


THE WHITE HOUSE

Washington

January 25, 2017

MEMORANDUM FOR THE DIRECTOR OF THE OFFICE OF GOVERNMENT ETHICS

FROM: Stefan C. Passantino, Deputy Counsel to the President and Designated White House Ethics Official 

SUBJECT: Application for a Certificate of Divestiture for Jared C. Kushner

Pursuant to 5 C.F.R. § 2634.1005(b), I am forwarding you a request from Jared C. Kushner for a certificate of divestiture.

Consistent with § 2634.1005(b)(1), I am enclosing the most recent draft of the OGE-278e new entrant report that Mr. Kushner will be submitting consistent with normal procedures. My understanding is that your office has agreed that this draft provides a sufficient basis to assess whether a certificate of divestiture is appropriate.

Consistent with § 2634.1005(b)(3), I am providing a brief description of Mr. Kushner's position. As Senior Advisor to the President, Mr. Kushner will be one of the President's closest advisors and provide him counsel on a broad range of issues. His work will not be limited to a defined portfolio, and I expect that, from time to time, unforeseen issues will arise that require his urgent attention.

Consistent with § 2634.1005(b)(2), I am providing an opinion describing why the divestiture of the property at issue is reasonably necessary to comply with 18 U.S.C. § 208. As you know, Section 208(a) provides that "an officer or employee of the executive branch of the United States Government" may not "participate[] personally and substantially as a Government officer or employee ... in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, [or] minor child, ... has a financial interest." This law prohibits an employee from participating "personally and substantially" in a particular matter that will "will have a direct and predictable effect" on a financial interest of the employee. 5 C.F.R. § 2640.103(a).

"Particular matters" that give rise to the prohibition under § 208 are "matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons." 5 C.F.R. § 2640.103(a)(1). A "particular matter" does not "cover consideration or adoption of broad policy options directed to the interests of a large and diverse group of persons," but it does cover "legislation or policy making that is narrowly focused on the interests of a discrete and identifiable class of persons," including a particular industry. *Id.* OGE has explained that the term "particular matter" "covers two categories of matters: (1) those that involve specific parties ..., and (2) those that do not involve specific parties but at least focus on the interests of a discrete and identifiable class of persons, such as a particular industry or profession." OGE Advisory Op. 06 x 9 at 7.

The assets of Mr. Kushner and his family described in Schedule A are broad and diverse. If retained, they would significantly hamper his ability to fulfill his duties. These interests cover a broad range of industries that could be affected by particular matters on which Mr. Kushner would otherwise be expected to participate personal and substantially. Examples of such holdings, and the financial conflicts they would likely create if retained, are described below. Many, but not all, of these interests are held through several funds managed by Thrive Capital, a venture capital firm, and through BFPS Ventures LLC, a private investment vehicle.

- Many of Thrive Capital's investments are in the technology and electronic commerce sectors. Thrive's investments in these sectors include such companies as Twitch, Harry's, Kickstarter, Paperless, Warby-Parker, Spotify, Compass, and Justworks, among many others. Mr. Kushner additionally holds interests in (b) (4), (b) (6) a private investment vehicle called BFPS Ventures LLC, (b) (4), (b) (6). If Mr. Kushner retains these interests, it would likely disqualify him from participating in particular matters that will have a direct and predictable effect on the technology and electronic commerce sectors.
- In addition, many more particular matters could have a direct and predictable effect on specific Thrive Capital holdings due to the nature of the company's business. For example:
  - One major holding of multiple Thrive Capital funds is Oscar Health Insurance. Mr. Kushner's continuing interest in Oscar could require his recusal from a variety of particular matters that will have a direct and predictable effect on the health insurance industry.
  - Another Thrive Capital holding is Morty's, Inc., a mortgage broker. Mr. Kushner's continuing interest in Oscar would require his recusal from a variety of particular matters that will have a direct and predictable effect on the mortgage brokerage industry.
  - Other Thrive Capital holdings are active in education, fitness, video messaging, payment process, consumer lending, medical billing, renters and homeowners insurance, and a host of other industries.
- Mr. Kushner owns an interest in Regal Bank. Likewise, his family owns shares of Signature Bank New York. Continuing ownership of these assets would require Mr. Kushner's recusal from particular matters that will have a direct and predictable effect on the banking industry.
- Mr. Kushner's interest in Broadband Proliferation Partners, LLC, a company that identifies and certifies buildings with the fastest and most reliable internet connections, could require his recusal from particular matters that will have a direct and predictable effect on the broadband industry and broadband providers in particular.
- Mr. Kushner's family owns publicly traded shares of the Hennessy Gas Utility Index Fund. This sector-specific fund tracks the American Gas Association Stock Index. In

addition, through the private investment vehicle BFPS Ventures LLC, Mr. Kushner owns an interest in Circle 9, an oil and gas exploration company. The family's continued ownership of these assets would require Mr. Kushner's recusal from particular matters that will have a direct and predictable effect on the oil and gas industries.

Retaining these and the other assets at issue would expose Mr. Kushner to a broad range of potential conflicts during his government service. Recusal is not a practical remedy, for two reasons. *First*, the breadth of the required recusals would render it difficult for Mr. Kushner to perform in his role as Senior Advisor to the President. *Second*, Mr. Kushner's participation in matters will often be ad hoc and in response to urgent requests from the President or other senior staff. This dynamic, combined with the diversity and breadth of Mr. Kushner's financial interests, would make it very difficult for any employee to identify and remove himself from potential conflicts. For these reasons, Mr. Kushner has appropriately agreed to divest these assets. That divestment is reasonably necessary to comply with 18 U.S.C. § 208.