel to the President, White House Office



**Attachment**  
OGE-2017-003

- 3,208 shares, Signature Bank
- 100% of all financial interests in Blackstone Strategic Alliance Fund II that you hold as of the date of this Certificate of Divestiture
- 2,076.278 shares, Hennessy Gas Utility Index Fund Investor Class Shares
- 100% of all financial interests in The Obsidian Fund LLC Class C that you hold as of the date of this Certificate of Divestiture



**CERTIFICATE OF DIVESTITURE**

**Certificate No. OGE-2017-004**

**ELIGIBLE PERSON:** (b)(6) minor child  
[minor child of Jared C. Kushner]  
White House Office

**DATE OF ISSUANCE:** JAN 26 2017

**DIVESTITURE PROPERTY:**

221 shares, Signature Bank

This Certificate of Divestiture is issued in accordance with section 1043 of the Internal Revenue Code of 1986 and 5 C.F.R. § 2634.1002 with respect to the specific property described above. I hereby determine that the divestiture of the described property is reasonably necessary to comply with 18 U.S.C. § 208, or other applicable Federal conflict of interest statutes, regulations, rules, or executive orders.

Note that section 1043 of the Internal Revenue Code and the rules of subpart J of 5 C.F.R. Part 2634 provide for nonrecognition of gain in the case of sales to comply with conflict of interest requirements. The rules of Subpart J relate to the issuance of Certificates of Divestiture and the permitted property into which a reinvestment must be made during the 60-day period beginning on the date of such a sale in order for nonrecognition to be permitted. Such reinvestments are called rollovers, and are limited to obligations of the United States and diversified investment funds as defined in 5 C.F.R. § 2634.1003. The substantive and procedural rules relating to the tax aspects of such sales and rollovers pursuant to the statutory scheme are subject to the jurisdiction of the Internal Revenue Service.

Eligible persons should seek the advice of their personal tax advisors for guidance as to the tax aspects of divestiture transactions and whether proposed acquisitions meet the requirements for permitted property. Internal Revenue Service regulations and other guidance should be consulted as to these matters. Internal Revenue Service requirements for reporting dispositions of property and making an election not to recognize gain under section 1043 (IRS Form 8824) must be followed by eligible persons wishing to make such an election.

  
David J. Apol  
General Counsel

cc: Deputy Counsel to the President, White House Office





**CERTIFICATE OF DIVESTITURE**

**Certificate No. OGE-2017-005**

**ELIGIBLE PERSON:** (b)(6) minor child  
[minor child of Jared C. Kushner]  
White House Office

**DATE OF ISSUANCE:** JAN 26 2017

**DIVESTITURE PROPERTY:**

221 shares, Signature Bank

This Certificate of Divestiture is issued in accordance with section 1043 of the Internal Revenue Code of 1986 and 5 C.F.R. § 2634.1002 with respect to the specific property described above. I hereby determine that the divestiture of the described property is reasonably necessary to comply with 18 U.S.C. § 208, or other applicable Federal conflict of interest statutes, regulations, rules, or executive orders.

Note that section 1043 of the Internal Revenue Code and the rules of subpart J of 5 C.F.R. Part 2634 provide for nonrecognition of gain in the case of sales to comply with conflict of interest requirements. The rules of Subpart J relate to the issuance of Certificates of Divestiture and the permitted property into which a reinvestment must be made during the 60-day period beginning on the date of such a sale in order for nonrecognition to be permitted. Such reinvestments are called rollovers, and are limited to obligations of the United States and diversified investment funds as defined in 5 C.F.R. § 2634.1003. The substantive and procedural rules relating to the tax aspects of such sales and rollovers pursuant to the statutory scheme are subject to the jurisdiction of the Internal Revenue Service.

Eligible persons should seek the advice of their personal tax advisors for guidance as to the tax aspects of divestiture transactions and whether proposed acquisitions meet the requirements for permitted property. Internal Revenue Service regulations and other guidance should be consulted as to these matters. Internal Revenue Service requirements for reporting dispositions of property and making an election not to recognize gain under section 1043 (IRS Form 8824) must be followed by eligible persons wishing to make such an election.

  
David J. Apol  
General Counsel

cc: Deputy Counsel to the President, White House Office





**CERTIFICATE OF DIVESTITURE**

**Certificate No. OGE-2017-006**

**ELIGIBLE PERSON:** (b)(6) minor child  
[minor child of Jared C. Kushner]  
White House Office

**DATE OF ISSUANCE:** JAN 26 2017

**DIVESTITURE PROPERTY:**

104 shares, Signature Bank

This Certificate of Divestiture is issued in accordance with section 1043 of the Internal Revenue Code of 1986 and 5 C.F.R. § 2634.1002 with respect to the specific property described above. I hereby determine that the divestiture of the described property is reasonably necessary to comply with 18 U.S.C. § 208, or other applicable Federal conflict of interest statutes, regulations, rules, or executive orders.

Note that section 1043 of the Internal Revenue Code and the rules of subpart J of 5 C.F.R. Part 2634 provide for nonrecognition of gain in the case of sales to comply with conflict of interest requirements. The rules of Subpart J relate to the issuance of Certificates of Divestiture and the permitted property into which a reinvestment must be made during the 60-day period beginning on the date of such a sale in order for nonrecognition to be permitted. Such reinvestments are called rollovers, and are limited to obligations of the United States and diversified investment funds as defined in 5 C.F.R. § 2634.1003. The substantive and procedural rules relating to the tax aspects of such sales and rollovers pursuant to the statutory scheme are subject to the jurisdiction of the Internal Revenue Service.

Eligible persons should seek the advice of their personal tax advisors for guidance as to the tax aspects of divestiture transactions and whether proposed acquisitions meet the requirements for permitted property. Internal Revenue Service regulations and other guidance should be consulted as to these matters. Internal Revenue Service requirements for reporting dispositions of property and making an election not to recognize gain under section 1043 (IRS Form 8824) must be followed by eligible persons wishing to make such an election.

  
David J. Apol  
General Counsel

cc: Deputy Counsel to the President, White House Office



UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

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FEB 01 2017

Stefan C. Passantino  
Deputy Counsel to the President,  
Ethics and Compliance  
The White House Office  
Washington, DC 20500

Dear Mr. Passantino:

In response to your request dated February 1, 2017, enclosed is Certificate of Divestiture OGE-2017-007 for Jared C. Kushner, Senior Advisor to the President, White House Office. This certificate replaces Certificate of Divestiture OGE-2017-002. We would appreciate your forwarding the original certificate to Mr. Kushner. Also enclosed is a copy of the certificate for your files.

If there are any questions, you may contact Monica Ashar, Assistant Counsel, at (202) 482-9282.

Sincerely,

A handwritten signature in blue ink, appearing to read "David J. Apol", written over a horizontal line.

David J. Apol  
General Counsel

Enclosures





**CERTIFICATE OF DIVESTITURE**

**Certificate No. OGE-2017-007**  
**(To replace Certificate No. OGE-2017-002)**

**ELIGIBLE PERSON:** Jared C. Kushner  
White House Office

**DATE OF ISSUANCE:** FEB 01 2017

**DIVESTITURE PROPERTY:**

**[The divestiture property is identified in the attachment to this Certificate.]**

This Certificate of Divestiture is issued in accordance with section 1043 of the Internal Revenue Code of 1986 and 5 C.F.R. § 2634.1002 with respect to the specific property described above. I hereby determine that the divestiture of the described property is reasonably necessary to comply with 18 U.S.C. § 208, or other applicable Federal conflict of interest statutes, regulations, rules, or executive orders.

Note that section 1043 of the Internal Revenue Code and the rules of subpart J of 5 C.F.R. Part 2634 provide for nonrecognition of gain in the case of sales to comply with conflict of interest requirements. The rules of Subpart J relate to the issuance of Certificates of Divestiture and the permitted property into which a reinvestment must be made during the 60-day period beginning on the date of such a sale in order for nonrecognition to be permitted. Such reinvestments are called rollovers, and are limited to obligations of the United States and diversified investment funds as defined in 5 C.F.R. § 2634.1003. The substantive and procedural rules relating to the tax aspects of such sales and rollovers pursuant to the statutory scheme are subject to the jurisdiction of the Internal Revenue Service.

Eligible persons should seek the advice of their personal tax advisors for guidance as to the tax aspects of divestiture transactions and whether proposed acquisitions meet the requirements for permitted property. Internal Revenue Service regulations and other guidance should be consulted as to these matters. Internal Revenue Service requirements for reporting dispositions of property and making an election not to recognize gain under section 1043 (IRS Form 8824) must be followed by eligible persons wishing to make such an election.

David J. Apel  
General Counsel

cc: Deputy Counsel to the President, White House Office



**Attachment**  
OGE-2017-007

- 100% of all financial interests in JKM Capital, LLC, that you hold as of the date of this Certificate of Divestiture
- 100% of all financial interests in Thrive Partners II GP, LLC, that you hold as of the date of this Certificate of Divestiture
- 100% of all financial interests in Thrive Partners III GP, LLC, that you hold as of the date of this Certificate of Divestiture
- 100% of all financial interests in JK Thrive IV LLC that you hold as of the date of this Certificate of Divestiture
- 100% of all financial interests in JK Thrive V LLC that you hold as of the date of this Certificate of Divestiture
- 112,376 shares, Regal Bank
- 100% of all financial interests in Broadband Proliferation Partners, LLC, that you hold as of the date of this Certificate of Divestiture
- 100% of all financial interests in BFPS Ventures LLC that you hold as of the date of this Certificate of Divestiture

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



FEB 01 2017

Stefan C. Passantino  
Deputy Counsel to the President,  
Ethics and Compliance  
The White House Office  
Washington, DC 20500

Dear Mr. Passantino:

In response to your request dated February 1, 2017, enclosed is Certificate of Divestiture OGE-2017-007 for Jared C. Kushner, Senior Advisor to the President, White House Office. This certificate replaces Certificate of Divestiture OGE-2017-002. We would appreciate your forwarding the original certificate to Mr. Kushner. Also enclosed is a copy of the certificate for your files.

If there are any questions, you may contact Monica Ashar, Assistant Counsel, at (202) 482-9282.

Sincerely,

A handwritten signature in blue ink, appearing to read "David J. Apol", written over a horizontal line.

David J. Apol  
General Counsel

Enclosures





**CERTIFICATE OF DIVESTITURE**

**Certificate No. OGE-2017-007**  
**(To replace Certificate No. OGE-2017-002)**

**ELIGIBLE PERSON:** Jared C. Kushner  
White House Office

**DATE OF ISSUANCE:** FEB 01 2017

**DIVESTITURE PROPERTY:**

**[The divestiture property is identified in the attachment to this Certificate.]**

This Certificate of Divestiture is issued in accordance with section 1043 of the Internal Revenue Code of 1986 and 5 C.F.R. § 2634.1002 with respect to the specific property described above. I hereby determine that the divestiture of the described property is reasonably necessary to comply with 18 U.S.C. § 208, or other applicable Federal conflict of interest statutes, regulations, rules, or executive orders.

Note that section 1043 of the Internal Revenue Code and the rules of subpart J of 5 C.F.R. Part 2634 provide for nonrecognition of gain in the case of sales to comply with conflict of interest requirements. The rules of Subpart J relate to the issuance of Certificates of Divestiture and the permitted property into which a reinvestment must be made during the 60-day period beginning on the date of such a sale in order for nonrecognition to be permitted. Such reinvestments are called rollovers, and are limited to obligations of the United States and diversified investment funds as defined in 5 C.F.R. § 2634.1003. The substantive and procedural rules relating to the tax aspects of such sales and rollovers pursuant to the statutory scheme are subject to the jurisdiction of the Internal Revenue Service.

Eligible persons should seek the advice of their personal tax advisors for guidance as to the tax aspects of divestiture transactions and whether proposed acquisitions meet the requirements for permitted property. Internal Revenue Service regulations and other guidance should be consulted as to these matters. Internal Revenue Service requirements for reporting dispositions of property and making an election not to recognize gain under section 1043 (IRS Form 8824) must be followed by eligible persons wishing to make such an election.

David J. Apel  
General Counsel

cc: Deputy Counsel to the President, White House Office



**Attachment**  
OGE-2017-007

- 100% of all financial interests in JKM Capital, LLC, that you hold as of the date of this Certificate of Divestiture
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- 100% of all financial interests in Thrive Partners III GP, LLC, that you hold as of the date of this Certificate of Divestiture
- 100% of all financial interests in JK Thrive IV LLC that you hold as of the date of this Certificate of Divestiture
- 100% of all financial interests in JK Thrive V LLC that you hold as of the date of this Certificate of Divestiture
- 112,376 shares, Regal Bank
- 100% of all financial interests in Broadband Proliferation Partners, LLC, that you hold as of the date of this Certificate of Divestiture
- 100% of all financial interests in BFPS Ventures LLC that you hold as of the date of this Certificate of Divestiture

PROTECT UNDER FOIA EXEMPTION (b)(6)

WILMERHALE

Edward N. Siskel

By Email

(b) (6)

December 28, 2016

Walter M. Shaub  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, N.W., Suite 500  
Washington, DC 20005

Dear Mr. Shaub:

(b) (6)



Wilmer Cutler Pickering Hale and Dorr LLP, (b) (6)

Beijing Berlin Boston Brussels Denver Frankfurt London Los Angeles New York Palo Alto Washington

Mr. Walter M. Shaub

December 28, 2016

Page 2

PROTECT UNDER FOIA EXEMPTION (b)(6)

(b) (6)

A large rectangular area of the document is completely redacted with black ink. The redaction covers approximately two lines of text.A large rectangular area of the document is completely redacted with black ink. The redaction covers approximately five lines of text. There are some small white artifacts within the redacted area, possibly from the scanning process.A single line of text is redacted with black ink.A large rectangular area of the document is completely redacted with black ink. The redaction covers approximately six lines of text.A rectangular area of the document is completely redacted with black ink. The redaction covers approximately three lines of text.

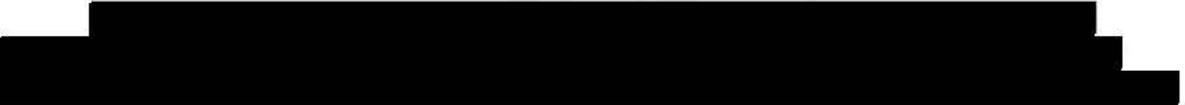
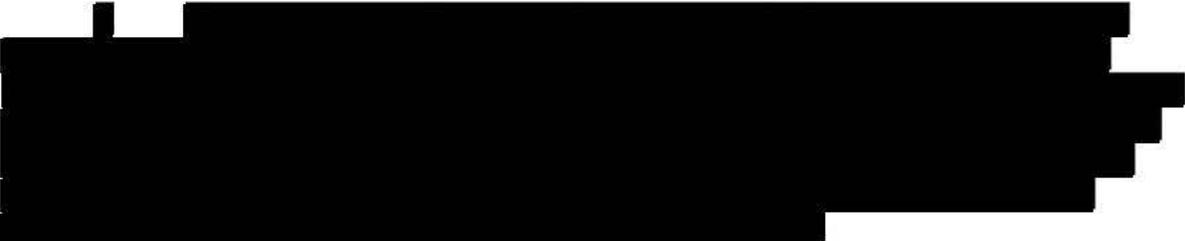
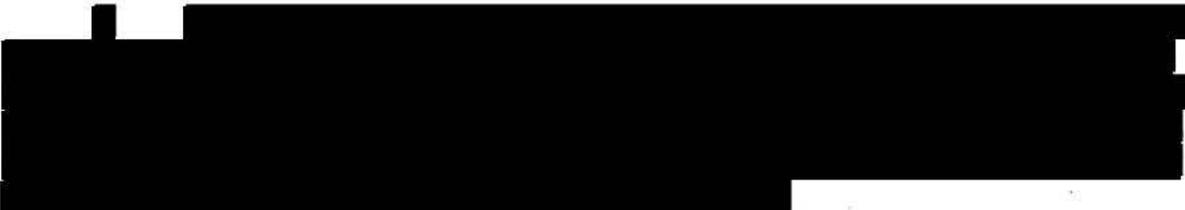
Mr. Walter M. Shaub

December 28, 2016

Page 3

PROTECT UNDER FOIA EXEMPTION (b)(6)

(b) (6)



Mr. Walter M. Shaub

December 28, 2016

Page 4

PROTECT UNDER FOIA EXEMPTION (b)(6)

(b) (6)

[Redacted]

[Redacted]

(b) (6)

[Redacted]

Edward N. Siskel *ER*

**From:** [Walter M. Shaub](#)  
**To:** "[Roberts, Blake](#)"; [David J. Apol](#); [Heather A. Jones](#); [Deborah J. Bortot](#)  
**Cc:** [Siskel, Edward N](#)  
**Subject:** RE: Call @ 4 with Trust Lawyer  
**Date:** Thursday, December 22, 2016 4:23:09 PM

---

We're running late due to another conference call running long. We should be available by 4:45.

---

**From:** Roberts, Blake [mailto:[\(b\) \(6\)](#)]  
**Sent:** Thursday, December 22, 2016 10:49 AM  
**To:** Walter M. Shaub; David J. Apol; Heather A. Jones; Deborah J. Bortot  
**Cc:** Siskel, Edward N  
**Subject:** RE: Call @ 4 with Trust Lawyer

Great – I will send an invite.

**From:** Walter M. Shaub [<mailto:wmshaub@oge.gov>]

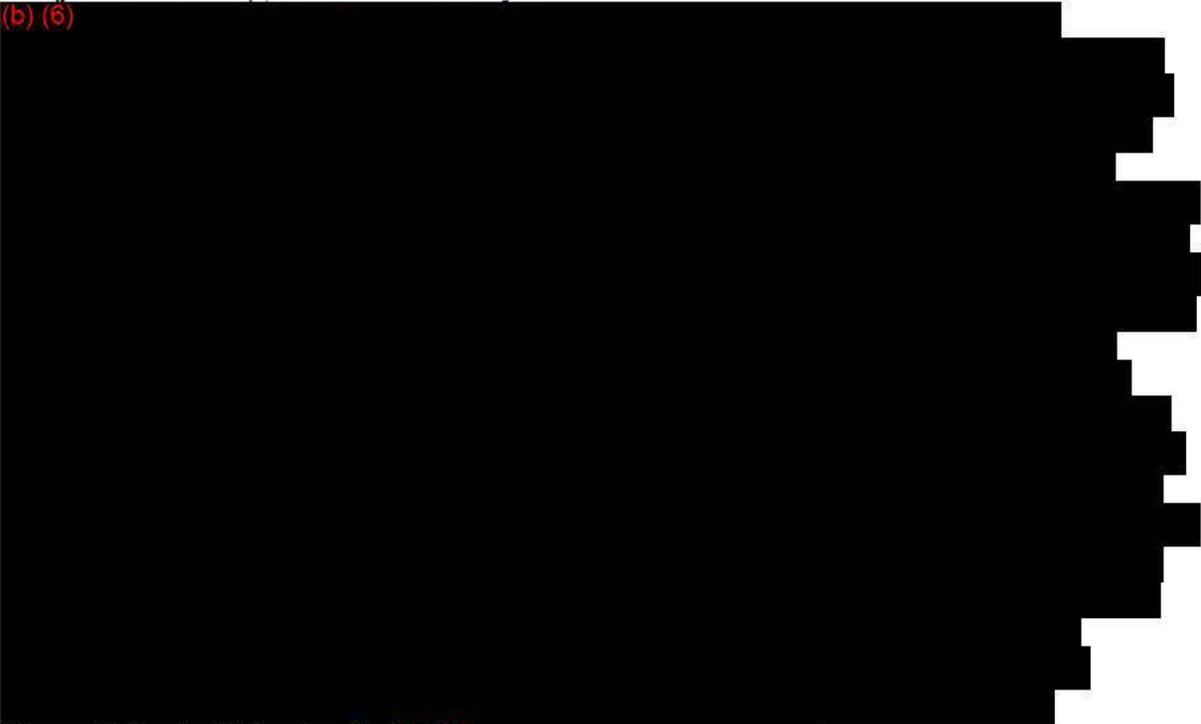
**Sent:** Thursday, December 22, 2016 10:29 AM  
**To:** Roberts, Blake; David J. Apol; Heather A. Jones; Deborah J. Bortot  
**Cc:** Siskel, Edward N  
**Subject:** RE: Call @ 4 with Trust Lawyer

Sorry, I forgot to add that 4:30 works for us.

**From:** Walter M. Shaub

**Sent:** Thursday, December 22, 2016 10:29 AM  
**To:** 'Roberts, Blake'; David J. Apol; Heather A. Jones; Deborah J. Bortot  
**Cc:** Siskel, Edward N  
**Subject:** RE: Call @ 4 with Trust Lawyer

[\(b\) \(6\)](#)



**From:** Roberts, Blake [[mailto:](#) [\(b\) \(6\)](#)]  
**Sent:** Thursday, December 22, 2016 10:08 AM  
**To:** Walter M. Shaub; David J. Apol; Heather A. Jones; Deborah J. Bortot  
**Cc:** Siskel, Edward N  
**Subject:** RE: Call @ 4 with Trust Lawyer

Walt,

[\(b\) \(6\)](#)

(b) (6)

Thank you,  
Blake

**From:** Walter M. Shaub [<mailto:wmschaub@oge.gov>]

**Sent:** Tuesday, December 20, 2016 6:08 PM

**To:** Roberts, Blake; David J. Apol; Heather A. Jones; Deborah J. Bortot

**Cc:** Siskel, Edward N

**Subject:** RE: Call @ 4 with Trust Lawyer

Blake,

(b) (6)

What am I missing?

Walt

**From:** Roberts, Blake [[\(b\) \(6\)](mailto:(b) (6))]

**Sent:** Tuesday, December 20, 2016 12:54 PM  
**To:** Walter M. Shaub; David J. Apol; Heather A. Jones; Deborah J. Bortot  
**Cc:** Siskel, Edward N  
**Subject:** RE: Call @ 4 with Trust Lawyer

All – Just wanted to follow up on your availability for a call at 4.

Thanks,

Blake

**From:** Roberts, Blake

**Sent:** Tuesday, December 20, 2016 10:43 AM

**To:** Walter M. Shaub ([wmschaub@oge.gov](mailto:wmschaub@oge.gov)); David J. Apol; Heather A. Jones; Deborah J. Bortot

**Cc:** Siskel, Edward N

**Subject:** Call @ 4 with Trust Lawyer

All – Could some or all of you be available for a call at 4 p.m. (b) (6)

(b) (6) We think that would be the most efficient way to get to ground on the issues we discussed yesterday.

Thanks,

Blake

**Blake Roberts | WilmerHale**

(b) (6)

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(b) (6)—and destroy all copies of this message and any attachments.

Thank you.

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**From:** [Roberts, Blake](#)  
**To:** [Siskel, Edward N](#); [Walter M. Shaub](#); [David J. Apol](#); [Deborah J. Bortot](#); [Heather A. Jones](#)  
**Subject:** Follow Up

---



UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



January 6, 2017

Mr. Edward N. Siskel  
Wilmer, Cutler, Pickering, Hale & Dorr, LLP

(b) (6)

Dear Mr. Siskel:

I am writing on behalf of the U.S. Office of Government Ethics (OGE) in response to your letter dated December 28, 2016, regarding Mr. Kushner's plan to divest potentially conflicting assets if the President-elect appoints him to a position in the White House. Your letter captures most of the salient points from our conversations, and I have only a few additional points to reiterate.

Consistent with our conversations, your letter indicates that (b) (6)

[Redacted]

[Redacted]

[Redacted]

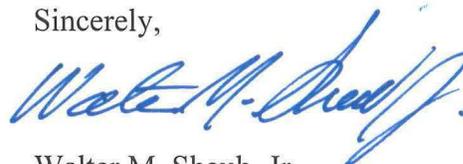
Mr. Edward N. Siskel  
Wilmer, Cutler, Pickering, Hale & Dorr, LLP  
Page 2

As we discussed, the conflict of interest prohibition under 18 U.S.C. § 208(a) will continue to apply to the assets until they have been divested. Accordingly, with regard to each entity in which he holds an interest, Mr. Kushner must not participate personally and substantially in any particular matter that to his knowledge has a direct and predictable effect on the financial interests of the entity until he has divested it, unless he first obtains a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualifies for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). If Mr. Kushner intends to seek a Certificate of Divestiture under 26 U.S.C. § 1043, please remember that he will need to obtain the Certificate of Divestiture before selling the assets.

Finally, please note that OGE is limited in the guidance it can provide as to conflicts of interest because OGE's staff is not in a position to know the precise nature of the duties that Mr. Kushner, or any future White House appointee, would perform. For that reason and because the applicable ethics requirements are more complex than could be addressed in a letter, Mr. Kushner would be well advised to obtain ethics counseling from the office of the White House Counsel prior to entering government and, after assuming the duties of his new position, to complete the new employee ethics training required under 5 C.F.R. § 2638.304. Ideally, the training for all incoming White House appointees should address, among other topics: conflicts of interest under 18 U.S.C. § 208; the gift bans under 5 C.F.R. part 2635, subparts B and C; impartiality under the government-wide appearance regulation, 5 C.F.R. part 2635, subpart E; "misuse of position," as that term is understood for purposes of 5 C.F.R. part 2635, subpart G (including use of public office for private gain, endorsements, coercion, and use of nonpublic information); the earned income ban under 5 C.F.R. § 2635.804(a); restrictions on fundraising under 5 C.F.R. § 2635.808; and certain restrictions relating to professions involving fiduciary relationships under 5 C.F.R. § 2636.305. As a preliminary introduction to the executive branch ethics program, I have enclosed a copy of OGE's Nominee Ethics Guide. Although Mr. Kushner will not be a "nominee," much of the information in this guide is pertinent to his anticipated appointment.

Please do not hesitate to contact me at (202) 482-9292 or Heather Jones, Senior Counsel, if we can be of further assistance.

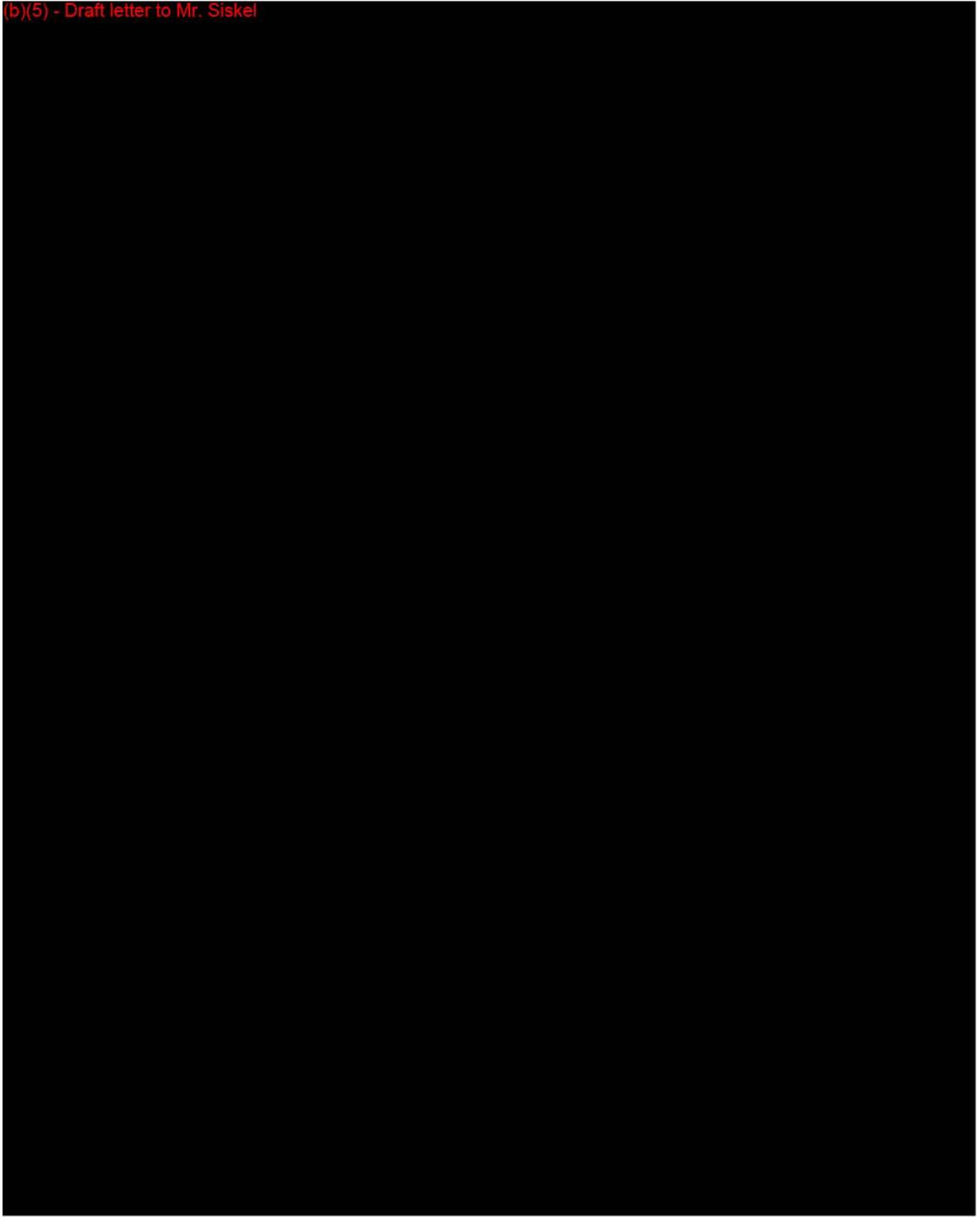
Sincerely,

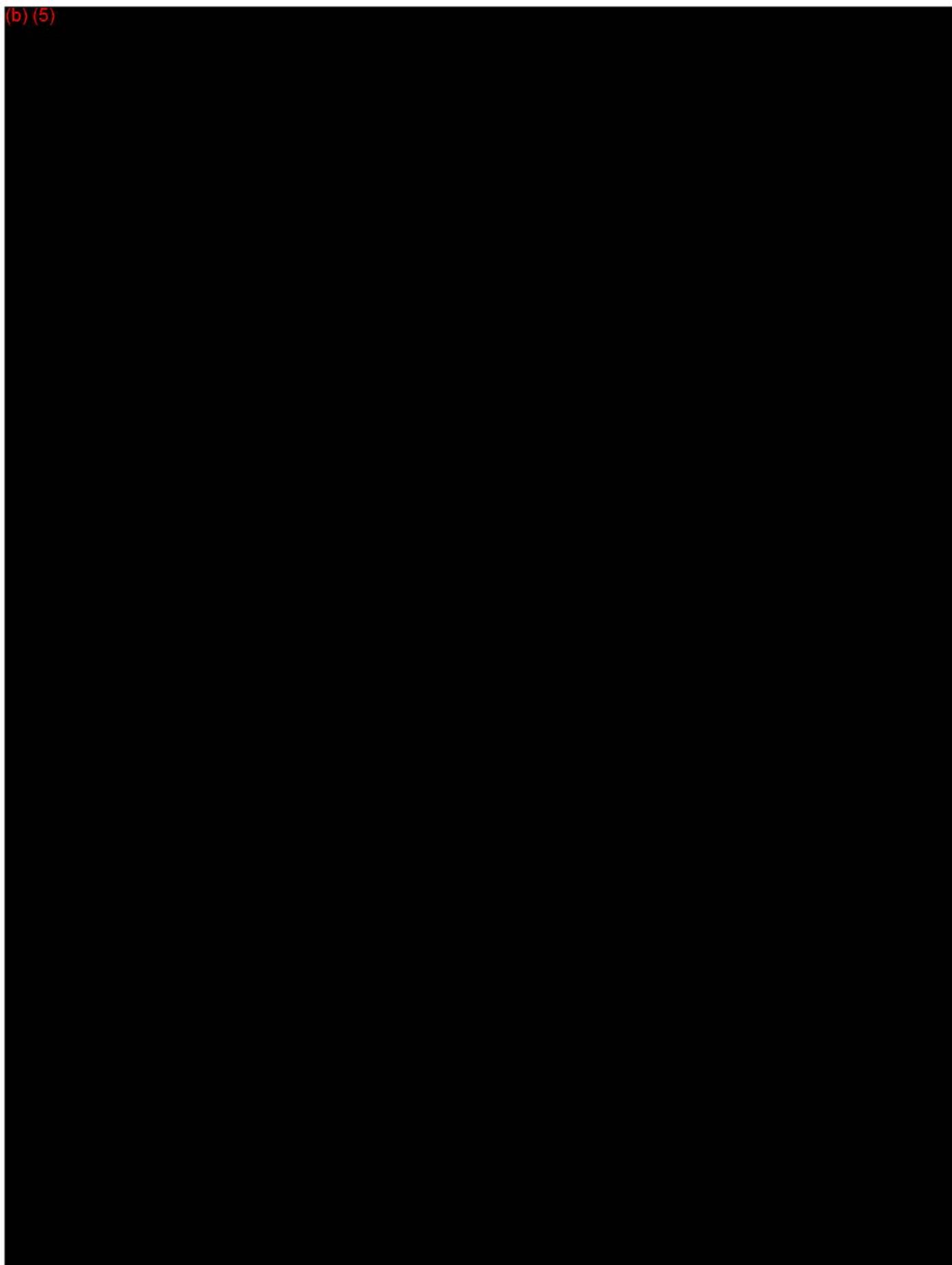


Walter M. Shaub, Jr.  
Director

Enclosure

(b)(5) - Draft letter to Mr. Siskel







---

**From:** Roberts, Blake [mailto:(b) (6)]  
**Sent:** Monday, January 02, 2017 2:34 PM  
**To:** Walter M. Shaub; David J. Apol; Deborah J. Bortot; Heather A. Jones  
**Cc:** Siskel, Edward N  
**Subject:** Follow-up Call

All,

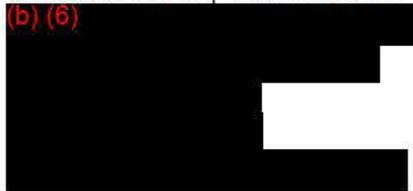
We have heard that, notwithstanding the federal holiday, some of you may be in the office working today. If that is correct, could you be available for a call sometime between 3:30-4:30 to discuss the assets of Mr. Kushner's spouse? If not, please let us know when you could be available tomorrow.

Thank you,

Blake

**Blake Roberts | WilmerHale**

(b) (6)



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## Brandon A. Steele

---

**From:** Roberts, Blake (b) (6)  
**Sent:** Thursday, January 05, 2017 11:02 AM  
**To:** Walter M. Shaub; David J. Apol  
**Subject:** RE: Quick Call

Sorry to hear that. Thanks, Walt. I will be around.

**From:** Walter M. Shaub [<mailto:wmschaub@oge.gov>]  
**Sent:** Thursday, January 05, 2017 10:13 AM  
**To:** Roberts, Blake; David J. Apol  
**Subject:** RE: Quick Call

(b) (6). I can call you after our call with Don McGahn.

Walt

Walter M. Shaub, Jr.

Director

U.S. Office of Government Ethics

1201 New York Avenue, NW, Suite 500

Washington, DC 20005-3917

Telephone: 202.482.9292

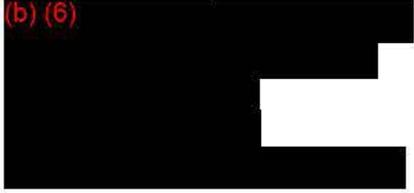
Email: [walter.schaub@oge.gov](mailto:walter.schaub@oge.gov)

**From:** Roberts, Blake [[\(b\) \(6\)](mailto:(b) (6))]  
**Sent:** Thursday, January 05, 2017 9:22 AM  
**To:** Walter M. Shaub; David J. Apol  
**Subject:** Quick Call

Do either of you have time for a quick call?

**Blake Roberts | WilmerHale**

(b) (6)

A large black rectangular redaction box covers the majority of the text in this section, starting below the name and extending down to the 'Please consider the environment' section.

**Please consider the environment before printing this email.**

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## Brandon A. Steele

---

**From:** Walter M. Shaub  
**Sent:** Saturday, January 07, 2017 10:17 AM  
**To:** Heather A. Jones; David J. Apol  
**Subject:** FW: NYTimes: Jared Kushner, a Trump In-Law and Adviser, Chases a Chinese Deal

Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

Telephone: 202.482.9292  
Email: [walter.shaub@oge.gov](mailto:walter.shaub@oge.gov)

-----Original Message-----

From: Walter M. Shaub  
Sent: Saturday, January 07, 2017 10:15 AM  
To: 'Gorelick, Jamie'  
Cc: Siskel, Edward N; Roberts, Blake  
Subject: RE: NYTimes: Jared Kushner, a Trump In-Law and Adviser, Chases a Chinese Deal

Thanks for sharing this, Jamie. Blake gave me a heads up that an article was in the works. The letter I sent Ed yesterday highlights some suggestions for protecting your client against potential conflicts of interest and other ethics issues.

I have one additional suggestion. There is a strong temptation for lawyers to think that it's enough to put together ethics arrangements that are legally compliant. As you know from your own time in government, senior officials invariably find themselves operating in a fast-paced work environment in which they necessarily move from one vaguely defined subject to another quickly throughout the day. Ethics issues arise unexpectedly, and they don't come with the label "Caution! I'm an ethics issue." For this reason, we encourage folks to set up ethics arrangements that put senior officials two steps back from the line between what is permissible and what is not. OGE can enforce that approach in the nominee program, but White House appointees are at the mercy of the attention span of a White House Counsel's office with a thousand other things to do. As things are currently shaping up, it's not clear that this new White House will have a fully functioning ethics office of its own on the first day. For that reason, caution is advisable. The further you can put him back from the line, the better you will protect him.

Walt

Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

Telephone: 202.482.9292  
Email: [walter.shaub@oge.gov](mailto:walter.shaub@oge.gov)

-----Original Message-----

From: Gorelick, Jamie [mailto:(b) (6)]

Sent: Saturday, January 07, 2017 9:42 AM

To: Walter M. Shaub

Cc: Siskel, Edward N; Roberts, Blake; Gorelick, Jamie

Subject: Fw: NYTimes: Jared Kushner, a Trump In-Law and Adviser, Chases a Chinese Deal

Walt -

Just a heads up so you know this is out there. Our proposed plan contemplates steps to remove and mitigate sources of conflict.

Best -

Jamie

Sent from my BlackBerry 10 smartphone.

Original Message

<http://www.nytimes.com/2017/01/07/us/politics/jared-kushner-trump-business.html?smprod=nytcore-iphone&smid=nytcore-iphone-share>

As Donald J. Trump's son-in-law prepares for a White House role, his undisclosed talks with a secretive Chinese company highlight potential conflicts of interest.

## Brandon A. Steele

---

**From:** David J. Apol  
**Sent:** Wednesday, January 18, 2017 3:10 PM  
**To:** Elaine Newton  
**Subject:** FW: Draft SF-278 for Jared Kushner  
**Attachments:** Kushner Application for COD.xlsx

Attachment (b)(6)

Here is the cd I was talking about

---

**From:** Roberts, Blake [mailto:(b) (6)]  
**Sent:** Wednesday, January 18, 2017 1:27 PM  
**To:** David J. Apol  
**Cc:** Siskel, Edward N  
**Subject:** RE: Draft SF-278 for Jared Kushner

Dave,

Thanks very much. Please find attached a draft spreadsheet that describes the assets for which Jared (and related persons) will seek a certificate of divestiture. We need to add some additional information about a few assets, including some of the questions you raise below. But there should be enough here for someone to begin the analysis. (b) (6)

We will supplement with additional information as it becomes available. Please let me know if you or your colleagues have any questions as you review.

Thank you again,

Blake

**From:** David J. Apol [mailto:[djapol@oge.gov](mailto:djapol@oge.gov)]  
**Sent:** Wednesday, January 18, 2017 11:24 AM  
**To:** Roberts, Blake (b) (6)  
**Subject:** RE: Draft SF-278 for Jared Kushner

Thanks Blake.

We need to know which assets he is asking a CD for at this time before we can do much with this. As I understand the plan, the initial CD request will be for <sup>(b) (6)</sup>

Additionally, for the assets he is requesting a CD for:

We need to know which assets are held in a trust.

For any assets in a trust, we need the trust instrument and the name of the trustee.

Are any held in retirement plans?

Were any acquired through employment?

Are the assets for his children reported?

Who holds each asset?

We will work on this as fast as we can consistent with other priorities we are getting from the PTT.

Thanks.

Dave

**From:** Roberts, Blake [[\(b\) \(6\)](mailto:(b) (6))]  
**Sent:** Tuesday, January 17, 2017 7:03 PM  
**To:** David J. Apol  
**Cc:** Siskel, Edward N  
**Subject:** Draft SF-278 for Jared Kushner

Dave,

As discussed, I am sending you the latest draft of Jared Kushner's SF-278. This is not yet ready to be filed – we are still working with the business people on some formatting issues and some information about individual assets needs to be filled in. However, we believe that this draft covers all or nearly all of the assets that will either be covered by the SF-278 reporting requirements or for which a certificate of divestiture will be sought.

(b) (6)

We will get you additional information tomorrow about the underlying investments of the (b) (6)

We have been in touch with Stefan Passantino of PTT and will be working closely with him so that the new personnel in the White House Counsel's Office are fully briefed on this issue and ready to initiate the process for obtaining a certificate of divestiture as quickly as possible. We are available at any time to answer questions from your office once they begin to review the draft SF-278 and draft COD application material.

Thank you again – we recognize that this is a challenging stretch for everyone on your team.

Thanks,

Blake

**Blake Roberts | WilmerHale**

(b) (6)

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## Brandon A. Steele

---

**From:** Rodrick T. Johnson  
**Sent:** Thursday, January 26, 2017 9:30 AM  
**To:** (b) (6)  
**Cc:** Elaine Newton; Teresa L. Williamson; Sandra S. Mabry; Monica M. G. Ashar  
**Subject:** Certificate of Divestiture for Jared C. Kushner  
**Attachments:** Kusher, Jared C. CD's 002-006.pdf  
  
**Importance:** High

Good Morning, Mr. Passantino:

Attached is the Certificate of Divestiture OGE-2017-002 for Jared C. Kushner, Senior Advisor to the President, White House Office; OGE-2017-003 for Ivanka Trump as trustee for the Ivanka Trump Revocable Trust; OGE-2017-004 for (b) (6), dependent minor child of Jared C. Kushner; OGE-2017-005 for (b) (6), dependent minor child of Jared C. Kushner; and OGE-2017-006 for (b) (6) dependent minor child of Jared C. Kushner. We would appreciate your forwarding the original certificates to Mr. Kushner. Also enclosed is a copy of the certificate's for your files.

The original certificate's and one copy for your records will be mailed to you. We would appreciate your forwarding the original certificate's to Mr. Kushner, upon receipt.

Please confirm receipt of this email by replying to all.

Thanks, Again  
Rodrick Johnson

**Brandon A. Steele**

---

**From:** Roberts, Blake (b) (6)  
**Sent:** Monday, January 02, 2017 2:34 PM  
**To:** Walter M. Shaub; David J. Apol; Deborah J. Bortot; Heather A. Jones  
**Cc:** Siskel, Edward N  
**Subject:** Follow-up Call

All,

We have heard that, notwithstanding the federal holiday, some of you may be in the office working today. If that is correct, could you be available for a call sometime between 3:30-4:30 to discuss the assets of Mr. Kushner's spouse? If not, please let us know when you could be available tomorrow.

Thank you,

Blake

**Blake Roberts | WilmerHale**

(b) (6)

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## Brandon A. Steele

---

**From:** Walter M. Shaub  
**Sent:** Friday, January 06, 2017 5:27 PM  
**To:** Siskel, Edward N; 'Roberts, Blake'  
**Cc:** Heather A. Jones  
**Subject:** response to follow-up letter  
**Attachments:** Letter to E. Siskel (1-6-2017).pdf

Blake and Ed,

Enclosed is OGE's response to Ed's letter. I discussed the content of the letter with Blake earlier this week. The original with the attachment will follow in the regular mail. The two-part attachment can also be viewed in electronic format on OGE's website at the following addresses:

**Nominee Ethics Guide**

[https://www.oge.gov/Web/OGEnsf/0/908088E45E5A64778525801B00590DD5/\\$FILE/Final%20Nomination%20Guide%20Spreads%20Optimized%20Web.pdf](https://www.oge.gov/Web/OGEnsf/0/908088E45E5A64778525801B00590DD5/$FILE/Final%20Nomination%20Guide%20Spreads%20Optimized%20Web.pdf)

**Appendix to the Nominee Ethics Guide**

[https://www.oge.gov/Web/OGEnsf/0/0EA56347F998FFA78525801B0058E0F9/\\$FILE/Final%20Appendix%20Spreads%20Web%20.pdf](https://www.oge.gov/Web/OGEnsf/0/0EA56347F998FFA78525801B0058E0F9/$FILE/Final%20Appendix%20Spreads%20Web%20.pdf)

Thanks

Walt

Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

Telephone: 202.482.9292  
Email: [walter.shaub@oge.gov](mailto:walter.shaub@oge.gov)

**From:** Roberts, Blake [[\(b\) \(6\)](mailto:(b) (6))]  
**Sent:** Wednesday, December 28, 2016 1:37 PM  
**To:** Walter M. Shaub  
**Cc:** Siskel, Edward N; David J. Apol; Deborah J. Bortot; Heather A. Jones  
**Subject:** Follow-up Letter

Walt,

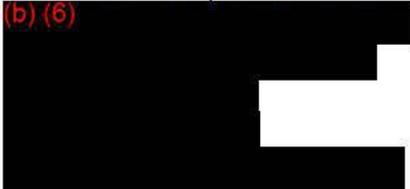
As discussed on our last call, please find attached a letter describing the proposal we discussed. I hope you all are getting some rest this holiday season.

Best regards,

Blake

**Blake Roberts | WilmerHale**

(b) (6)

A large black rectangular redaction box covers the signature and contact information of Blake Roberts. The text "(b) (6)" is printed in red at the top left corner of this redacted area.

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**Brandon A. Steele**

---

**From:** Deborah J. Bortot  
**Sent:** Wednesday, January 18, 2017 10:41 AM  
**To:** David J. Apol; Heather A. Jones  
**Cc:** Elaine Newton  
**Subject:** RE: Draft SF-278 for Jared Kushner

Dave,

(b) (5) [Redacted]

(b) (5) [Redacted]

Once we get the request, there will be additional questions.

Thanks,  
Deb

---

**From:** David J. Apol  
**Sent:** Wednesday, January 18, 2017 10:26 AM  
**To:** Heather A. Jones; Deborah J. Bortot  
**Cc:** Elaine Newton  
**Subject:** FW: Draft SF-278 for Jared Kushner

Anything you want me to add to this before I send?

(b) (5) [Redacted]

[Redacted]

[Redacted]

---

**From:** Roberts, Blake [mailto:(b) (6)]  
**Sent:** Tuesday, January 17, 2017 7:03 PM  
**To:** David J. Apol  
**Cc:** Siskel, Edward N  
**Subject:** Draft SF-278 for Jared Kushner

Dave,

As discussed, I am sending you the latest draft of Jared Kushner's SF-278. This is not yet ready to be filed – we are still working with the business people on some formatting issues and some information about individual assets needs to be filled in. However, we believe that this draft covers all or nearly all of the assets that will either be covered by the SF-278 reporting requirements or for which a certificate of divestiture will be sought.

(b) (6)

We will get you additional information tomorrow about the underlying investments of the (b) (6)

We have been in touch with Stefan Passantino of PTT and will be working closely with him so that the new personnel in the White House Counsel's Office are fully briefed on this issue and ready to initiate the process for obtaining a certificate of divestiture as quickly as possible. We are available at any time to answer questions from your office once they begin to review the draft SF-278 and draft COD application material.

Thank you again – we recognize that this is a challenging stretch for everyone on your team.

Thanks,

Blake

**Blake Roberts | WilmerHale**  
(b) (6)

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## Brandon A. Steele

---

**From:** Monica M. G. Ashar  
**Sent:** Thursday, January 26, 2017 11:51 AM  
**To:** 'Passantino, Stefan C. EOP/WHO'  
**Cc:** Elaine Newton; Rodrick T. Johnson  
**Subject:** RE: Certificate of Divestiture for Jared C. Kushner

Thanks, Stefan. What would be the best way to get the originals of the CDs over to you?

Monica Ashar  
Assistant Counsel  
U.S. Office of Government Ethics  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005  
Phone: (202) 482-9282

Visit OGE's website: [www.oge.gov](http://www.oge.gov)  
Follow OGE on Twitter: @OfficeGovEthics

---

**From:** Passantino, Stefan C. EOP/WHO [[\(b\) \(6\)](mailto:(b) (6))]  
**Sent:** Thursday, January 26, 2017 11:22 AM  
**To:** Rodrick T. Johnson; Walter M. Shaub  
**Cc:** Elaine Newton; Teresa L. Williamson; Sandra S. Mabry; Monica M. G. Ashar  
**Subject:** RE: Certificate of Divestiture for Jared C. Kushner

Thank you. I have received this and am grateful for the prompt attention your office has been paying to issues such as this. Stefan.

STEFAN C. PASSANTINO  
Deputy Counsel to the President, Ethics & Compliance  
Office of the White House Counsel  
(b) (6)

---

**From:** Rodrick T. Johnson [<mailto:rjohnson@oge.gov>]  
**Sent:** Thursday, January 26, 2017 9:30 AM  
**To:** Passantino, Stefan C. EOP/WHO (b) (6)  
**Cc:** Elaine Newton <[enewton@oge.gov](mailto:enewton@oge.gov)>; Teresa L. Williamson <[tlwillia@oge.gov](mailto:tlwillia@oge.gov)>; Sandra S. Mabry <[ssmabry@oge.gov](mailto:ssmabry@oge.gov)>; Monica M. G. Ashar <[mmgashar@oge.gov](mailto:mmgashar@oge.gov)>  
**Subject:** Certificate of Divestiture for Jared C. Kushner  
**Importance:** High

Good Morning, Mr. Passantino:

Attached is the Certificate of Divestiture OGE-2017-002 for Jared C. Kushner, Senior Advisor to the President, White House Office; OGE-2017-003 for Ivanka Trump as trustee for the Ivanka Trump Revocable Trust; OGE-2017-004 for (b) (6), dependent minor child of Jared C. Kushner; OGE-2017-005 for (b) (6) dependent minor child of Jared C. Kushner; and OGE-2017-006 for (b) (6), dependent minor child of Jared C. Kushner. We would appreciate your forwarding the original certificates to Mr. Kushner. Also enclosed is a copy of the certificate's for your files.

The original certificate's and one copy for your records will be mailed to you. We would appreciate your forwarding the original certificate's to Mr. Kushner, upon receipt.

Please confirm receipt of this email by replying to all.

Thanks, Again  
Rodrick Johnson

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## Brandon A. Steele

---

**From:** Walter M. Shaub  
**Sent:** Saturday, January 07, 2017 11:29 AM  
**To:** Gorelick, Jamie  
**Cc:** Siskel, Edward N; Roberts, Blake; Brown, Reginald  
**Subject:** Re: NYTimes: Jared Kushner, a Trump In-Law and Adviser, Chases a Chinese Deal

Thanks. That's good to hear!

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

Original Message

From: Gorelick, Jamie  
Sent: Saturday, January 7, 2017 10:36 AM  
To: Walter M. Shaub  
Cc: Siskel, Edward N; Roberts, Blake; Brown, Reginald  
Subject: Re: NYTimes: Jared Kushner, a Trump In-Law and Adviser, Chases a Chinese Deal

Walt -

I know you have been trading notes with Reg. (b) (6) is done.  
As he mentioned, (b) (6). We obviously represent Kushner. (b) (6)  
You will see the same conservative approach with each.

Jamie

Sent from my BlackBerry 10 smartphone.

Original Message

From: Gorelick, Jamie  
Sent: Saturday, January 7, 2017 10:28 AM  
To: Walter M. Shaub  
Cc: Siskel, Edward N; Roberts, Blake; Gorelick, Jamie  
Subject: Re: NYTimes: Jared Kushner, a Trump In-Law and Adviser, Chases a Chinese Deal

We agree. We are trying to make a workable and conservative plan. We have met with the person who will be doing ethics for McGahn so he can become familiar with the issues and be of help in keeping Jared clear of the line. Your advice is welcome!

Jamie

Sent from my BlackBerry 10 smartphone.

Original Message

From: Walter M. Shaub  
Sent: Saturday, January 7, 2017 10:17 AM  
To: Gorelick, Jamie  
Cc: Siskel, Edward N; Roberts, Blake  
Subject: RE: NYTimes: Jared Kushner, a Trump In-Law and Adviser, Chases a Chinese Deal

Thanks for sharing this, Jamie. Blake gave me a heads up that an article was in the works. The letter I sent Ed yesterday highlights some suggestions for protecting your client against potential conflicts of interest and other ethics issues.

I have one additional suggestion. There is a strong temptation for lawyers to think that it's enough to put together ethics arrangements that are legally compliant. As you know from your own time in government, senior officials invariably find themselves operating in a fast-paced work environment in which they necessarily move from one vaguely defined subject to another quickly throughout the day. Ethics issues arise unexpectedly, and they don't come with the label "Caution! I'm an ethics issue." For this reason, we encourage folks to set up ethics arrangements that put senior officials two steps back from the line between what is permissible and what is not. OGE can enforce that approach in the nominee program, but White House appointees are at the mercy of the attention span of a White House Counsel's office with a thousand other things to do. As things are currently shaping up, it's not clear that this new White House will have a fully functioning ethics office of its own on the first day. For that reason, caution is advisable. The further you can put him back from the line, the better you will protect him.

Walt

Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

Telephone: 202.482.9292  
Email: [walter.shaub@oge.gov](mailto:walter.shaub@oge.gov)

-----Original Message-----

From: Gorelick, Jamie [mailto:[\(b\) \(6\)](#)]  
Sent: Saturday, January 07, 2017 9:42 AM  
To: Walter M. Shaub  
Cc: Siskel, Edward N; Roberts, Blake; Gorelick, Jamie  
Subject: Fw: NYTimes: Jared Kushner, a Trump In-Law and Adviser, Chases a Chinese Deal

Walt -

Just a heads up so you know this is out there. Our proposed plan contemplates steps to remove and mitigate sources of conflict.

Best -

Jamie

Sent from my BlackBerry 10 smartphone.  
Original Message

<http://www.nytimes.com/2017/01/07/us/politics/jared-kushner-trump-business.html?smprod=nytcore-iphone&smid=nytcore-iphone-share>

As Donald J. Trump's son-in-law prepares for a White House role, his undisclosed talks with a secretive Chinese company highlight potential conflicts of interest.

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## Brandon A. Steele

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**From:** Walter M. Shaub  
**Sent:** Thursday, January 05, 2017 7:01 PM  
**To:** Heather A. Jones  
**Subject:** Letter.docx  
**Attachments:** Letter.docx

Please review and offer any edits you think are appropriate using tracked changes. I need to send this letter before c.o.b. Friday. Thanks!

## Brandon A. Steele

---

**From:** Gorelick, Jamie (b) (6)  
**Sent:** Saturday, January 07, 2017 3:01 PM  
**To:** Walter M. Shaub  
**Subject:** Re: NYTimes: Jared Kushner, a Trump In-Law and Adviser, Chases a Chinese Deal

That would be fine, Walt. It is certainly a true statement. And we have appreciated and followed that advice, for example, with regard to the (b) (6)

Best -

Jamie

Sent from my BlackBerry 10 smartphone.

Original Message

From: Walter M. Shaub

Sent: Saturday, January 7, 2017 2:51 PM

To: Gorelick, Jamie

Subject: Re: NYTimes: Jared Kushner, a Trump In-Law and Adviser, Chases a Chinese Deal

Jamie,

Do you have any concerns if at some point I state publicly that, "We have consulted with attorneys for Jared Kushner to provide assistance in connection with some steps he may take to avoid conflicts of interest if he comes into government." This seems to be consistent with what you told the NY Times.

Walt

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

Original Message

From: Gorelick, Jamie

Sent: Saturday, January 7, 2017 11:37 AM

To: Walter M. Shaub

Subject: Re: NYTimes: Jared Kushner, a Trump In-Law and Adviser, Chases a Chinese Deal

Will do.

Sent from my BlackBerry 10 smartphone.

Original Message

From: Walter M. Shaub

Sent: Saturday, January 7, 2017 11:32 AM

To: Gorelick, Jamie

Subject: Re: NYTimes: Jared Kushner, a Trump In-Law and Adviser, Chases a Chinese Deal

They have not shared with us that they've hired someone. If you get the chance, please let him know that I'd love to meet with him. Emory Rounds of my office and I can give him some ideas for setting up shop.

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

Original Message

From: Gorelick, Jamie

Sent: Saturday, January 7, 2017 10:27 AM

To: Walter M. Shaub

Cc: Siskel, Edward N; Roberts, Blake; Gorelick, Jamie

Subject: Re: NYTimes: Jared Kushner, a Trump In-Law and Adviser, Chases a Chinese Deal

We agree. We are trying to make a workable and conservative plan. We have met with the person who will be doing ethics for McGahn so he can become familiar with the issues and be of help in keeping Jared clear of the line. Your advice is welcome!

Jamie

Sent from my BlackBerry 10 smartphone.

Original Message

From: Walter M. Shaub

Sent: Saturday, January 7, 2017 10:17 AM

To: Gorelick, Jamie

Cc: Siskel, Edward N; Roberts, Blake

Subject: RE: NYTimes: Jared Kushner, a Trump In-Law and Adviser, Chases a Chinese Deal

Thanks for sharing this, Jamie. Blake gave me a heads up that an article was in the works. The letter I sent Ed yesterday highlights some suggestions for protecting your client against potential conflicts of interest and other ethics issues.

I have one additional suggestion. There is a strong temptation for lawyers to think that it's enough to put together ethics arrangements that are legally compliant. As you know from your own time in government, senior officials invariably find themselves operating in a fast-paced work environment in which they necessarily move from one vaguely defined subject to another quickly throughout the day. Ethics issues arise unexpectedly, and they don't come with the label "Caution! I'm an ethics issue." For this reason, we encourage folks to set up ethics arrangements that put senior officials two steps back from the line between what is permissible and what is not. OGE can enforce that approach in the nominee program, but White House appointees are at the mercy of the attention span of a White House Counsel's office with a thousand other things to do. As things are currently shaping up, it's not clear that this new White House will have a fully functioning ethics office of its own on the first day. For that reason, caution is advisable. The further you can put him back from the line, the better you will protect him.

Walt

Walter M. Shaub, Jr.

Director

U.S. Office of Government Ethics

1201 New York Avenue, NW, Suite 500

Washington, DC 20005-3917

Telephone: 202.482.9292

Email: walter.shaub@oge.gov

**Brandon A. Steele**

---

**From:** Roberts, Blake (b) (6)  
**Sent:** Tuesday, January 10, 2017 1:31 PM  
**To:** David J. Apol; David J. Apol; Heather A. Jones  
**Subject:** Quick Call

Hi – Do any of you all have time for a quick call today? We have a few (hopefully straightforward) questions.

Thanks,

Blake

**Blake Roberts | WilmerHale**

(b) (6)

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**Brandon A. Steele**

---

**From:** Roberts, Blake (b) (6)  
**Sent:** Friday, January 13, 2017 1:47 PM  
**To:** David J. Apol; Heather A. Jones; Deborah J. Bortot  
**Subject:** Quick questions today

Please let me know whenever you have availability today and I will make myself available. Thank you!

**From:** Roberts, Blake  
**Sent:** Friday, January 13, 2017 12:19 PM  
**To:** [djapol@oge.gov](mailto:djapol@oge.gov); [hajones@oge.gov](mailto:hajones@oge.gov); [djbortot@oge.gov](mailto:djbortot@oge.gov)  
**Subject:** Quick questions before 2:30

All,

Do any of you have 10 minutes for a few quick questions sometime before 2:30?

Thank you,

Blake

**Blake Roberts | WilmerHale**

(b) (6)  
[Redacted signature block]

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## Brandon A. Steele

---

**From:** Roberts, Blake (b) (6)  
**Sent:** Wednesday, January 11, 2017 11:17 AM  
**To:** David J. Apol  
**Cc:** Heather A. Jones; Deborah J. Bortot; Siskel, Edward N  
**Subject:** RE: Call re Questions

Dave – That works. Thank you. I will send an invite.

Thanks,

Blake

**Blake Roberts | WilmerHale**

(b) (6)

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**From:** David J. Apol [<mailto:djapol@oge.gov>]  
**Sent:** Wednesday, January 11, 2017 11:02 AM  
**To:** Roberts, Blake  
**Cc:** Heather A. Jones ; Deborah J. Bortot  
**Subject:** RE: Call re Questions

Blake,

Heather and I would be available at 3. Does that work for you?

Dave

**From:** Roberts, Blake [mailto:(b) (6)]  
**Sent:** Wednesday, January 11, 2017 9:27 AM  
**To:** Walter M. Shaub; David J. Apol; Deborah J. Bortot; Heather A. Jones  
**Cc:** Siskel, Edward N  
**Subject:** Call re Questions

All,

We know that you are very busy with all of your work for nominees. However, we would be very appreciative if it would be possible to schedule a 30 minute call with some of you this afternoon. We have several questions, one of which (b) (6). Please let us know what times could work for you and we will do our best to make ourselves available.

Thank you,

Blake

**Blake Roberts | WilmerHale**

(b) (6)

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**Brandon A. Steele**

---

**From:** David J. Apol  
**Sent:** Thursday, January 19, 2017 2:58 PM  
**To:** 'Roberts, Blake'  
**Cc:** Monica M. G. Ashar; Elaine Newton  
**Subject:** RE: Call Thursday morning

Blake,

Monica and Elaine are taking the lead on the CD. Are you available to talk to them at 3:15? If so, they will call you.

Dave

---

**From:** Roberts, Blake [[\(b\) \(6\)](mailto:(b) (6))]  
**Sent:** Thursday, January 19, 2017 1:46 PM  
**To:** David J. Apol  
**Subject:** RE: Call Thursday morning

Dave – Just following up. Can we possibly touch base quickly this afternoon?

**From:** Roberts, Blake  
**Sent:** Wednesday, January 18, 2017 11:57 PM  
**To:** [djapol@oge.gov](mailto:djapol@oge.gov)  
**Subject:** Call Thursday morning

Dave,

I know this is a very busy time. Would it be possible to schedule a short call tomorrow morning to go over some procedural and substantive questions?

Thanks,

Blake

**Blake Roberts | WilmerHale**

(b) (6)

(b) (6)

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## Brandon A. Steele

---

**From:** Monica M. G. Ashar  
**Sent:** Tuesday, January 24, 2017 11:34 AM  
**To:** 'Roberts, Blake'  
**Subject:** RE: Call Thursday morning

Thanks.

---

**From:** Roberts, Blake [mailto:(b) (6)]  
**Sent:** Tuesday, January 24, 2017 11:34 AM  
**To:** Monica M. G. Ashar  
**Subject:** RE: Call Thursday morning

They are not.

**From:** Monica M. G. Ashar [mailto:mmgashar@oge.gov]  
**Sent:** Tuesday, January 24, 2017 11:33 AM  
**To:** Roberts, Blake (b) (6)  
**Subject:** RE: Call Thursday morning

I have one more quick question: (b) (6)

Thanks,

Monica

Monica Ashar

Assistant Counsel

U.S. Office of Government Ethics

1201 New York Avenue, NW, Suite 500

Washington, DC 20005

Phone: (202) 482-9282

Visit OGE's website: [www.oge.gov](http://www.oge.gov)

Follow OGE on Twitter: @OfficeGovEthics

**From:** Roberts, Blake [mailto:(b) (6)]  
**Sent:** Sunday, January 22, 2017 11:10 AM  
**To:** Elaine Newton; Monica M. G. Ashar  
**Cc:** David J. Apol  
**Subject:** RE: Call Thursday morning

Elaine – Thanks again for these helpful questions. Here are our responses. Please let me know if you have any further questions.

Thank you,

Blake

**(1) Please instruct Mr. Kushner not to divest any holdings prior to receiving the CD for those holdings. According to the statute, OGE cannot issue a CD after the conflicting property has been divested.** (b) (6)

(b) (6)

[Redacted]

[Redacted]

[Redacted]

(b) (6)

[Redacted text block]

(b) (6)

**From:** Roberts, Blake  
**Sent:** Saturday, January 21, 2017 12:16 PM  
**To:** 'Elaine Newton' <[enewton@oge.gov](mailto:enewton@oge.gov)>; Monica M. G. Ashar <[mmgashar@oge.gov](mailto:mmgashar@oge.gov)>  
**Cc:** David J. Apol <[djapol@oge.gov](mailto:djapol@oge.gov)>  
**Subject:** RE: Call Thursday morning

Elaine – Thanks very much. I will get back to you with answers to these questions as quickly as possible. I will continue to be your point of contact for Jared’s personal counsel. I believe that Stefan Passantino will be your contact in the Counsel’s Office on this.

**From:** Elaine Newton [<mailto:enewton@oge.gov>]  
**Sent:** Saturday, January 21, 2017 12:09 PM  
**To:** Roberts, Blake (b) (6); Monica M. G. Ashar <[mmgashar@oge.gov](mailto:mmgashar@oge.gov)>  
**Cc:** David J. Apol <[djapol@oge.gov](mailto:djapol@oge.gov)>  
**Subject:** RE: Call Thursday morning

Good Afternoon,

Thank you for the additional information and draft documents. We are continuing to review the information and have some additional questions:

**(1) Please instruct Mr. Kushner not to divest any holdings prior to receiving the CD for those holdings. According to the statute, OGE cannot issue a CD after the conflicting property has been divested.** (b) (6)

(b) (6)

Monica and I will continue to review the draft documents. Will you continue to be our point of contact or is there another name (and contact information) that you can provide?

Thanks, Elaine

Elaine Newton

Associate Counsel

U.S. Office of Government Ethics

1201 New York Ave., NW, Suite 500

Washington, DC 20005-3915

Telephone: 202-482-9265

**From:** Roberts, Blake [mailto:(b) (6)]  
**Sent:** Friday, January 20, 2017 4:56 PM  
**To:** Monica M. G. Ashar; Elaine Newton  
**Cc:** David J. Apol  
**Subject:** RE: Call Thursday morning

Monica and Elaine – Please also find attached drafts of a memo from Jared applying for the COD and a memo from the WH Counsel’s Office forwarding the application to OGE. Please let us know if you have any comments on these or if they seem sufficient.

Thank you,

Blake

**From:** Roberts, Blake  
**Sent:** Friday, January 20, 2017 4:39 PM  
**To:** 'Monica M. G. Ashar' <[mmgashar@oge.gov](mailto:mmgashar@oge.gov)>; 'Elaine Newton' <[enewton@oge.gov](mailto:enewton@oge.gov)>  
**Cc:** 'David J. Apol' <[djapol@oge.gov](mailto:djapol@oge.gov)>  
**Subject:** RE: Call Thursday morning

Monica and Elaine – Here is the redacted trust document. Can you please let me know if this is adequate for your purposes? If not, can you please let me know what information you need?

On timing, my understanding is that Jared will be sworn in Sunday afternoon. Hopefully, you will receive the official package that afternoon.

Thanks,

Blake

**From:** Roberts, Blake  
**Sent:** Thursday, January 19, 2017 5:17 PM  
**To:** 'Monica M. G. Ashar' <[mmgashar@oge.gov](mailto:mmgashar@oge.gov)>; 'Elaine Newton' <[enewton@oge.gov](mailto:enewton@oge.gov)>  
**Cc:** 'David J. Apol' <[djapol@oge.gov](mailto:djapol@oge.gov)>  
**Subject:** RE: Call Thursday morning

Monica and Elaine,

Thank you so much for our discussion earlier. I am attaching updated materials, which include revisions addressing questions you raised. Briefly:

(b) (6)

· The application contains additional information that was missing in the prior version we sent you. (b) (6)

(b) (6)

· We have added a note that (b) (6)

Please let me know if you have any questions as you review this updated material.

Thanks,

Blake

**From:** Roberts, Blake

**Sent:** Thursday, January 19, 2017 3:21 PM

**To:** 'David J. Apol' <[djapol@oge.gov](mailto:djapol@oge.gov)>

**Cc:** Monica M. G. Ashar <[mmgashar@oge.gov](mailto:mmgashar@oge.gov)>; Elaine Newton <[enewton@oge.gov](mailto:enewton@oge.gov)>

**Subject:** RE: Call Thursday morning

Just saw this – yes. Please call whenever – (b) (6)

**From:** David J. Apol [<mailto:djapol@oge.gov>]

**Sent:** Thursday, January 19, 2017 2:58 PM

**To:** Roberts, Blake (b) (6)  
**Cc:** Monica M. G. Ashar <[mmgashar@oge.gov](mailto:mmgashar@oge.gov)>; Elaine Newton <[enewton@oge.gov](mailto:enewton@oge.gov)>  
**Subject:** RE: Call Thursday morning

Blake,

Monica and Elaine are taking the lead on the CD. Are you available to talk to them at 3:15? If so, they will call you.

Dave

**From:** Roberts, Blake [[\(b\) \(6\)](mailto:(b) (6))]  
**Sent:** Thursday, January 19, 2017 1:46 PM  
**To:** David J. Apol  
**Subject:** RE: Call Thursday morning

Dave – Just following up. Can we possibly touch base quickly this afternoon?

**From:** Roberts, Blake  
**Sent:** Wednesday, January 18, 2017 11:57 PM  
**To:** [djapol@oge.gov](mailto:djapol@oge.gov)  
**Subject:** Call Thursday morning

Dave,

I know this is a very busy time. Would it be possible to schedule a short call tomorrow morning to go over some procedural and substantive questions?

Thanks,

Blake

(b) (6)

A large black rectangular redaction box covers the majority of the page's top section, starting below the header and extending down to just above the 'Please consider the environment' notice.

**Please consider the environment before printing this email.**

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This email message and any attachments are being sent by Wilmer Cutler Pickering Hale and Dorr LLP, are confidential, and may be privileged. If you are not the intended recipient, please notify us immediately—by replying to this message or by sending an email to (b) (6)—and destroy all copies of this message and any attachments. Thank you.

For more information about WilmerHale, please visit us at <http://www.wilmerhale.com>.

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OGE Confidential Notice: This email, including all attachments, may constitute a Federal record or other Government property that is intended only for the use of the individual or entity to which it is addressed. This email also may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable law. If you are not the intended recipient or the employee or agent responsible for delivering the transmission to the intended recipient, you are hereby notified that any dissemination, distribution, copying or

use of this email or its contents is strictly prohibited. If you have received this email in error, please notify the sender by responding to the email and then immediately delete the email.



**From:** [Shelley K. Finlayson](#)  
**To:** [Don McGahn](#) (b)(6); [Ann M. Donaldson](#) (b)(6)  
**Subject:** FW: OGE's Recommendations  
**Date:** Monday, December 05, 2016 11:35:35 AM

---

Good morning –

Walt is having technical difficulties and wanted to send you the message below, so I am forwarding it to you.

Regards,

Shelley

---

**From:** [wmschaub@oge.gov](mailto:wmschaub@oge.gov)  
**Sent:** Monday, December 5, 2016 11:15 AM  
**To:** (b)(6) - Donald; (b)(6) - Ann Donaldson's  
**Cc:** Shelley K. Finlayson; David Apol  
**Subject:** OGE's Recommendations

Don and Annie,

I know you're hard at work on the plan that the President-elect will be announcing on December 15. OGE has a number of recommendations based on our extensive experience. We'll send you a letter detailing them tomorrow morning. If you would prefer to discuss them in a phone call instead, send me a message today and we will hold off on sending the letter tomorrow morning.

Walt

Walter M. Shaub, Jr.

Director

U.S. Office of Government Ethics  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917  
Telephone: **202.482.9292**  
Email: [walter.schaub@oge.gov](mailto:walter.schaub@oge.gov)

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

**From:** [Walter M. Shaub](#)  
**To:** (b) (6) Don McGahn  
**Subject:** press inquiries  
**Date:** Wednesday, November 30, 2016 1:13:47 PM

---

We started receiving dozens of press calls as soon as the President-elect announced his plan to divest his assets. Here's the response our spokesperson is sending out to them:

Like everyone else, we were excited this morning to read the President-elect's twitter feed indicating that he wants to be free of conflicts of interest. OGE applauds that goal, which is consistent with an opinion OGE issued in 1983. Divestiture resolves conflicts of interest in a way that transferring control does not. We don't know the details of their plan, but we are willing and eager to help them with it.

Walt

Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

Telephone: 202.482.9292  
Email: [walter.shaub@oge.gov](mailto:walter.shaub@oge.gov)

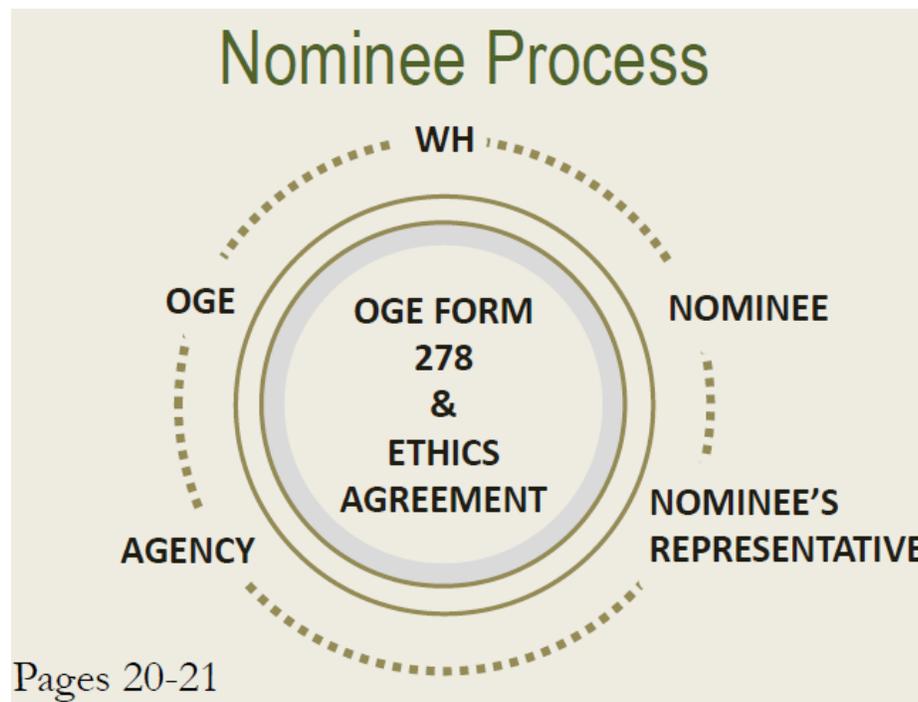
---

**From:** Walter M. Shaub  
**Sent:** Wednesday, November 30, 2016 10:14 AM  
**To:** (b) (6) Don McGahn  
**Subject:** Can we talk today?

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

## INFORMAL DISCUSSION POINTS (11/21/16)

- nominee process
  - financial disclosure report
    - collection by WH (transition team)
    - release to OGE/agency
    - multiple rounds of revision and information collection, conflicts analysis, ethics agreement (9-year average = ~40 days)



- preclearance
- review by WH (transition team)
- national security form
  - initiation by WH (transition team) through OPM's e-QIP
  - processed by OPM
  - FBI background investigation
  - FBI report drafted & issued
  - review by WH (transition team)
- public records search by WH (transition team)
- review of tax filings by WH (transition team)

- supplemental information collected by WH (transition team)
- Senate questionnaire collection, review, editing in consultation with agency and WH (transition team)
- reconciling inconsistent information in different forms
- interview of nominee by WH (transition team) vetting attorney
- meeting by WH (transition team) personnel office and counsel to formulate recommendation to President (President-elect)
- decision by President (President-elect)
- WH (transition team) communications team recommends best approach to announcing intent to nominate
- WH (transition team) legislative team prepares nominee
- Senate typically holds some cabinet hearings before January 20
- process in detail (pages 20-21)
- received v. preclear chart (pp. 24-25)
- critical milestones (pp. 22-23)
- blind reviews (page 13)
- *blind review v. OGE-only review v. risk management consultation*
- working with nominees (pp. 26-27)
  - nominee responsiveness is the primary driver of speed/delay
  - to speed up process:
    - deliver hard copy of Nominee Ethics Guide
    - communicate that it will be a lengthy process (multiple rounds) and that prompt responses are critical
    - communicate that they (and their spouses) may need to make changes to finances
- assignee
- *assignee v. detailee*
- additional expertise: in-house or outside counsel

- transition team personnel are running an instance of *Integrity* (page 29)

The screenshot shows the Integrity.gov website. On the left is the login page with the text "INTEGRITY Play your part." and a "Login to Integrity (using MAX.gov)" button. On the right is a diagram titled "Initiating Reports in Integrity" showing a flow between PPO, WHCO, Agency, and OGE. PPO connects to WHCO (3) and Agency (1). WHCO connects to Agency (4) and OGE (4). Agency connects to OGE (5). A person icon connects to PPO (2) and Agency (5). Below the diagram is "Page 35".

You indicated that you hold (or held) stock options. Answer the questions below regarding the stock options.

**VALUE**

Are you able to provide a value of these stock options?

Yes

No, a value is not readily ascertainable

**DESCRIPTION IN LIEU OF A VALUE**

You have indicated that a value is not readily ascertainable. In lieu of providing a value, provide the following information: (1) the number of shares of the stock for which the option was issued; (2) the strike price (e.g., "\$16.53/share"); (3) the expiration date; (4) an indication as to whether the options are vested or unvested; and (5) the date on which the options will vest (if the options are unvested).

1,000 unvested shares, \$11.75, exp. 2/1/27, vest 2/1/17  
 1,000 vested shares, \$11.50, exp. 2/1/26

Characters Left: 403

**INCOME**

Provide the amount of income produced by these options during the reporting period. ?

Note: We do not treat the receipt of stock options as income, even when taxable as ordinary income. For this reason, most filers select the "none or less than \$201" category.

Please Select

Please Select

None (or less than \$201)

\$201 - \$1,000

\$1,001 - \$2,500

\$2,501 - \$5,000

\$5,001 - \$15,000

\$15,001 - \$50,000

\$50,001 - \$100,000

\$100,001 - \$1,000,000

\$1,000,001 - \$5,000,000

Over \$5,000,000

**ARRANGEMENT DESCRIPTION**

Describe what will happen to your stock options.

Please enter your Answer

- setting up lines of communication
- typical show stoppers for nominees (Nominee Appendix checklists)

- OGE resources:



## OGE TRANSITION MATERIALS

### OGE's Role in the Presidential Transition

The law requires OGE to review the financial disclosure reports of most Presidential nominees for civilian positions requiring Senate confirmation. OGE reviews these reports for potential conflicts of interest and for compliance with disclosure requirements. OGE's efforts to resolve potential conflicts help ensure that nominees will be able to perform the duties of their positions.

### OGE's Guide for the Presidential Transition Team

The work of a Presidential transition is a monumental undertaking. OGE developed this Guide as a resource for the Presidential Transition Team to prepare for the upcoming transition so that top leadership positions can be filled quickly and free from conflicts of interest. This guide explains the nominee ethics process, provides strategies for establishing a strong ethical culture in the new Presidential administration, and includes useful reference materials.

### OGE's Guide for Nominees

OGE developed this Guide as a resource for potential Presidentially-appointed, Senate-confirmed (PAS) nominees during the upcoming transition. The Guide contains helpful guidance for incoming PAS nominees including an introduction to the nominee process, guidance on financial disclosure, and an overview of key ethics rules and regulations.

### OGE's Appendix to the Guide for Nominees

The Appendix to the Guide for Nominees contains detailed reference content, such as financial disclosure checklists, criteria for identifying excepted investment funds, and information on ongoing financial disclosure obligations.

### (Unofficial) Excel workbook listing positions for which OGE reviews nominees

The official source for identifying political positions in the executive branch is the publication titled, "United States Government Policy and Supporting Positions." This publication, commonly known as the Plum Book, is published alternately by the Senate and the House committees after each Presidential election. However, the Presidential Transition Team will need to begin identifying possible nominees well before the election. To assist in this process, OGE has compiled an unofficial Excel workbook listing the civilian Presidentially appointed, Senate-confirmed positions traditionally subject to OGE's review in the nomination process.

### Ways OGE Can Help in the Presidential Transition (1-page graphic)

OGE is ready to assist the Presidential Transition Team in navigating the transition and laying the groundwork for a strong ethical culture in the new administration. OGE is also ready to assist in establishing a strong White House ethics program.

### OGE's Public Financial Disclosure Guide

The Public Financial Disclosure Guide is an interactive tool to assist individuals who file or review public financial disclosure reports (OGE Form 278e or OGE Form 278-T). The Guide offers helpful instructions, illustrations of sample language, definitions of terms, and plain language answers to frequently asked questions.

### OGE's Nominee Ethics Agreement Guide

The ethics agreement outlines specific steps a nominee will take to avoid conflicts of interest. OGE's staff and agency ethics officials draft each ethics agreement using standardized language from this Guide that will be modified as needed to tailor the agreement to the nominee's unique circumstances.

### Nominee Public Financial Disclosure Review Checklists

OGE developed this collection of public financial disclosure checklists for incoming Presidential nominees who file public financial disclosure reports, as well as for agency reviewers. The collection includes a general checklist applicable to all nominees and supplemental checklists that target incoming attorneys; corporate officers, employees, and directors; university professors and deans; and investment fund managers.

### OGE's Electronic Public Financial Disclosure Filing System, *Integrity*

Presidential nominees in the executive branch file public financial disclosure reports through Integrity, the executive branch electronic financial disclosure system. The online user manual for Integrity provides useful explanations of the system's features. A user name and password is required to access both Integrity and its user manual.

### Presidential Appointee & Nominee Records

Follow this link for access to public financial disclosure reports and ethics agreements, executive branch agency Ethics Pledge waivers, and the annual report on Executive Order 13490 (Ethics Pledge).

### The theme of OGE's 2016 National Government Ethics Summit: Presidential Transition

The National Government Ethics Summit held this spring kicked off OGE's efforts to ensure that the more than 4,500 ethics officials throughout the executive branch are prepared to help facilitate a smooth transition between Presidential administrations. Follow this link and the links below for more information on OGE's 2016 National Government Ethics Summit and other Presidential Transition readiness efforts.

- Materials from the 2016 National Government Ethics Summit on the Presidential Transition (March 8-10, 2016)
- Agenda for the full-day Symposium on Nominee Financial Disclosure in a Presidential Transition (March 7, 2016)
- Video: Replay of selected session from the 2016 National Government Ethics Summit
- OGE and Agency Ethics Officials Train for Post-Election Readiness
- Video: Transition Readiness Series

### OGE Form 278 (Public Financial Disclosure Report) and OGE Form 450 (Confidential Financial Disclosure Report)

Follow this link for access to OGE's financial disclosure forms and instructions for downloading the forms.

### OGE Senior Leadership

Follow this link to learn more about OGE's Senior Leadership.

### OGE Staff Contact Information

Follow this link for an OGE staff listing and contact information.

- Partnership for Public Service – Center for Presidential Transition

The screenshot shows the website for the Partnership for Public Service Center for Presidential Transition. The page title is 'Incoming Administration: Appointments'. The main content area features an 'Overview' section with the text: 'The goal of a presidential transition team is not only to help the president-elect prepare to take office, but to fill roughly 4,000 politically appointed positions, including more than 1,000 jobs requiring Senate confirmation. Identifying, selecting and securing Senate confirmation of presidential appointees requires a thorough understanding of the number and types of presidential appointments that will need to be made, the skills that are needed in various positions, the importance of diversity among appointees and how the leadership team that is chosen will drive the new administration's agenda for the next four years.' Below this is a 'Transition Guide' section with a 'Download PDF' button. The sidebar on the left contains 'Transition Workstreams' (Agency Review, Appointments, Operations, Policy) and 'Tasks and Resources by Month' (Select Month). The top navigation bar includes 'READY TO GOVERN', 'RESOURCES', 'BLOG', 'ABOUT', and 'DON'.

- o **Max Stier, President and CEO**

(b)(6)

- recommendation

## QUALIFIED BLIND & DIVERSIFIED TRUSTS (a few key points)

### *Applicable to qualified blind trusts only*

- Trustee prepares and files the trust's taxes, including the taxes of any businesses in the trust (and Settlor does not receive information other than the limited information contained in the annual statement)
- Any initial asset placed in the trust is not "blind" and continues to pose conflicts of interest until it is sold down to a value of \$1,000 or less
- After obtaining OGE's approval of the written communication, Trustee will send Settlor written notice that the asset has been sold down to a value of \$1,000 or less (note: this notice is publicly available)

### *Applicable to qualified diversified trusts only*

- Only readily marketable assets can be placed in a diversified trust (i.e., cannot place closely held businesses in the trust)
- Trustee prepares and files not only the trust's taxes but also the Settlor's personal income taxes
- With respect to initial assets placed in the trust, no more than 5% can be in any asset and no more than 20% can be in any sector
- Assets placed in the trust immediately cease to pose conflicts
- Cannot place any asset in trust that poses a significant conflict

### *Applicable to both:*

- OGE must oversee establishment of trust from start to finish (no prior communications with prospective trustees)
- Must use OGE's model trust documents
- Trustee must be an institution and fully independent (cannot be a relative)
- A relative cannot be employed by the trust (i.e., in any businesses owned by the trust)
- Trustee must provide OGE with a relationship letter describing any relationships the trustee (including its officers, directors and principals) has with the interested parties
- Settlor must relinquish all control of assets
- Settlor must publicly disclose all assets placed in the trust

- Trustee must be provided with all information regarding businesses, including liabilities, assets and agreements
- Title must be transferred to Trustee
- Trust assets cannot be encumbered
- Liabilities, agreements, arrangements and all other entanglements with the Settlor and all interested parties must be transferred to the trustee
- There can be no restrictions as to actions the trust can take with regard to assets or liabilities (e.g., sale, liquidation, operation, destruction, settlement of lawsuits, etc.)
- Settlor cannot provide instructions, or even communicate specific preferences, as to the nature of the assets to acquire, retain, etc.
- All communications from the Settlor (and Settlor's representatives) to the trustee must be in writing
- All communications from the Trustee to the Settlor (and Settlor's representatives) must be in writing
- OGE must approve all written communications before they are transmitted
- OGE must receive another copy of the written communications after they are transmitted
- Trustee and agents of the trustee may not communicate any information about holdings, trades, etc.
- A quarterly statement is provided, but the only information in the statement is the total value of the trust
- An annual statement is provided with general tax information, but it cannot include any tax information that would reveal the nature of the assets
- When the trust is eventually dissolved (even if after the Settlor leaves government service) the holdings of the trust must be publicly disclosed
- OGE typically receives (and fulfills) requests from the public for all trust documents

**From:** [Walter M. Shaub](#)  
**To:** [Sean Doocey](#)  
**Cc:** [Shelley K. Finlayson](#)  
**Subject:** time-sensitive issue  
**Date:** Friday, November 18, 2016 9:15:10 AM

---

Sean,

I'm just dropping another quick note to remind you that OGE is here to help. We seem to have lost contact with the Trump-Pence transition since the election.

As we discussed prior to the election, announcing cabinet picks without taking OGE up on the offer to take an early look at financial disclosure picks poses the risk of embarrassment for the President-elect (and the individual candidate for nomination) in the event that the individual walks away from the nomination after learning what he or she will have to do with his or her financial interests. This is true even in the case of Senators, as Senators are not subject to conflicts of interest laws and may not fully appreciate how different life is in the executive branch. We would genuinely like to help you prevent that undesirable outcome.

As we also previously discussed, the same offer applies to possible White House appointees. The risk is even higher for them because OGE would not normally receive their financial disclosure reports until after they have been in office for weeks or even months. By that time, they run the risk of having inadvertently violated the criminal conflicts of interest restriction at 18 USC 208. If we don't get involved early to prevent problems, we won't be able to help them after the fact.

In addition, please remind people that, as we discussed, OGE needs to be involved before anyone seeks to set up a blind trust. Conversations with potential trustees before consulting to OGE could disqualify them. Also, please be sure that people realize that no asset placed in a blind trust is considered blind, and thus continues to pose conflicts of interest, until the asset has been sold off and the government official receives a letter (approved in advance by OGE) indicating that an asset has been sold down to \$1,000 or less.

I will be taking to Don McGahn as soon as I can pin him down to a time for a call, which is proving to be difficult. However, I don't have confirmation from anyone on the transition team or from OMB that he is serving in any official capacity. It would help to have confirmation that he is authorized to speak for the transition.

As you know, our goal is to help you by preventing problems before they arise. I will consider OGE successful if we get the new administration off to a great start, wholly free of conflicts of interest.

Walt

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

---

**From:** Walter M. Shaub  
**Sent:** Thursday, November 17, 2016 2:52 PM  
**To:** Sean Doocey  
**Subject:** semi time-sensitive issue

---

Sean,

Is there a phone number where I can call you for a quick phone call today. A somewhat time sensitive issue has arisen.

Walt

Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

Telephone: 202.482.9292  
Email: walter.shaub@oge.gov

**From:** [Walter M. Shaub](#)  
**To:** [Sean E. Doocey](#)  
**Cc:** [Shelley K. Finlayson](#)  
**Subject:** Re: time-sensitive issue  
**Date:** Friday, November 18, 2016 9:49:14 AM

---

Re-sending with some potentially confusing typos corrected (below) in case you need to forward the message to anyone. (Sorry for that. It's hard to proof read on a blackberry.)

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

---

**From:** Walter M. Shaub  
**Sent:** Friday, November 18, 2016 9:15 AM  
**To:** Sean Doocey  
**Cc:** Shelley K. Finlayson  
**Subject:** time-sensitive issue

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Walt

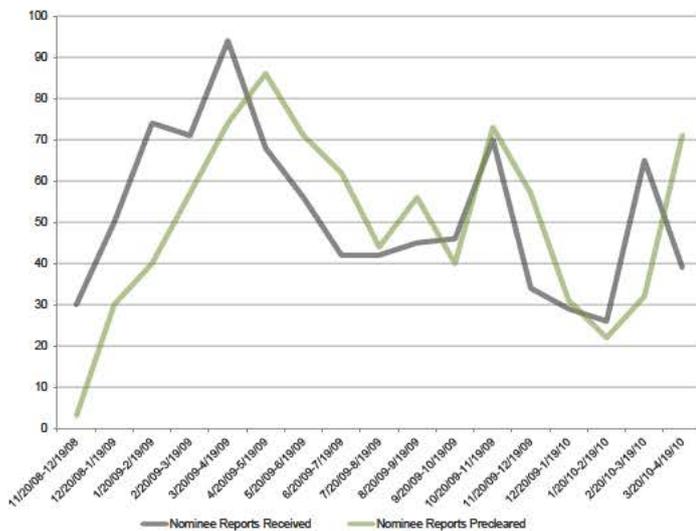
Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

Telephone: 202.482.9292  
Email: walter.shaub@oge.gov

- Walter M. Shaub, Jr., Director, 202.482.9302, walter.shaub@oge.gov
- Shelley K. Finlayson, Chief of Staff, 202.482.9314 shelley.finlayson@oge.gov
- David J. Apol, General Counsel, 202.482.9205 david.apol@oge.gov
- Deborah J. Bortot, Chief, Presidential Nominations Branch, 202.482.9227, deborah.bortot@oge.gov

# WAYS OGE CAN HELP

- Briefings before and after the election
- Review of financial disclosure reports
- Consultations on prospective nominees
- “Blind” reviews of certain nominee reports
- Technical assistance with ethics initiatives
- Training and guidance on government ethics
- Training on *Integrity* (e-filing system)



## TIMELINE

**August**  
SCHEDULE AN OGE  
BRIEFING

**September**

Receive training on  
*Integrity*

**October**

Recruit ethics official

**November**

Collect financial  
disclosure reports

**December**

Increase volume of  
reports

## PROCESS

- Provide Nominee Ethics Guide to nominee
- Initiate financial disclosure report in *Integrity*
- Release report to OGE and the agency
- OGE/agency work on report with nominee (multiple rounds over several weeks)
- OGE and agency draft ethics agreement
- OGE “preclears” report
- Senate holds hearings before Inauguration

## ADDRESSING RISK FACTORS

### • Risk: Too little time

Send OGE as many reports as possible in November and early December

### • Risk: Slow responses from nominees

Emphasize the importance of responding promptly to questions about their reports

### • Risk: Nominees’ resistance to resolving conflicts of interest

Advise nominees early in the process that they and their spouses may be required to make changes to their financial interests

### • Risk: Confidentiality concerns shorten timeframe for reviewing certain reports

Request an initial “blind” review by OGE

### • Risk: Issues arising from the complexity of ethics rules and the nominee process

Detail an agency ethics official or hire an outside financial disclosure expert

**From:** [Walter M. Shaub](#)  
**To:** (b) (6) Don McGahn  
**Subject:** Can we talk today?  
**Date:** Wednesday, November 30, 2016 10:14:15 AM

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Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

**Remarks of Walter M. Shaub, Jr., Director, U.S. Office of Government Ethics,  
as prepared for delivery at 4:00 p.m. on January 11, 2017, at the Brookings Institution**

I wish circumstances were different and I didn't feel the need to make public remarks today. You don't hear about ethics when things are going well. You've been hearing a lot about ethics lately.

I need to talk about ethics today because the plan the President-elect has announced doesn't meet the standards that the best of his nominees are meeting and that every President in the past four decades has met. My hope is that, if the Office of Government Ethics can provide some constructive feedback on his plan, he may choose to make adjustments that will resolve his conflicts of interest.

I'll limit the scope of my remarks today, and I won't be talking about nominees whose ethics packages have not gone to the Senate. With that limitation, there's still much that can be said. For starters, I'm happy to report that it's not all bad news. OGE has been able to do good work during this Presidential transition. I'm especially proud of the ethics agreement we developed for the intended nominee for Secretary of State, Rex Tillerson.

Mr. Tillerson is making a clean break from Exxon. He's also forfeiting bonus payments worth millions. As a result of OGE's work, he's now free of financial conflicts of interest. His ethics agreement serves as a sterling model for what we'd like to see with other nominees. He clearly recognizes that public service sometimes comes at a cost. The greater the authority entrusted in a government official, the greater the potential for conflicts of interest. That's why the cost is often greater the higher up you go.

We've had similar success with some of the President-elect's other intended nominees. Some of them haven't quite gotten there yet, as I explained in recent letters to the Senate. But with an example like Mr. Tillerson's ethics agreement, I anticipate we'll get them there, too. In connection with this work, it's important to recognize that OGE is not the enforcement mechanism but the prevention mechanism. OGE is non-partisan and does its work independently. Our goal—*our reason for existing*—is to guard the executive branch against conflicts of interest.

We can't risk creating the perception that government leaders would use their official positions for profit. That's why I was glad in November when the President-elect tweeted that he wanted to, as he put it, "in no way have a conflict of interest" with his businesses. Unfortunately, his current plan cannot achieve that goal.

It's easy to see that the current plan does not achieve anything like the clean break Rex Tillerson is making from Exxon. Stepping back from running his business is meaningless from a conflict of interest perspective. The Presidency is a full-time job and he would've had to step back anyway. The idea of setting up a trust to hold his operating businesses adds nothing to the equation. This is not a blind trust—it's not even close.

I think *Politico* called this a "half-blind" trust, but it's not even halfway blind. The only thing this has in common with a blind trust is the label, "trust." His sons are still running the businesses, and, of course, he knows what he owns. His own attorney said today that he can't "un-know" that he owns Trump tower. The same is true of his other holdings. The idea of limiting direct communication about the business is wholly inadequate. That's not how a blind trust works. There's not supposed to be any information at all.

Here too, his attorney said something important today. She said he'll know about a deal if he reads it in the paper or sees it on TV. That wouldn't happen with a blind trust. In addition, the notion that there won't be new deals doesn't solve the problem of all the existing deals and businesses. The enormous stack of documents on the stage when he spoke shows just how many deals and businesses there are.

I was especially troubled by the statement that the incoming administration is going to demand that OGE approve a diversified portfolio of assets. No one has ever talked to us about that idea, and there's no legal mechanism to do that. Instead, Congress set up OGE's blind trust program under the Ethics in Government Act. Under that law anyone who wants a blind trust has to work with OGE from the start, but OGE has been left out of this process. We would have told them that this arrangement fails to meet the statutory requirements.

The President-elect's attorney justified the decision not to use a blind trust by saying that you can't put operating businesses in a blind trust. She's right about that. That's why the decision to set up this strange new kind of trust is so perplexing. The attorney also said she feared the public might question the legitimacy of the sale price if he divested his assets. I wish she had spoken with those of us in the government who do this for a living. We would have reassured her that Presidential nominees in every administration agree to sell illiquid assets all the time. Unlike the President, they have to run the gauntlet of a rigorous Senate confirmation process where the legitimacy of their divestiture plans can be closely scrutinized. These individuals get through the nomination process by carefully ensuring that the valuation of their companies is done according to accepted industry standards. There's nothing unusual about that.

For these reasons, the plan does not comport with the tradition of our Presidents over the past 40 years. This isn't the way the Presidency has worked since Congress passed the Ethics in Government Act in 1978 in the immediate aftermath of the Watergate scandal. Since then, Presidents Jimmy Carter, Ronald Reagan, George H.W. Bush, Bill Clinton, George W. Bush, and Barack Obama all either established blind trusts or limited their investments to non-conflicting assets like diversified mutual funds, which are exempt under the conflict of interest law.

Now, before anyone is too critical of the plan the President-elect announced, let's all remember there's still time to build on that plan and come up with something that *will* resolve his conflicts of interest. In developing the current plan, the President-elect did not have the benefit of OGE's guidance. So, to be clear, OGE's primary recommendation is that he divest his conflicting financial interests. Nothing short of divestiture will resolve these conflicts.

This has been my view from the start. The media covered some messages I sent the President-elect through Twitter. While some people got what I was doing, I think some others may have missed the point. I was trying to use the vernacular of the President-elect's favorite social media platform to encourage him to divest. My thinking was that more pointed language would have been too strong at a time when he was still making up his mind. I reiterated my view in a written response to questions from the Senate, which is posted on OGE's website. I've been pursuing this issue because the ethics program starts at the top. The signals a President sends set the tone for ethics across the executive branch. Tone from the top matters.

I've had the honor and great privilege of serving as Director of the Office of Government Ethics for four years now. But I've been in ethics for much longer than that, having come up through the ranks as a career government ethics official. Over the years, I've worked closely with countless officials in administrations of both major parties. Ethics has no party.

The job hasn't always been easy, though, especially when I've had to ask nominees and appointees to take painful steps to avoid conflicts of interest. I can't count the number of times I've delivered the bad news that they needed to divest assets, break open trusts, and dissolve businesses. Most of these individuals have worked with us in good faith. Their basic patriotism usually prevails, as they agree to set aside their personal interests to serve their country's interests. Sometimes these individuals have required more persuasion, but every OGE Director has been buoyed by the unwavering example of Presidents who resolved their own conflicts of interest.

As I said, every President in modern times has taken the strong medicine of divestiture. This means OGE Directors could always point to the President as a model. They could also rely on the President's implicit assurance of support if anyone balked at doing what OGE asked them to do. Officials in any administration need their President to show ethics matters, not only through words but also through deeds. This is vitally important if we're going to have any kind of ethics program.

Now, some have said that the President can't have a conflict of interest, but that is quite obviously not true. I think the most charitable way to understand such statements is that they are referring to a particular conflict of interest law that doesn't apply to the President. That law, 18 U.S.C. § 208, bars federal employees from participating in particular matters affecting their financial interests. Employees comply with that law by "recusing," which is a lawyerly way of saying they have stay out of things affecting their financial interests. If they can't stay out of these things, they have to sell off their assets or get a waiver. That's what Presidential appointees do. But Congress understood that a President can't recuse without depriving the American people of the services of their leader. *That's* the reason why the law doesn't apply to the President.

Common sense dictates that a President can, of course, have very real conflicts of interest. A conflict of interest is anything that creates an incentive to put your own interests before the interests of the people you serve. The Supreme Court has written that a conflict of interest is, and I'm quoting here, "an evil which endangers the very fabric of a democratic society, for a democracy is effective only if the people have faith in those who govern, and that faith is bound to be shattered when high officials and their appointees engage in activities which arouse suspicions of corruption."

That same Court referred to what it called a "moral principle" underlying concerns about conflicts of interest. The Court cited, and I'm quoting again, "the Biblical admonition that no man may serve two masters, a maxim which is especially pertinent if one of the masters happens to economic self-interest." A President is no more immune to the influence of two masters than any subordinate official. In fact, our common experience of human affairs suggests that the potential for corruption only grows with the increase of power.

For this reason, it's been the consistent policy of the executive branch that the President should act as though the financial conflict of interest law applied. One of my tweets and my letter to Congress cited an OGE opinion issued during the Reagan administration that articulated this very policy.

Back when he was working for the Justice Department, the late Antonin Scalia also wrote an opinion declaring that a President should avoid engaging in conduct prohibited by the government's ethics regulations, even if they don't apply. Justice Scalia warned us that there would be consequences if a President ever failed to adhere to the same standards that apply to lower level officials. The sheer obviousness of Justice Scalia's words becomes apparent if you just ask yourself one question: Should a President hold himself to a lower standard than his own appointees?

I appreciate that divestiture can be costly. But the President-elect would not be alone in making that sacrifice. I've been involved in just about every Presidential nomination in the past 10 years. I also have been involved in the ethics review of Presidents, Vice Presidents, and most top White House officials. I've seen the sacrifices that these individuals have had to make.

It's important to understand that the President is now entering the world of public service. He's going to be asking his own appointees to make sacrifices. He's going to be asking our men and women in uniform to risk their lives in conflicts around the world. So, no, I don't think divestiture is too high a price to pay to be the President of the United States of America.

As we all know, one of the things that make America truly great is its system for preventing public corruption. For a long time now, OGE has helped developing countries set up their own systems for detecting and preventing conflicts of interest. Our executive branch ethics program is considered the gold standard internationally and has served as a model for the world. But that program starts with the Office of the President. The President-elect must show those in government—and those coming into government after his inauguration—that *ethics matters*.

All of this is to say there are reasons why experts and others are expressing concern. These calls for divestiture have been bipartisan. You have the examples of President Obama's ethics counsel, Norm Eisen, and President Bush's ethics counsel, Richard Painter. The conservative Wall Street Journal recommended divestiture. So did conservative columnist Peggy Noonan.

It's plain to see that none of this reflects any partisan motivation. All you have to do is imagine what will happen if the President-elect takes this advice and divests. He'll be stronger. He'll have a better chance of succeeding. So will the ethics program and the government as a whole. And, in turn, America will have a better chance of succeeding. We should all want that. I know I want that.

In closing, I would just like to add that I'm happy to offer my assistance and the assistance of my staff. Thank you.

RON JOHNSON, WISCONSIN, CHAIRMAN

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# United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

November 20, 2016

The Honorable Walter M. Shaub  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005

Dear Director Shaub:

As the Ranking Member of the Senate Committee with jurisdiction over the Office of Government Ethics, I write today to request your assistance with understanding how your office plans to address the potential for conflicts of interest in the upcoming Administration of President-elect Donald Trump.

As you know, President-elect Trump is a businessman with considerable financial interests in the United States and around the world. The full extent of his financial interests remains unclear, in part because he was the first presidential candidate in modern history to decline to release his tax returns to the American public. These unique circumstances raise important questions about how the Administration of President-elect Trump will avoid conflicts of interest and ensure integrity of executive branch programs and operations.

As you know, the Office of Government Ethics oversees the executive branch ethics program and works with ethics practitioners in more than 130 agencies to implement this effort. The Office of Government Ethics also plays a critical role in the 2016 Presidential Transition by making sure that prospective nominees are free of conflicts of interest. This role includes providing guidance regarding the federal laws that prohibit certain officials from participating personally and substantially in an official capacity in any matter that will have a direct and predictable effect on their financial interests. Unless an official receives a waiver or an exemption applies, the official with a conflict of interest must disqualify him or herself from participating in the matter. Criminal penalties may apply to officials who violate this statute.

As the independent ethics watchdog of the federal government, the Office of Government Ethics must provide assurances to the American people that your agency will advance a strong ethics program that holds the Administration of President-elect Trump accountable for any conflicts of interest. To better understand how your office plans to address the potential for conflicts of interest in the upcoming Administration of

President-elect Donald Trump, I ask that you please provide the following information by December 5, 2016:

1. **Handling of Trump Organization** – For constitutional reasons, the President is exempt from certain conflict of interest rules, such as the prohibition on acting in matters affecting his personal financial interest or representing his own claims and business interests to the government. However, the President remains subject to many related statutes, such as prohibitions on bribery and embezzlement. President-elect Trump and the Trump Organization reportedly have business with the federal government, lease federal property, and have regulatory and enforcement matters presently being adjudicated by federal government agencies.
  - a. What guidance has Office of Government Ethics (OGE) provided to agency ethics officials regarding the protocols for handling matters directly affecting President-elect Trump and the Trump Organization?
  - b. Will OGE recommend safeguards to protect federal officials from fear of reprisal in dealings with the Trump Organization?
  - c. Will OGE take steps to ensure Trump Organization employees do not have privileged access to decision-makers or access to nonpublic government information?
  - d. President-elect Trump reportedly intends to transfer control of the Trump Organization to his three oldest children.<sup>1</sup> Does this transfer meet the standards of a qualified blind trust, as defined under the Ethics in Government Act?
  
2. **President-elect Trump's Financial Conflicts** – President-elect Trump's previous financial disclosure reports reveal potential financial conflicts of interest in several areas of the economy and foreign relations. While Presidents are exempt from conflict of interest rules for constitutional reasons, Presidents of both parties, dating back to Lyndon Johnson, have taken significant steps to avoid the appearance of a conflict.<sup>2</sup>
  - a. Please identify the information that must be included in the President's annual financial disclosure, when a President must file his first disclosure, and whether the public will receive access to these disclosures.
  - b. What steps does OGE require a President to take if any conflicts of interest are apparent on the face of a financial disclosure?
  - c. What steps will OGE require to *prevent* acquisition of new conflicts by President-elect Trump and his Trump Organization?
  
3. **Transition Team** – President-elect Trump's three oldest children are members of the Presidential Transition team while continuing to serve as executives and

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<sup>1</sup> *Three Trump Children Seen Managing President-Elect's Company*, REUTERS (Nov. 11, 2016).

<sup>2</sup> CYNTHIA BROWN AND L. PAIGE WHITAKER, CONG. RESEARCH SERV., LEGAL SIDEBAR, CONFLICTS OF INTEREST AND THE PRESIDENCY (2016).

officers in the Trump Organization.<sup>3</sup> As leaders on the Transition team, his children will be party to sensitive government information and empowered to discuss matters of government policy and operations with the leadership of several federal agencies.

- a. What guidance has OGE provided to agency ethics officials regarding the handling of non-transition business communications from Mr. Trump's children and the Trump Organization during the transition?

**4. President-elect Trump's Oldest Children and Jared Kushner** – President-elect Trump has reportedly expressed interest in obtaining security clearances for his three oldest children and his son-in-law, Jared Kushner.<sup>4</sup>

- a. What guidance has OGE provided to President-elect Trump's oldest children and Mr. Kushner concerning the management of their conflicts of interest while participating in executive branch deliberations?
- b. Does President-elect Trump have legal authority to appoint these individuals to government positions?
- c. Are President-elect Trump's children and Mr. Kushner exempt from conflict of interest laws?
- d. Has OGE provided guidance to these individuals to ensure they disqualify themselves from matters in which they have financial interests and to prevent inadvertent disclosure of confidential government information?

**5. Ongoing Financial Disclosure Obligations** – President-elect Trump has disclosed a large portfolio of financial interests that include securities interests in several investment companies.<sup>5</sup> President-elect Trump will be under an ongoing obligation to file public reports of any securities transactions so that the public may understand his financial interests.

- a. What guidance has OGE provided to President-elect Trump to ensure he continues to file any required financial disclosures of securities transactions?
- b. How often will President-elect Trump be required to file such disclosures?
- c. Will OGE or the White House Counsel be responsible for assessing fines for any late filings?

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<sup>3</sup> Brian Naylor & Barbara Sprunt, *From Lobbyists to Loyalists, See Who's on Donald Trump's Transition Team*, NPR (Nov. 16, 2016).

<sup>4</sup> Jim Acosta et al., *Trump Transition Team Asked about Security Clearance for His Children*, CNN (Nov. 15, 2016).

<sup>5</sup> Gregor Aisch et al., *What's in Donald Trump's 104-Page Financial Disclosure?*, N.Y. TIMES (May 18, 2016).

6. **Outside Fiduciary Positions** – President-elect Trump has disclosed that he serves as chairman or board member of hundreds of companies.<sup>6</sup> As a board member or officer, he owes those entities and their investors’ legal fiduciary duties that have the potential to interfere with his duties as president.
  - a. What guidance has OGE provided to President-elect Trump regarding his outside positions and the steps he should take to address potential conflicts of interest?
  - b. What safeguards will OGE establish to prevent conflicts of interest between his legal fiduciary obligations to these companies and his legal obligations and duties as President?
  
7. **Misuse of Image** – Longstanding White House policy across Administrations prohibits the use of the President’s name or image in advertising or for the endorsement of any commercial product or service.
  - a. What guidance has OGE provided to President-elect Trump regarding the use of his name and image for the endorsement of the Trump Organization or his children’s businesses?

If you or members of your staff have any questions about this request, please feel free to contact Roberto Berrios of my staff at (202) 224-2627. Thank you very much for your attention to this matter.

With best personal regards, I am

Sincerely yours,



Tom Carper  
Ranking Member

cc: The Honorable Ron Johnson  
Chairman

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<sup>6</sup> David Goldman, *Donald Trump’s 500 Businesses Would Pose ‘Unprecedented Ethical Dilemma’*, CNN (Mar. 17, 2016).

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



December 12, 2016

The Honorable Thomas R. Carper  
Ranking Member  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
513 Hart Senate Office Building  
Washington, DC 20510-6250

Dear Ranking Member Carper:

Thank for your letter dated November 20, 2016, regarding the role of the United States Office of Government Ethics (OGE) in preventing conflicts of interest. Your letter initially set a response deadline of December 5, 2016, but your office extended that deadline to December 12, 2016. I have enclosed OGE's responses to the questions posed in your letter.

If your staff has any questions or would like to discuss these responses, they may feel free to contact OGE's Chief of Staff, Shelley K. Finlayson, at (202) 482-9292.

Sincerely,

A handwritten signature in blue ink that reads "Walter M. Shaub, Jr." with a stylized flourish at the end.

Walter M. Shaub, Jr.  
Director

Enclosure

cc. The Honorable Ron Johnson  
Chairman

RESPONSES TO THE QUESTIONS POSED IN THE NOVEMBER 20, 2016, LETTER OF THOMAS R. CARPER, RANKING MEMBER, COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, UNITED STATES SENATE (DECEMBER 12, 2016)

Before responding to each of your questions, some background on OGE and its legal authorities may prove helpful. As your letter correctly indicates, OGE oversees the executive branch ethics program and works with ethics practitioners in more than 130 federal agencies to carry out its important mission of preventing conflicts of interest on the part of the approximately 2.7 million federal employees. However, OGE is not, as your letter indicates, an “independent” agency, with the protections and authorities<sup>1</sup> that such status would confer. Instead, OGE is an executive agency with the limited authorities that the Ethics in Government Act vests in it.<sup>2</sup>

As your letter suggests, OGE has some involvement in ethics issues related to Presidents. For example, the Stop Trading on Congressional Knowledge Act (STOCK Act) imposes limited ethics-related restrictions on the President.<sup>3</sup> The STOCK Act bars the President from: using nonpublic information for private profit;<sup>4</sup> engaging in insider trading;<sup>5</sup> participating in an initial public offering;<sup>6</sup> intentionally influencing an employment decision or practice of a private entity solely on the basis of partisan political affiliation;<sup>7</sup> and participating in a particular matter directly and predictably affecting the financial interests of any person with whom he has, or is negotiating for, an agreement of future employment or compensation.<sup>8</sup> In addition, OGE is authorized to review the President’s annual, periodic transaction, and termination financial disclosure reports.<sup>9</sup> OGE’s regulations on gifts from outside sources and gifts from employees also apply to the President.<sup>10</sup>

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<sup>1</sup> Such protections and authorities typically include: a restriction on removing the agency head, except for cause; a requirement that Congress be notified of the agency’s independent budget request; and bypass authority for unrestricted communications with Congress. *See, e.g.*, 5 U.S.C. §§ 1202(d), 1204(k)-(l), 1205-1206, 1211(b), 1212(e), 1217-18 (2012); 5 U.S.C. app. §§ 3(b), 5, 6(f) (2012).

<sup>2</sup> 5 U.S.C. app. §§ 401-408 (2012).

<sup>3</sup> *See* STOCK Act, Pub. L. No. 112–105, § 2(3)(B)(i), 126 Stat. 291 (2012), as amended.

<sup>4</sup> *See* STOCK Act, Pub. L. No. 112–105, § 9(a), 126 Stat. 291 (2012) (linked to the subject of OGE’s regulation on the misuse of nonpublic information at 5 C.F.R. § 2635.703 (2016)).

<sup>5</sup> *See* STOCK Act, Pub. L. No. 112–105, § 9(b), 126 Stat. 291 (2012).

<sup>6</sup> *See* STOCK Act, Pub. L. No. 112–105, § 12, 126 Stat. 291 (2012). However, note that, except for identifying and advising covered executive branch officials, OGE is not involved in interpreting section 12 because that section amends the Securities and Exchange Act of 1934, 15 U.S.C. 78u-1. *Cf.* OGE LA-14-02 (Mar. 7, 2014).

<sup>7</sup> *See* STOCK Act, Pub. L. No. 112–105, § 18, 126 Stat. 291 (2012), (codified at 18 U.S.C. § 227 (2012)). Note, however, that the Ethics in Government Act does not authorize OGE to make any finding that a criminal law has been violated. 5 U.S.C. app. § 402(f)(5).

<sup>8</sup> *See* STOCK Act, Pub. L. No. 112–105, § 17, 126 Stat. 291 (2012). Note that OGE has interpreted future employment or compensation as employment or compensation that will commence after a covered individual’s government service has ended. *See* OGE LA-13-06 (Apr. 25, 2013); OGE LA-12-01 (Apr. 6, 2012).

<sup>9</sup> *See* 5 U.S.C. app. §§ 101(f)(1), 103(b), 106 (2012).

<sup>10</sup> *See* 5 C.F.R. 2635.102(h) (2016). Note that an exception to the gift rules generally permits the President to accept gifts from outside sources, but that exception does not exempt him from overarching considerations relating to the acceptance of gifts. *See* 5 C.F.R. §§ 2635.204(j), 2635.202(c) (2016); *see also* 81 Fed. Reg. 81,641, 81,648-49 (Nov. 18, 2016) (to be codified at 5 C.F.R. § 2635.201).

At the same time, OGE's involvement in ethics issues related to the President has significant limits. For example, although the bribery statute applies to the President, a 1980 memorandum of understanding between OGE and the U.S. Department of Justice withholds from OGE authority to issue binding opinions on the statutory prohibition against bribery.<sup>11</sup> Similarly, although the President is subject to the Emoluments Clause<sup>12</sup> and the Presidential Emoluments Clause<sup>13</sup> of the United States Constitution, OGE lacks authority and expertise to address issues arising under those clauses. In addition, provisions of the Ethics in Government Act limiting outside earned income and outside employment are inapplicable to the President because they employ the terms "officer" and "employee," which are subject to definitions that exclude the President in the same title of the United States Code.<sup>14</sup> Most important to the questions raised in your letter, the primary criminal conflicts of interest statute, 18 U.S.C. § 208, is inapplicable to the President, though OGE has for more than three decades asserted authority to make nonbinding recommendations regarding a President's conflicts of interest.<sup>15</sup>

While OGE's role in ethics issues involving the President is limited, OGE has significant involvement in ethics issues related to the President's nominees. The law requires OGE to review the financial disclosure reports of most Presidential nominees for civilian positions requiring Senate confirmation. If confirmed, these individuals become, upon assuming their government positions, subject to the criminal conflict of interest laws at 18 U.S.C. §§ 201-208, as well as the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct) and other OGE regulations. Those who are not special government employees also become subject to 18 U.S.C. § 209.<sup>16</sup> Therefore, OGE reviews their financial disclosure reports not only for compliance with applicable disclosure requirements but also for conflicts of interest. OGE approaches this work from the perspective of managing risk, preparing ethics agreements to prescribe concrete steps they must take to reduce the potential for conflicts of interest to arise. OGE then transmits their nominee packages directly to the Senate.<sup>17</sup>

With this background, please find below OGE's responses to each of the questions posed in your November 20, 2016, letter.

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<sup>11</sup> See 18 U.S.C. § 201 (2012).

<sup>12</sup> U.S. Const., art. I, § 9, cl. 8.

<sup>13</sup> U.S. Const., art. II, § 1, cl. 7.

<sup>14</sup> See 5 U.S.C. §§ 2104 (officer), 2105 (employee); 5 U.S.C. app. §§ 501 (Outside earned income limitation), 502 (Limitations on outside employment), 505(2) (modifying the definitions of "officer" and "employee" in title 5, United States Code to exclude from those definitions special government employees for purposes of title V of the Ethics in Government Act).

<sup>15</sup> See 18 U.S.C. § 202(c) (2012); *see also* OGE opinion 83x16 (October 20, 1983) available online at [https://www.oge.gov/web/oge.nsf/Legal%20Advisories/01F8E09232041FD185257E96005FBBE8/\\$FILE/64ed9ad9bd294b45a88ac8729a97968a3.pdf?open](https://www.oge.gov/web/oge.nsf/Legal%20Advisories/01F8E09232041FD185257E96005FBBE8/$FILE/64ed9ad9bd294b45a88ac8729a97968a3.pdf?open).

<sup>16</sup> For additional information, you may find it helpful to review OGE's Transition Guide, OGE's Nominee Ethics Guide, and the appendix to OGE's Nominee Ethics Guide. All three of these documents are available online at: <https://www.oge.gov/web/oge.nsf/Resources/PRESIDENTIAL+TRANSITION>.

<sup>17</sup> For more information about OGE's mission, structure and operations, you might find it useful to review OGE's newly released agency profile publication, which is available online at [https://www.oge.gov/web/oge.nsf/0/AAD52FD1763F7B6A85258082005E8840/\\$FILE/OGEO%20Agency%20Profile%20Book%20Spread%20View.pdf](https://www.oge.gov/web/oge.nsf/0/AAD52FD1763F7B6A85258082005E8840/$FILE/OGEO%20Agency%20Profile%20Book%20Spread%20View.pdf)

## QUESTION 1:

1. ***Handling of Trump Organization***—*For constitutional reasons, the President is exempt from certain conflict of interest rules, such as the prohibition on acting in matters affecting his personal financial interest or representing his own claims and business interests to the government. However, the President remains subject to many related statutes, such as prohibitions on bribery and embezzlement. President-elect Trump and the Trump Organization reportedly have business with the federal government, lease federal property, and have regulatory and enforcement matters presently being adjudicated by federal government agencies.*
  - a. *What guidance has Office of Government Ethics (OGE) provided to agency ethics officials regarding the protocols for handling matters directly affecting President-elect Trump and the Trump Organization?*

For approximately the past 18 months, OGE has worked diligently to prepare the executive branch ethics community for the types of ethics issues that demand greater focus during a Presidential transition. As part of that preparation, OGE undertook significant regulatory reforms and provided extensive guidance and training to agency ethics officials across the executive branch. The effort included, among other measures, strengthening OGE's regulations on seeking employment, gifts from outside sources, and requirements for the executive branch ethics program.<sup>18</sup> 81 Fed. Reg. 48,687 (July 26, 2016); 81 Fed. Reg. 81,641 (November 18, 2016) (gifts from outside sources); and 81 Fed. Reg. 36,193 (June 6, 2016) (ethics program requirements). The effort also included proposed revisions to OGE's financial disclosure regulations. 81 Fed. Reg. 69,204 (October 5, 2016). In addition, OGE developed and distributed a number of new guidance and resource materials to ethics officials on topics such as nominee financial disclosure, ethics agreements, and post-employment restrictions.<sup>19</sup> OGE provided extensive training to agency ethics officials on ethics issues related to the transition, including: a three-day training event regarding the Presidential transition with over 500 in-person participants and thousands of online viewers; a full day of financial disclosure training, with separate tracks for beginner and advanced reviewers; and a transition readiness program, comprising six distance learning events. This transition-specific training was in addition to the regular training that OGE presents in order to ensure that agency ethics officials have the requisite skills to support executive branch officials. In fiscal year 2016, OGE received nearly 7,000 registrations for its training courses, and recorded sessions from its past training events were viewed online over 20,000 times across the year.

OGE also worked extensively with the nonpartisan Partnership for Public Service and a number of agency service providers to advance the Partnership's transition readiness project. This project involved the development of guidance, training, and an expansive database of resource materials<sup>20</sup> for the transition teams of both major party Presidential candidates. In

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<sup>18</sup> Significantly, OGE's regulatory revisions to ethics program requirements included expanded ethics training requirements for executive branch employees, with specific emphasis on impartiality and misuse of position.

<sup>19</sup> These materials are all available on OGE's website at [www.oge.gov](http://www.oge.gov).

<sup>20</sup> For additional information, you may want to review the Partnership for Public Service's Center for Presidential Transition online at <http://presidentialtransition.org/>.

conjunction with this project, OGE met separately with each of the two transition teams and provided additional technical information and training on establishing transition procedures and operating *Integrity*,<sup>21</sup> OGE's electronic public financial disclosure filing system. OGE also developed a page on its website dedicated to the Presidential transition, which is linked through a prominent banner on the homepage of its website.<sup>22</sup> OGE contributed other information and materials to websites operated by the General Services Administration, as well.<sup>23</sup>

*b. Will OGE recommend safeguards to protect federal officials from fear of reprisal in dealings with the Trump Organization?*

OGE believes that a strong ethical culture inherently depends on protecting whistleblowers. For this reason, OGE is supportive of the important work of the U.S. Office of Special Counsel, which is the agency authorized to investigate and administratively prosecute executive branch officials for whistleblower retaliation, and the U.S. Merit Systems Protection Board, which is the agency authorized to adjudicate claims of whistleblower retaliation.

*c. Will OGE take steps to ensure Trump Organization employees do not have privileged access to decision-makers or access to nonpublic government information?*

As an initial matter, it bears emphasizing that members of President-elect's Transition Team (PETT) will necessarily interact with executive branch officials, some of whom may have decision-making authority. Such interaction is not only permitted but encouraged by the authorities that establish processes for Presidential transitions.<sup>24</sup> Moreover, the PETT is not a federal agency and its members are not executive branch employees.<sup>25</sup> Therefore, the ethics restrictions applicable to federal employees are inapplicable to PETT members, and OGE has no authority over them.<sup>26</sup>

OGE is aware of a memorandum of understanding (MOU) between the Chief of Staff to the President and the Chair of the PETT that addresses the confidentiality of nonpublic government information. That agreement addresses the responsibilities of PETT members with regard to nonpublic information and related conflicts of interest.<sup>27</sup> The MOU also references a Code of Ethical Conduct for the transition, as well as the public disclosure requirements of the Presidential Transition Act, as amended.<sup>28</sup> OGE has no role in drafting either such an MOU or a

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<sup>21</sup> Available online at <https://integrity.gov/efeds-login/> or simply [integrity.gov](https://integrity.gov).

<sup>22</sup> Available online at <https://www.oge.gov/web/oge.nsf/Resources/PRESIDENTIAL+TRANSITION>.

<sup>23</sup> Available online at <https://presidentialtransition.usa.gov/>.

<sup>24</sup> See Pub. L. No. 88-277 (1963), Pub. L. No. 94-499 (1976), Pub. L. No. 100-398 (1988), Pub. L. No. 106-293 (2000), Pub. L. No. 111-283 (2010), Pub. L. No. 114-136 (2016); Exec. Order 13,727 (May 6, 2016).

<sup>25</sup> See Pub. L. No. 88-277, § 3(a)(2) (1963); see also Applicability of 18 U.S.C. § 207(c) to President-Elect's Transition Team, Letter for the Director, Office of Government Ethics, 12 Op. O.L.C. 264, 265 n.1, (Nov. 18, 1988).

<sup>26</sup> See 5 U.S.C. app. § 402(a) (2012).

<sup>27</sup> See Mem. of Understanding between Denis R. McDonough, Chief of Staff to the President, and Michael R. Pence, Chair of the President-elect's Transition Team (Nov. 15, 2016), available online at <https://presidentialtransition.usa.gov/files/2015/11/16-11-15-Final-Signed-MOU.pdf>.

<sup>28</sup> See *id.* In addition, the disclosure provisions of the Presidential Transition Act, as amended, require the PETT, as a condition of receiving funds and services from the government, to make public (1) the names and most recent employment of all transition personnel who are members of agency transition teams, and (2) information regarding the sources of funding that support the transition activities of each transition team member. Presidential Transition

transition code of ethical conduct. The Office of Management and Budget or the PETT may be able to supply additional information about these documents.

It is OGE's understanding that the requirements set forth in the MOU and the Code of Ethical Conduct are contractual and cannot be enforced against PETT members using the mechanisms generally applicable to federal employees. Federal employees who interact with the PETT, however, continue to be subject to the full range of executive branch ethics laws, including restrictions on the use of nonpublic information and the use of public office for private gain established in the Standards of Conduct.<sup>29</sup> Accordingly, federal employees may not provide PETT members with nonpublic information unless the requirements of the MOU and the Presidential Transition Act, as amended, have been met. Their employing agencies have authority to impose disciplinary sanctions for violations of these authorities.<sup>30</sup>

With regard to other potential contacts between outside organizations, such as the one mentioned in your question, executive branch employees are subject to requirements in the Standards of Conduct related to impartiality, misuse of position, and release of nonpublic information.<sup>31</sup> To ensure that employees comply with these requirements, OGE will continue providing training and guidance to the nearly 4,500 agency ethics officials in the executive branch, who in turn will continue to provide training and guidance to the 2.7 million federal employees in their agencies. OGE similarly supports Offices of Inspectors General through training and guidance related to the enforcement of ethics laws and regulations.

*d. President-elect Trump reportedly intends to transfer control of the Trump Organization to his three oldest children. Does this transfer meet the standards of a qualified blind trust, as defined under the Ethics in Government Act?*

OGE does not have any independent knowledge of facts that would either support or refute the premise of this question. As to the question itself, the Ethics in Government Act prescribes specific requirements for establishing a qualified blind trust.<sup>32</sup> Transferring operational control of a company to one's children would not constitute the establishment of a qualified blind trust, nor would it eliminate conflicts of interest under 18 U.S.C. § 208 if applicable.<sup>33</sup>

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Act of 1963, 3 U.S.C. § 102 note, Sec. 6(b)(1), *amended by* Edward 'Ted' Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015, Pub. L. No. 114-136, 130 Stat. 301.

<sup>29</sup> See 5 C.F.R. §§ 2635.702-2635.703 (2016). In addition, the MOU states that a government employee may not allow the improper use of nonpublic information to further his or her own private interest or that of another. This provision is enforceable, through normal disciplinary procedures, by the employing agency of any employee who violates it.

<sup>30</sup> See, e.g., 5 U.S.C. ch. 75 (2012).

<sup>31</sup> See 5 C.F.R. 2635, subparts E and G (2016).

<sup>32</sup> See 5 U.S.C. app. § 102(f) (2012).

<sup>33</sup> *Id.*

QUESTION 2:

2. ***President-elect Trump's Financial Conflicts***—*President-elect Trump's previous financial disclosure reports reveal potential financial conflicts of interest in several areas of the economy and foreign relations. While Presidents are exempt from conflict of interest rules for constitutional reasons, Presidents of both parties, dating back to Lyndon Johnson, have taken significant steps to avoid the appearance of a conflict.*
- a. *Please identify the information that must be included in the President's annual financial disclosure, when a President must file his first disclosure, and whether the public will receive access to these disclosures.*

The President-elect's first annual public financial disclosure report will be due on or before May 15, 2018.<sup>34 35</sup> Traditionally, Presidents voluntarily file an annual financial disclosure report by May 15 during their first year in office, but OGE does not know whether the President-elect will choose to adhere to that tradition. Because the STOCK Act requires that his annual public financial disclosure report be posted online, it will be posted on either OGE's website or the White House's website.<sup>36</sup> The items below describe the information that a President is required to disclose in an annual public financial disclosure report (OGE Form 278e).<sup>37</sup>

- *Filer's Positions Held Outside United States Government*

Part 1 of the OGE Form 278e discloses positions that the filer held at any time during the reporting period (excluding positions with the United States Government). Positions are reportable even if the filer did not receive compensation. This section does not include the following: (1) positions with religious, social, fraternal, or political organizations; (2) positions solely of an honorary nature; (3) positions held as part of the filer's official duties with the United States Government; (4) mere membership in an organization; and (5) passive investment interests as a limited partner or non-managing member of a limited liability company.

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<sup>34</sup> See 5 U.S.C. app. § 101(a) and (d) (2012).

<sup>35</sup> Note that in 2012 the STOCK Act amended the Ethics in Government Act, in part, by requiring Presidents to file periodic transaction reports in order to disclose each covered transaction. See 5 U.S.C. app. § 103(l) (2012). In the case of the President-elect, this requirement will apply only to transactions occurring on or after January 20, 2017. The deadline for disclosing each such transaction is "[n]ot later than 30 days after receiving notification of any transaction required to be reported under section 102(a)(5)(B), but in no case later than 45 days after such transaction." *Id.*

<sup>36</sup> See STOCK Act, Pub. L. No. 112-105, 126 Stat. 291, § 11(b) (2012), as amended by Pub. Law No. 113-7, § 1(b)(2) (2013). Note that the public posting requirement applies equally to periodic transaction reports. *Id.*

<sup>37</sup> 5 U.S.C. app. § 102 (2012); 5 C.F.R. part 2634, subpart C (2016).

- *Filer's Employment Assets & Income and Retirement Accounts*

Part 2 of the OGE Form 278e discloses the following:

- Sources of earned and other non-investment income of the filer totaling more than \$200 during the reporting period (e.g., salary, fees, partnership share, honoraria, scholarships, and prizes); and
- Assets related to the filer's business, employment, or other income-generating activities that (1) ended the reporting period with a value greater than \$1,000 or (2) produced more than \$200 in income during the reporting period (e.g., equity in business or partnership, stock options, retirement plans/accounts and their underlying holdings as appropriate, deferred compensation, and intellectual property, such as book deals and patents).

This section does not include assets or income from United States Government employment or assets that were acquired separately from the filer's business, employment, or other income-generating activities (e.g., assets purchased through a brokerage account). Note that the type of income is not required to be identified if the amount of income is \$0 - \$200 or if the asset qualifies as an excepted investment fund (EIF).

- *Filer's Employment Agreements and Arrangements*

Part 3 of the OGE Form 278e discloses agreements and arrangements that the filer had during the reporting period with an employer or former employer (except the United States Government), such as the following:

- Future employment;
- Leave of absence;
- Continuing payments from an employer, including severance and payments not yet received for previous work (excluding ordinary salary from a current employer);
- Continuing participation in an employee welfare, retirement, or other benefit plan, such as pensions or a deferred compensation plan; and
- Retention or disposition of employer-awarded equity, sharing in profits or carried interests (e.g., vested and unvested stock options, restricted stock, future share of a company's profits, etc.).

- *Spouse's Employment Assets & Income and Retirement Accounts*

Part 5 of the OGE Form 278e discloses the following:

- Sources of earned income (excluding honoraria) for the filer's spouse totaling more than \$1,000 during the reporting period (e.g., salary, consulting fees, and partnership share);
- Sources of honoraria for the filer's spouse greater than \$200 during the reporting period; and
- Assets related to the filer's spouse's employment, business activities, other income-generating activities that (1) ended the reporting period with a value greater than \$1,000, or (2) produced more than \$200 in income during the reporting period (e.g., equity in a business or partnership, stock options, retirement plans/accounts and their underlying holdings as appropriate, deferred compensation, and intellectual property, such as book deals and patents).

Information disclosed in Part 5 does not include assets or income from United States Government employment or assets that were acquired separately from the filer's spouse's business, employment, or other income-generating activities (e.g., assets purchased through a brokerage account). Note that the type of income is not required to be identified if the amount of income is \$0 - \$200 or if the asset qualifies as an EIF. Amounts of income are not required for a spouse's earned income (excluding honoraria).

- *Other Assets and Income*

Part 6 of the OGE Form 278e discloses each asset, not already reported, that (1) ended the reporting period with a value greater than \$1,000 or (2) produced more than \$200 in investment income during the reporting period. For purposes of the value and income thresholds, the filer aggregates the filer's interests with those of the filer's spouse and dependent children. This section does not include the following types of assets: (1) a personal residence (unless it was rented out during the reporting period); (2) income or retirement benefits associated with United States Government employment (e.g., Thrift Savings Plan); and (3) cash accounts (e.g., checking, savings, certificates of deposit, money market accounts, etc.) at a single financial institution with a value of \$5,000 or less (unless more than \$200 of income was produced). Additional exceptions apply. Note that the type of income is not required if the amount of income is \$0 - \$200 or if the asset qualifies as an EIF.

- *Transactions*

Part 7 of the OGE Form 278e discloses purchases, sales, or exchanges of real property or securities in excess of \$1,000 made on behalf of the filer, the filer's spouse or dependent child during the reporting period. This section does not include transactions that concern the following: (1) a personal residence, unless rented out; (2) cash accounts (e.g., checking, savings, certificates of deposit, money market accounts, etc.) and money market mutual funds; (3) Treasury bills, bonds, and notes; and (4) holdings within a federal Thrift Savings Plan account. Additional exceptions apply.

- *Liabilities*

Part 8 of the OGE Form 278e discloses liabilities over \$10,000 that the filer, the filer's spouse, or the filer's dependent child owed at any time during the reporting period. With regard to a President, this section does not include the following types of liabilities: (1) loans secured by a personal motor vehicle, household furniture, or appliances, unless the loan exceeds the item's purchase price; and (2) revolving charge accounts, such as credit card balances, if the outstanding liability did not exceed \$10,000 at the end of the reporting period. Additional exceptions apply.

- *Gifts and Travel Reimbursements*

Part 9 of the OGE Form 278e discloses:

- Gifts totaling more than \$375 that the filer, the filer's spouse, and dependent children received from any one source during the reporting period; and
- Travel reimbursements totaling more than \$375 that the filer, the filer's spouse, and dependent children received from any one source during the reporting period.

For purposes of this section, the filer need not aggregate any gift or travel reimbursement with a value of \$150 or less. Regardless of the value, this section does not include the following items: (1) anything received from relatives; (2) anything received from the United States Government or from the District of Columbia, state, or local governments; (3) bequests and other forms of inheritance; (4) gifts and travel reimbursements given to the filer's agency in connection with the filer's official travel; (5) gifts of hospitality (food, lodging, entertainment, etc.) at the donor's residence or personal premises; and (6) anything received by the filer's spouse or dependent children totally independent of their relationship to the filer. Additional exceptions apply.

Note that annual filers are not required to complete Part 4 of the OGE Form 278e. Part 4 discloses sources (except the United States Government) that paid more than \$5,000 in a

calendar year for the filer’s services during any year of the reporting period. The filer discloses payments both from employers and from any clients to whom the filer personally provided services. The filer discloses a source even if the source made its payment to the filer’s employer and not to the filer. The filer does not disclose a client’s payment to the filer’s employer if the filer did not provide the services for which the client is paying.

*b. What steps does OGE require a President to take if any conflicts of interest are apparent on the face of a financial disclosure?*

Congress amended 18 U.S.C. § 202 in 1989 to clarify that 18 U.S.C. § 208 does not apply to a President.<sup>38 39</sup> Even prior to that amendment, OGE did not construe 18 U.S.C. § 208 as applicable to a President.<sup>40</sup> Nevertheless, it has been the consistent policy of the executive branch that a President should conduct himself “as if” he were bound by this financial conflict of interest law.<sup>41</sup> Given the unique circumstances of the Presidency, OGE’s view is that a President should comply with this law by divesting conflicting assets,<sup>42</sup> establishing a qualified blind trust,<sup>43</sup> or both. However, although every President in modern times has adopted OGE’s recommended approach, OGE has no power to require adherence to this tradition.

*c. What steps will OGE require to prevent acquisition of new conflicts by President-elect Trump and his Trump Organization?*

Please refer to OGE’s response to (2)(b), above.

QUESTION 3:

**3. *Transition Team—President-elect Trump’s three oldest children are members of the Presidential Transition team while continuing to serve as executives and officers in the Trump Organization. As leaders on the Transition team, his children will be party to***

<sup>38</sup> See Ethics Reform Act of 1989, Pub. L. No. 101-194, § 401 (1989); see also 18 U.S.C. § 202(c) (2012).

<sup>39</sup> Note that, as mentioned earlier, the STOCK Act separately imposes one limited conflict of interest restriction on the President. That law prohibits the President from participating in any particular matter directly and predictably affecting the financial interests of any person with whom he has, or is negotiating for, an agreement of future employment or compensation. STOCK Act, Pub. L. 112-105 at § 17. OGE has interpreted future employment or compensation as employment or compensation that will commence after a covered individual’s government service has ended. See OGE LA-13-06 (Apr. 25, 2013); OGE LA-12-01 (Apr. 6, 2012). However, it is Congress, not OGE, that possesses authority to address violations of law by sitting Presidents. U.S. Const., art. II, § 4.

<sup>40</sup> See OGE Opinion 83 x 16 (Oct. 20, 1983). Setting aside constitutional arguments, the merits of which are the subject of differing views, the inapplicability of the prohibition under 18 U.S.C. § 208(a) stems from the statute’s use of the terms “officer” and “employee,” which are generally construed to have the meanings assigned in 5 U.S.C. § 2104-05. See *Applicability of 18 U.S.C. § 207(c) to President-Elect’s Transition Team*, 29 Op. O.L.C. 127, 128 (Jul. 22, 2005) (“Title 18 does not define ‘officer’ or ‘employee,’ but we have found the definitions in title 5 to be the most obvious source of a definition for title 18 purposes” (internal quotation marks omitted)); see also *Application of Conflict of Interest Rules to Appointees Who Have Not Begun Service*, 26 Op. O.L.C. 32 (May 8, 2002) (“Because title 18 sets out no definition of ‘officer’ or ‘employee,’ we have looked to the definitions in title 5 as the most obvious source of a definition for title 18 purposes” (internal quotation marks omitted)).

<sup>41</sup> See OGE Advisory 83 x 16 (Oct. 20, 1983) (and authorities cited therein).

<sup>42</sup> In lieu of a blind trust, the proceeds could be reinvested in diversified mutual funds. See 5 C.F.R. § 2640.201(a) (2016).

<sup>43</sup> See 5 U.S.C. app. § 102(f) (2012).

*sensitive government information and empowered to discuss matters of government policy and operations with the leadership of several federal agencies.*

- a. *What guidance has OGE provided to agency ethics officials regarding the handling of non-transition business communications from Mr. Trump's children and the Trump Organization during the transition?*

As explained in response to Question 1(c), OGE lacks authority over the Presidential transition team and its members, but will continue to provide training and guidance to agency ethics officials regarding provisions of the Standards of Conduct related to impartiality, misuse of position, and release of nonpublic information.

QUESTION 4:

4. ***President-elect Trump's Oldest Children and Jared Kushner***—*President-elect Trump has reportedly expressed interest in obtaining security clearances for his three oldest children and his son-in-law, Jared Kushner.*

- a. *What guidance has OGE provided to President-elect Trump's oldest children and Mr. Kushner concerning the management of their conflicts of interest while participating in executive branch deliberations?*

To the best of OGE's knowledge, these individuals are private citizens who have not been appointed to positions as officers or employees of the federal executive branch. For this reason, the criminal conflicts of interest law, 18 U.S.C. § 208, is inapplicable to them. Please refer to OGE's response to Question 1(c) for discussion of documents governing their activities in the capacity of PETT members.

- b. *Does President-elect Trump have legal authority to appoint these individuals to government positions?*

The Constitution of the United States authorizes the President to appoint officers and employees in the executive branch.<sup>44</sup> Various statutes and regulations outside OGE's purview may address the exercise of that authority.<sup>45</sup> The U.S. Department of Justice, the U.S. Office of Personnel Management, the U.S. Office of Special Counsel, and the U.S. Merit Systems Protection Board may have some role in interpreting such authorities.

- c. *Are President-elect Trump's children and Mr. Kushner exempt from conflict of interest laws?*

Please refer to OGE's response to Question 4(a).

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<sup>44</sup> U.S. Const., art. II, § 2, cl. 2.

<sup>45</sup> See, e.g., 5 U.S.C. § 3110 (2012).

- d. *Has OGE provided guidance to these individuals to ensure they disqualify themselves from matters in which they have financial interests and to prevent inadvertent disclosure of confidential government information?*

Please refer to OGE's response to Question 4(a).

QUESTION 5:

5. ***Ongoing Financial Disclosure Obligations***—*President-elect Trump has disclosed a large portfolio of financial interests that include securities interests in several investment companies. President-elect Trump will be under an ongoing obligation to file public reports of any securities transactions so that the public may understand his financial interests.*

- a. *What guidance has OGE provided to President-elect Trump to ensure he continues to file any required financial disclosures of securities transactions?*

OGE provides assistance to the PETT and the White House. As part of this effort, OGE will be providing the PETT and, after January 20, 2016, the White House assistance in complying with applicable financial disclosure requirements. OGE has also made information available on its website in the form of legal advisories, a public financial disclosure guide, and training materials.<sup>46</sup> In addition, OGE's electronic filing system is available to assist public filers with satisfying public financial disclosure requirements.<sup>47</sup> A President's public financial disclosure reports are filed with OGE.<sup>48</sup>

- b. *How often will President-elect Trump be required to file such disclosures?*

Annual public financial disclosure reports are filed annually on or before May 15 each year.<sup>49</sup> Periodic transaction reports are filed by the earlier of 45 days after the transaction or 30 days after receiving notification of the transaction.<sup>50</sup> Additional information regarding periodic

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<sup>46</sup> OGE's legal advisories are available online at <https://www.oge.gov/Web/OGEnsf/Legal%20Advisories>. OGE's online Public Financial Disclosure Guide is available online at <https://www.oge.gov/Web/278eGuide.nsf>. Examples of OGE's training materials are available online at <https://www.youtube.com/user/OGEinstitute> and <https://plus.google.com/+OGEinstitute>. Checklists for nominee financial disclosure reports, which would also be useful for a President's representatives, are available at [https://www.oge.gov/Web/OGEnsf/0/BC975C546E68A21C852580560045BE83/\\$FILE/Financial%20Disclosure%20Checklists.pdf](https://www.oge.gov/Web/OGEnsf/0/BC975C546E68A21C852580560045BE83/$FILE/Financial%20Disclosure%20Checklists.pdf). A guide for Presidential nominees and an appendix to that guide, both of which contain information that would be useful for a President's representatives are available at [https://www.oge.gov/Web/OGEnsf/0/908088E45E5A64778525801B00590DD5/\\$FILE/Final%20Nomination%20Guide%20Spreads%20Optimized%20Web.pdf](https://www.oge.gov/Web/OGEnsf/0/908088E45E5A64778525801B00590DD5/$FILE/Final%20Nomination%20Guide%20Spreads%20Optimized%20Web.pdf) and [https://www.oge.gov/Web/OGEnsf/0/0EA56347F998FFA78525801B0058E0F9/\\$FILE/Final%20Appendix%20Spreads%20Web%20.pdf](https://www.oge.gov/Web/OGEnsf/0/0EA56347F998FFA78525801B0058E0F9/$FILE/Final%20Appendix%20Spreads%20Web%20.pdf), respectively. A guide for the transition team is available online at [https://www.oge.gov/Web/OGEnsf/0/915128106F6180848525801B0059371D/\\$FILE/Transition%20Guide%20Spread.pdf](https://www.oge.gov/Web/OGEnsf/0/915128106F6180848525801B0059371D/$FILE/Transition%20Guide%20Spread.pdf).

<sup>47</sup> That system is available online at <https://integrity.gov/efeds-login/>.

<sup>48</sup> 5 U.S.C. app. § 103(b) (2012).

<sup>49</sup> 5 U.S.C. app. § 101(c) (2012).

<sup>50</sup> 5 U.S.C. app. § 103(l) (2012).

transaction reports can be found in OGE's legal advisories.<sup>51</sup> Termination financial disclosure reports are filed on or before the thirtieth day after terminating employment in a filing position.<sup>52</sup>

*c. Will OGE or the White House Counsel be responsible for assessing fines for any late filings?*

Having never encountered this issue, OGE does not currently know whether a sitting President can be assessed late filing fees.<sup>53</sup> If so, the Counsel to the President is responsible for collecting them.<sup>54</sup>

QUESTION 6:

**6. *Outside Fiduciary Positions***—*President-elect Trump has disclosed that he serves as chairman or board member of hundreds of companies. As a board member or officer, he owes those entities and their investors legal fiduciary duties that have the potential to interfere with his duties as president.*

*a. What guidance has OGE provided to President-elect Trump regarding his outside positions and the steps he should take to address potential conflicts of interest?*

The President-elect has indicated publicly that he will announce a plan for resolving his conflicts of interest on December 15, 2016. Although OGE offered to provide recommendations, OGE has not been involved in developing that plan. Please refer to Question 2(b) for discussion of OGE's views on conflicts of interest.

*b. What safeguards will OGE establish to prevent conflicts of interest between his legal fiduciary obligations to these companies and his legal obligations and duties as President?*

Please refer to Question 2(b).

**7. *Misuse of Image***—*Longstanding White House policy across Administrations prohibits the use of the President's name or image in advertising or for the endorsement of any commercial product or service.*

*a. What guidance has OGE provided to President-elect Trump regarding the use of his name and image for the endorsement of the Trump Organization or his children's businesses?*

The policy to which this question refers is outside OGE's purview. Furthermore, OGE is not familiar with that policy or its interpretation and application by the White House.

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<sup>51</sup> See OGE LA-12-04 (Jun. 20, 2012); OGE LA-13-01 (Jan. 18, 2013).

<sup>52</sup> 5 U.S.C. app. § 101(e) (2012).

<sup>53</sup> See 5 U.S.C. app. § 104 (2012); cf. A Sitting President's Amenability to Indictment and Criminal Prosecution, 24 Op. O.L.C. 222 (Oct. 16, 2000).

<sup>54</sup> 5 U.S.C. app. § 104(d) (2012); 5 C.F.R. § 2634.704 (2016).

**U.S. House of Representatives**  
**Committee on the Judiciary**  
Washington, DC 20515-6216  
One Hundred Fourteenth Congress

November 30, 2016

The Honorable Bob Goodlatte  
Chairman  
House Committee on the Judiciary  
2138 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Goodlatte:

As the Committee with jurisdiction of the Ethics in Government Act, we write to urge you to hold hearings immediately to examine the issue of the federal conflicts-of-interest and ethics provisions that may apply to the President of the United States.

This request is all the more urgent in light of president-elect Trump announcement this morning that he will be “leaving [his] great business” to his children, a move he felt would be “visually important.”<sup>1</sup>

Although we do not yet know the details of his proposal, this announcement raises a number of questions, including whether Mr. Trump intends to legally transfer ownership of his assets to his children, or simply allow them to manage his assets; the extent his children will continue to be involved in his Administration and whether they will be subject to an “ethics firewall;” whether businesses, foreign governments, and others will continue to be able to take actions that benefit Mr. Trump and his family; and what level of transparency in these matters Mr. Trump will provide.

Noted legal experts Norman Eisen and Richard Painter, the chief White House ethics lawyers for Presidents Obama and George W. Bush, respectively, have already expressed concerns about Mr. Trump’s inescapable business entanglements: “unless [Mr. Trump] divests

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<sup>1</sup> Drew Harwell, *Trump announces he will leave business ‘in total’ – leaving open how he will avoid conflicts of interest*, WASH. POST, Nov. 30, 2016.

ownership, he will have an interest in the foreign government payments and benefits that flow to his business daily. That creates such a serious conflict of interest that the framers of the constitution prohibited it for presidents in the emoluments clause.”<sup>2</sup>

The issue is particularly important given the continued cascade of reports outlining President-Elect Donald Trump’s apparent disregard for conflicts of interest he may already face.<sup>3</sup> Just last week, Mr. Trump denied that it is even possible for a president to have a conflict of interest.<sup>4</sup> An independent report shows that understanding of the law to be mistaken.

At our request, the Congressional Research Service has compiled a list of federal ethics and conflict-of-interest rules that may apply to the President-Elect when he assumes office. These rules include:

- Article I, section 9, clause 8 of the United States Constitution, which prohibits the President from accepting any “emolument” from any foreign power.
- 5 U.S.C. app. §§ 101-111, the Ethics in Government Act, which requires federal officials to make certain financial disclosures.
- 5 U.S.C. § 3110, which restricts the President’s employment of his relatives.
- 5 U.S.C. § 7342, which governs the receipt and disposition of gifts from foreign officials and heads of state.
- 5 U.S.C. § 7353, which restricts the receipt of gifts by federal employees.
- 18 U.S.C. § 201, which prohibits bribery of public officials.
- 18 U.S.C. § 211, which prohibits the acceptance of gifts in connection with appointment to public office.
- 18 U.S.C. § 219, which prohibits officers and employees of the United States from acting as agents of a foreign power.

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<sup>2</sup> Adam Liptak, *Donald Trump’s Business Dealings Test a Constitutional Limit*, N.Y. TIMES, Nov. 21, 2016.

<sup>3</sup> See, e.g., Richard C. Paddock et al., *Potential Conflicts Around the Globe for Trump, the Businessman President*, N.Y. TIMES, Nov. 26, 2016; Rosalind S. Helderman & Tom Hamburger, *Trump’s presidency, overseas business deals and relations with foreign governments could all become intertwined*, WASH. POST, Nov. 25, 2016; *Donald Trump’s Conflicts of Interest*, THE ECONOMIST, Nov. 26, 2016.

<sup>4</sup> *Donald Trump’s New York Times Interview: Full Transcript*, N.Y. TIMES, Nov. 23, 2016.

- 18 U.S.C. § 1905, which prohibits the disclosure of confidential information, including trade secrets and other proprietary information, learned by an official in the course of his or her official duties.

We have attached the CRS work product for your convenience. This memorandum makes clear that, in addition to the emoluments clause, a number of applicable conflict of interest laws that would apply to a President Trump and his family. In addition, our committee has received legislative referrals of legislation that would further expand these restrictions. We can certainly expect to receive additional legislative referrals in the future.

Donald Trump regularly boasts of the scale and global reach of his companies,<sup>5</sup> and he can be expected to face an array of situations in which his personal business interests are entwined with official policy matters. So far, however, he has indicated only that he will turn over day-to-day management of his holdings to three of his children, each of whom has played a role in his presidential transition, and who may continue to serve as informal advisors during his presidency.<sup>6</sup>

In the weeks since his election, a number of incidents have occurred which may well cross the lines of ethical behavior. Citing to just a few examples:

- Mr. Trump met with Indian business partners who are seeking to capitalize on his victory to extend the Trump brand throughout India.<sup>7</sup>
- Foreign diplomats booked rooms in Mr. Trump's Washington D.C. hotel in an effort to curry favor with him.<sup>8</sup>
- Mr. Trump reportedly encouraged the leader of a British political party to oppose offshore wind farm projects because such projects could block the views from one of Mr. Trump's golf courses.<sup>9</sup>

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<sup>5</sup> *Donald Trump's New York Times Interview: Full Transcript*, N.Y. TIMES, Nov. 23, 2016 ("When I filed my forms with the [F]ederal [E]lection [Commission], people said, 'Wow that's really a big company, that's a big company.' It really is big, it's diverse, it's all over the world.").

<sup>6</sup> See Editorial, *The Trump Family Political Business*, WALL ST. JOURNAL, Nov. 17, 2016.

<sup>7</sup> Editorial, *Donald Trump's Caldron of Conflicts*, N.Y. TIMES, Nov. 25, 2016.

<sup>8</sup> Jonathan O'Connell & Mary Jordan, *For foreign diplomats, Trump hotel is place to be*, WASH. POST, Nov. 18, 2016.

<sup>9</sup> Danny Hakim & Eric Lipton, *With a Meeting, Trump Renewed a British Wind Farm Fight*, N.Y. TIMES, Nov. 21, 2016.

Such conduct may also implicate the emoluments clause of the U.S. Constitution, which prohibits United States officials from accepting gifts from foreign powers without the consent of Congress.<sup>10</sup> There is concern that foreign governments and government-owned corporations may steer business to him, or offer him favorable business terms, in an effort to gain political influence with his administration.<sup>11</sup>

To avoid such inevitable conflicts, a broad range of scholars has urged President-Elect Trump to liquidate his assets. This viewpoint includes Richard Painter, President George W. Bush's chief ethics lawyer,<sup>12</sup> Norman Eisen, President Barack Obama's chief ethics lawyer,<sup>13</sup> conservative columnist Peggy Noonan,<sup>14</sup> and even the *Wall Street Journal* Editorial Page.<sup>15</sup> It would seem that allowing his children to simply continue to operate his businesses would fall far short of these standards.

The American people should never have to question whether their president is working on their behalf or rather on behalf of his own personal interests.

For all the foregoing reasons, we ask that you schedule hearings, without delay, to examine these critical issues.

Sincerely,



Handwritten signature of John Conyers in blue ink, written over a horizontal line.



Handwritten signature of Gerald Rade in blue ink, written over a horizontal line.

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<sup>10</sup> U.S. CONSTITUTION, Art. I, Sec. 9, cl. 8 ("no Person holding any Office of Profit or Trust under [the United States] shall, without Consent of Congress, accept ... any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.").

<sup>11</sup> See Adam Liptak, *Donald Trump's Business Dealings Test a Constitutional Limit*, N.Y. TIMES, Nov. 21, 2016; Ailsa Chang, *Trump's International Business Dealings Could Violate the Constitution*, NAT. PUB. RADIO, Nov. 22, 2016.

<sup>12</sup> Richard W. Painter, *Trump must address conflicts of interest*, CNN, Nov. 18, 2016.

<sup>13</sup> Richard W. Painter & Norman Eisen, *Trump's 'blind trust' is neither blind nor trustworthy*, WASH. POST, Nov. 15, 2016.

<sup>14</sup> Peggy Noonan, *No More Business As Usual, Mr. Trump*, WALL ST. JOURNAL, Nov. 24, 2016.

<sup>15</sup> Editorial, *The Trump Family Political Business*, WALL ST. JOURNAL, Nov. 17, 2016.

Frank Johnson

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UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



January 16, 2017

The Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and Government Reform  
United States House of Representatives  
2157 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Chaffetz:

In a letter dated January 12, 2017, you requested that I attend a transcribed interview with your Committee staff to answer questions about the role of the U.S. Office of Government Ethics (OGE). Over the weekend, your office modified your original request and proposed a private meeting with you and the Ranking Member and your respective staffs to take place on January 23. Through staff, I requested that meeting be open to the public. I recently received word from your Chief of Staff that you are not able to accommodate that request. I write to ask you to reconsider. Allowing the public to attend our meeting—or, at the very least, to view it through live broadcast or the attendance of the news media—would ensure transparency and educate the public about how OGE guards the executive branch against conflicts of interest.

As you know, I have devoted most of my career to government ethics. I believe passionately that ethics matters and that if Americans do not have confidence that their government leaders' decisions are free from conflicts, the integrity of our government suffers. I have had the honor of helping thousands of officials from both parties ensure that their work is free from any conflicts of interest. In recent weeks, I have spoken publicly about my concerns about the President Elect's current plan to not divest—as well as to applaud some of his nominees' ethics agreements, such as Rex Tillerson's. My remarks were intended to educate the public about the shortcomings of the President Elect's current plan and made in the hopes of persuading him to make adjustments that will resolve his conflicts of interest. I believe these remarks to be in line with OGE's mission.

OGE is an independent agency that aims to prevent conflicts of interest in the executive branch. A core function of OGE is to educate the public about government ethics and “promote transparency of the executive branch ethics program by raising the visibility of the ethics



The Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and Government Reform  
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program and OGE, and by ensuring that ethics information is publicly available.”<sup>1</sup> Since the election, there has been significant public interest in OGE and government ethics issues. Our office has received an unprecedented volume of telephone calls, emails, and letters from members of the public related to our executive branch ethics program. As these communications make clear, the public wants to understand conflicts of interest in government and the role that OGE plays in preventing conflicts from hindering effective governance. Holding our meeting in public is in accordance with OGE’s educational function and will further ensure transparency in how we approach ethical governance.

Although I am willing to attend a private meeting if you insist, I am hopeful that you will agree that a public meeting is preferable. If a different date would allow for a public meeting, I would be happy to discuss alternative dates with you or your staff.

Sincerely,

Walter M. Shaub, Jr.  
Director

cc. The Honorable Elijah E. Cummings  
Ranking Member  
Committee on Oversight and Government Reform  
United States House of Representatives  
2471 Rayburn House Office Building  
Washington, DC 20515

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<sup>1</sup> See <https://www.oge.gov/web/oge.nsf/Mission%20and%20Responsibilities>; see also, e.g., 5 C.F.R. § 2638.108(a)(16) (“The Office of Government Ethics conducts outreach to inform the public of matters related to the executive branch ethics program.”).