

From: [David J. Apol](#)
To: [Passantino, Stefan C. EOP/WHO](#)
Cc: [Director of OGE](#)
Subject: Calls regarding Nordstrom statements
Date: Thursday, February 09, 2017 11:40:43 AM

Stefan,

This email is to confirm the content of the two calls we had yesterday afternoon and this morning.

Walt and I initiated the discussion yesterday regarding the President's tweet concerning the decision of Nordstrom to stop carrying his daughter's line of products. During the call, we reiterated OGE's recommendation that the President should conduct himself as though he is covered by the Standards of Conduct, including 2635.702 (Misuse of Position). (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

After Kellyanne Conway encouraged the public to buy the products of the President's daughter this morning, you initiated a call to me. You expressed that you wanted to reassure OGE that, as the Counsel to the President for Ethics and Compliance, you will be taking appropriate action to address her conduct and that of the individuals we discussed yesterday. I thanked you initiating this call and for your reassurance. I also recommended that you counsel all White House staff regarding the misuse of position rule.

In light of the attention this issue has drawn and the volume of calls OGE is receiving, we discussed that OGE will need to be able to reassure the public that we are addressing this issue with you. You stated that you understood and did not want to interfere.

As I indicated in our phone call, we need you to follow up after you address this matter by informing OGE of whatever action you take. Please let me or Walt know as soon as possible what action is taken.

Dave

David J. Apol
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TED W. LIEU
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Congress of the United States

House of Representatives

Washington, DC 20515-0533

February 9, 2017

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Walter M. Shaub, Jr
Director
Office of Government Ethics
1201 New York Avenue NW
Washington, DC 20005

Dear Director Shaub,

Thank you for your service. I write today to call your attention to the recent actions of a member of the White House senior staff, Ms. Kellyanne Conway.

In an appearance this morning on the Fox News program "Fox & Friends," Ms. Conway made the following remarks regarding the Ivanka Trump fashion line: "Go buy Ivanka's stuff, is what I would tell you. It's a wonderful line. I own some of it. I fully – I'm going to just, I'm going to give a free commercial here: Go buy it today, everybody. You can find it online."

Ms. Conway's endorsement of any privately owned business – let alone a company owned by an immediate family member of her employer, the President of the United States – is a clear violation of federal ethics law. The regulations in this area are quite clear. Title 5, Section § 2635.702 of the U.S. Code of Federal Regulations states:

"An employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations."

Ms. Conway's comments are a clear violation of the letter and spirit of the law. Given President Trump's apparent view that federal ethics rules do not apply to his office, I respectfully request the Office of Government Ethics to investigate this incident. Pursuant to Title 5, Section § 2638.503 of the U.S. Code of Federal Regulations, I urge you to immediately notify the White House of the violation of government ethics law in order to prompt corrective action.

Addressing this early and egregious violation is critical to ensuring the Administration's future adherence to the law.

Sincerely,



Ted W. Lieu
Member of Congress

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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February 9, 2017

The Honorable Walter M. Shaub, Jr.
Director
U.S. Office of Government Ethics
1201 New York Avenue NW
Washington, D.C. 20005

Dear Mr. Shaub:

Counselor to the President Kellyanne Conway gave a public interview this morning that raised extremely serious concerns. During the interview, Conway advertised and endorsed a commercial line of products associated with President Trump's daughter, Ivanka Trump.¹ Conway was acting in her official capacity, was identified as "Counselor to President Trump," and gave the interview at the White House in front of the White House seal.² During the interview, Conway discussed the decision by some U.S. companies to cease sales of products from Ivanka's fashion line, which is named after Ivanka and in which she holds an ownership stake.³

In the course of the interview, Conway repeatedly and explicitly endorsed Ivanka Trump's products. She stated, "Go buy Ivanka's stuff is what I would tell you." Later, she said, "It's a wonderful line. I own some of it. I fully — I'm going to give a free commercial here. Go buy it today, everybody. You can find it online."⁴ Conway's statements clearly violate the ethical principles for federal employees and are unacceptable. The White House's reported decision to counsel Conway supports this conclusion.⁵

Conway's statements appear to violate federal ethics regulations, which prohibit actions that imply a government endorsement of the "personal activities" of another person. Specifically, Office of Government Ethics (OGE) regulations state:

[A]n employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that

¹ *Fox & Friends* (Fox News television broadcast Feb. 9, 2017).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ E.g., Louis Nelson, *White House: Conway Has Been 'Counseled' for Urging People to Buy Ivanka's Products*, POLITICO, Feb. 9, 2017, available at <http://www.politico.com/story/2017/02/kellyanne-conway-ivanka-nordstrom-white-house-react-234856>.

could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another.⁶

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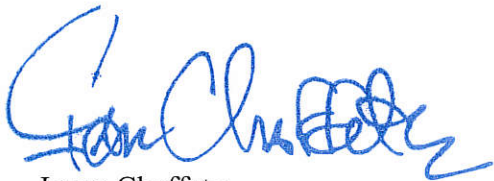
An employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product, service or enterprise⁷

In this case, Conway's statements from the White House using her official title could appear to constitute an explicit endorsement and advertisement for Ivanka Trump's personal business activities.

As the director of OGE, you have authority to review potential ethics violations and notify the employee's agency, which in this case is the White House. In this case, there is an additional challenge, which is that the President, as the ultimate disciplinary authority for White House employees, has an inherent conflict of interest since Conway's statements relate to his daughter's private business. For this reason, we request that you use authority Congress granted to you under the Ethics in Government Act of 1978, as amended, to "recommend to the head of the officer's or employee's agency that appropriate disciplinary action (such as reprimand, suspension, demotion, or dismissal) be brought against the officer or employee."⁸

We request you review Conway's statements and act promptly on the basis of your findings. We also ask you to report back to the Committee with your recommendation for disciplinary action, if warranted.

Sincerely,



Jason Chaffetz
Chairman



Elijah E. Cummings
Ranking Minority Member

cc: The Honorable Donald F. McGahn II, Counsel to the President
The White House

⁶ 5 C.F.R. § 2635.702(b) (2016).

⁷ 5 C.F.R. § 2635.702(c) (2016).

⁸ 5 U.S.C. Appendix—Ethics in Government Act of 1978, Title IV, § 402(f)(2).

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February 9, 2017

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to request that the Committee refer for review and potential disciplinary action statements made on national television by Kellyanne Conway, the Counselor to President Donald Trump, that directly promoted and endorsed the President's daughter's private business. This appears to be a textbook violation of government ethics laws and regulations enacted to prevent the abuse of an employee's government position.

During an interview on Fox News this morning, Ms. Conway appeared in her official capacity in front of the official White House seal. She stated that Ivanka Trump had "developed another fully, unbelievably, entrepreneurial, wildly successful business that bears her name." She added: "Go buy Ivanka's stuff is what I would tell you. I hate shopping, I'm going to go get some myself today." She continued: "It's a wonderful line. I own some of it. I fully, I'm going to just give a free commercial here. Go buy it today everybody. You can find it online."¹

In 1966, Congress passed and the President signed a federal ethics law, set forth in 5 U.S.C. §7301, which states: "The President may prescribe regulations for the conduct of employees in the executive branch." In 1989, President George H.W. Bush issued Executive Order 12674 setting forth "Principles of Ethical Conduct for Government Officers and Employees." One of the key principles in that Executive Order is that employees "shall not use public office for private gain."²

In addition, federal regulations implementing the law provide as follows:

An employee shall not use his public office for his own private gain, for the endorsement

¹ *Fox & Friends*, Fox News (Feb. 9, 2017) (online at <http://insider.foxnews.com/2017/02/09/kellyanne-conway-ivanka-trump-retailers-go-buy-her-stuff>).

² Executive Order No. 12674, Principles of Ethical Conduct for Government Officers and Employees (Apr. 12, 1989).

of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity.³

Under the section of these regulations entitled "Corrective Action Involving Individual Employees," the Office of Government Ethics (OGE) has authority to review potential violations and recommend discipline ranging from suspension to loss of pay to removal.⁴

Don W. Fox, the former General Counsel and Acting Director of OGE, stated during an interview with the Washington Post: "Conway's encouragement to buy Ivanka's stuff would seem to be a clear violation of rules prohibiting misuse of public office for anyone's private gain." He also warned:

This is jaw-dropping to me. This rule has been promulgated by the federal Office of Government Ethics as part of the Standards of Conduct for all executive branch employees and it applies to all members of the armed forces as well.⁵

Since the Committee has direct jurisdiction over the ethics laws applicable to White House employees, I request that the Committee make an official referral of this matter to the Office of Government Ethics and request that it report back to the Committee as soon as possible with its findings.

I would appreciate a response to this request by the close of business on February 10, 2017. Thank you for your prompt consideration.

Sincerely,



Elijah E. Cummings
Ranking Member

³ 5 C.F.R. § 2635.702.

⁴ 5 C.F.R. § 2638 (E).

⁵ *Conway May Have Broken Key Ethics Rule by Touting Ivanka Trump's Products, Experts Say*, Washington Post (Feb. 9, 2017) (online at www.washingtonpost.com/politics/conway-may-have-broken-key-ethics-rule-by-touting-ivanka-trumps-products-experts-say/2017/02/09/fd1cc64a-eeda-11e6-b4ff-ac2cf509efe5_story.html?utm_term=.3b031d5e42ee).