

**From:** [Walter M. Shaub](#)  
**To:** [Montgomery, David](#)  
**Subject:** Re: tiny fact checks.....RE: References  
**Date:** Friday, March 10, 2017 7:15:41 PM

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"If we couldn't laugh, we would all go insane."

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

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**From:** Montgomery, David  
**Sent:** Friday, March 10, 2017 6:57 PM  
**To:** Walter M. Shaub  
**Subject:** Re: tiny fact checks.....RE: References

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Thank you.

A Jimmy Buffett song is still a comfort now and then.

Best,  
David

David Montgomery  
The Washington Post  
C(b) (6) [REDACTED] C(b) (6) [REDACTED]  
(b) (6) [REDACTED]

On Mar 10, 2017, at 5:47 PM, Walter M. Shaub <[wmshaub@oge.gov](mailto:wmshaub@oge.gov)> wrote:

Oops, meant "Buffett"

I forgot all about that. Yes, I did wear a Hawaiian shirt. I don't think I bothered with the yearbook any other year, except for team photos. One afternoon in my senior year, I noticed a sign on a building announcing yearbook photos. They were free, so I popped inside. I remember the photographer asking if I wanted to go home and change first, but I was in my Parrothead phase and thought the Hawaiian shirt would have made Jimmy Buffett proud. That sort of logic made sense to the 22-year old version of me. The photo didn't come up in my Senate confirmation hearing, so I guess I got away with it until now.

**From:** Walter M. Shaub  
**Sent:** Friday, March 10, 2017 5:45 PM  
**To:** 'Montgomery, David'  
**Subject:** RE: tiny fact checks.....RE: References

**From:** Montgomery, David (b) (6) [REDACTED] ]  
**Sent:** Friday, March 10, 2017 5:15 PM  
**To:** Walter M. Shaub  
**Subject:** tiny fact checks.....RE: References

Dear Director Shaub,

Just checking a few things.

\*I noticed in the JMU yearbook that most of the young men have suits and ties for their senior photos, but it appears as though you went with a Hawaiian shirt. As a flash of personality, I thought I would mention it in passing.

I forgot all about that. Yes, I did wear a Hawaiian shirt. I don't think I bothered with the yearbook any other year, except for team photos. One afternoon in my senior year, I noticed a sign on a building announcing yearbook photos. They were free, so I popped inside. I remember the photographer asking if I wanted to go home and change first, but I was in my Parrothead phase and thought the Hawaiian shirt would have made Jimmy Buffet proud. That sort of logic made sense to the 22-year old version of me. The photo didn't come up in my Senate confirmation hearing, so I guess I got away with it until now.

\*On your Form 278e, I noticed the everyman detail that you are still paying a student loan, which I thought I would mention, without saying the amount or other detail.

It's a publicly available form, so that's not a secret.

\*Is it correct that your five-year term is up in January 2018 (as opposed to some other month?)

Yes. The last day of the term is January 8, 2018. (Not sure if that should be written as "ends on January 8" or "ends after January 8")

Thank you.

Best,

david

David Montgomery

The Washington Post

w (b) (6) c (b) (6)

(b) (6)

**From:** Walter M. Shaub [<mailto:wmshaub@oge.gov>]  
**Sent:** Friday, March 03, 2017 10:15 PM  
**To:** Montgomery, David (b) (6) >  
**Subject:** Re: References

Yes. Pretty much everything of mine is FOIA'd these days, so I'm sure they'll appreciate the shout out. We'll redact your email address and phone numbers, of course.

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

**From:** Montgomery, David

**Sent:** Friday, March 3, 2017 10:11 PM

**To:** Walter M. Shaub

**Subject:** Re: References

Dear Mr. Shaub,

Thank you for these thoughtful responses. I will keep you and your office posted on anything that might need to be clarified or checked. I think this will tentatively run April 2, but in any case there is production time in advance, so I must finish shortly.

One meta thought: Is now the time to say hello to the future FOIA filers who will read this email? Very well then, hello! ;->

Best,

David

David Montgomery

The Washington Post

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(b) (6)

On Mar 3, 2017, at 7:07 PM, Walter M. Shaub <[wmshaub@oge.gov](mailto:wmshaub@oge.gov)> wrote:

**What drew you to the field of ethics law? Does it go back to law school (even though I know your first lawyer job after law school was not related to ethics, as far as I can tell)? Was there a professor or ethics class or role model in the field that inspired you – or was it more happenstance? What has kept you engaged in this work? What do you like about it? What are the challenges?**

I was initially drawn more to public service in general than to ethics in particular. I grew up in the Washington, D.C., area and my father worked for the government. Watching this man I admired go to work for our country every day led me to view public service as meaningful. Over the course of my career, the assignments I enjoyed eventually led me to the field of government ethics. What I've enjoyed most about the ethics work is the mission of ensuring the integrity of the government's operations. I like feeling like I'm working for the good guys. As I think I may have said during my confirmation hearing, I am a true believer in the government ethics

program.

In response to your question about the challenges, I am reminded of something a mentor told me right at the very beginning of my career. He told me that there are two types of ethics questions. In the first type, the issues are complex, there's a lot of grey area, and it's hard to discern the right course of action. He told me that this is the hard type of ethics question. In the second type, there is no doubt about the right course of action, but the temptation or the risk is great. He told me never to forget that this is the *easy* type of ethics question. Do the right thing, he said. I've never forgotten his advice. The challenge is trying to live up to that standard. One of these days, I hope to get it right.

**I know from reading testimony of yours over the years, and from looking at the accomplishments listed in annual reports, that you value the public-facing work of your office, as a way of spreading information and best practices, whether by blog posts, seminars, yes even Twitter (beyond last Nov. 30) and other channels. Yet at the same time I sense an anxiety about the public role – your reluctance to speak publicly, whether in January at Brookings or to reporters on certain subjects. Can you address what you think your public role should be?**

OGE's role is to help the public understand the government ethics program. When I think that communicating publicly will help advance that goal I do it. However, I don't really want to be the story myself. I want OGE to be the story. The mission of this agency is critical, and my staff has worked hard to try to get the word about OGE's work out to the public. To that end, I would encourage anyone interested in learning more about OGE's work to check out our agency profile on OGE's webpage:

[https://www.oge.gov/web/oge.nsf/Resources/OGE+Agency+Profile+\(print+version\)\[oge.gov\]](https://www.oge.gov/web/oge.nsf/Resources/OGE+Agency+Profile+(print+version)[oge.gov]).

**What is the length of the workday for you and your colleagues during the transition of a president (any president)?**

It varies. During the last transition (2008/2009) we were in the office very late. That was challenging because they cut off the heat at 6:00 p.m. every night. I remember laughing about how bad our fingers hurt from the cold once it got to be around 11:00 p.m., and we made corny Bob Cratchit jokes about needing "*just one more lump of coal please.*" This time around, we have much better technology for working remotely. We have an improved capacity for logging into our virtual IT network from home, the ability to share desktop screens with one another, remote call-in lines, and an advanced electronic filing system that can be accessed from anywhere. As a result, most of the staff-level employees leave at the end of their normal workday but then log back into the system in the evening or on the weekend as needed to work on nominee reports or ethics

agreements when they receive responses or updates from nominees and their representatives. On the other hand, Deb Bortot, who is the nominee program manager, and Heather Jones, who is our senior nominee counsel, practically live at the office. (I'd say they sleep here, but I don't have any evidence that either of them has stopped working long enough to sleep since the transition began.) The busiest time so far was the stretch between Christmas and the inauguration when a number of employees worked most every weekend.

**Are you aware that there is a lively “Walter Shaub Fans” Facebook page, as well as a widely-shared Twitter image of your photo and a quote of yours on a t-shirt? What is your reaction to those manifestations of interest in you?**

I'm not really comfortable with the level of attention I'm getting, so I don't have anything to say about that. What I would like is to find ways to get people interested in learning more about OGE's ethics program. Here's another shameless plug for our agency profile on OGE's webpage:

[https://www.oge.gov/web/oge.nsf/Resources/OGE+Agency+Profile+\(print+version\)\[oge.gov\].](https://www.oge.gov/web/oge.nsf/Resources/OGE+Agency+Profile+(print+version)[oge.gov].)

**What are your pastimes/passions when not working?**

I love spending time with my wife and my dog. I like photography, but I'm not very good at it.

**The testimony at your confirmation hearing mentioned that your wife, Sheila, and parents were present. Can I say what line of work Sheila is in? (Fairfax County Schools?)** Sheila used to be an elementary school principal with Fairfax County Public Schools. She is now active in volunteer activities, mostly through our church.

**Without being specific, is it correct to say you live in the [redacted] area? Yes. Correct to say you were born in Ithaca, NY, and raised in northern Virginia and graduated from South Lakes High School in Reston? Yes.**

**Could we have this conversation in person?**

I have received so many requests for interviews that it's been overwhelming, and I don't have the ability to grant all of them. I'm concerned that it might be unfair to give an interview to one reporter after having turned down all the others. I would be willing to speak briefly on background instead, if I can be of help in clarifying any issue.

**From:** Montgomery, David (b) (6) [redacted]  
**Sent:** Friday, March 03, 2017 3:23 PM  
**To:** Elaine Newton  
**Subject:** RE: References

Dear Elaine,

Thank you for forwarding this to the director.

Dear Director Shaub,

I understand from Ms. Newton that you might be able to answer some questions not directly related to the transition, to help inform my profile of you.

- What drew you to the field of ethics law? Does it go back to law school (even though I know your first lawyer job after law school was not related to ethics, as far as I can tell)? Was there a professor or ethics class or role model in the field that inspired you – or was it more happenstance? What has kept you engaged in this work? What do you like about it? What are the challenges?
- I know from reading testimony of yours over the years, and from looking at the accomplishments listed in annual reports, that you value the public-facing work of your office, as a way of spreading information and best practices, whether by blog posts, seminars, yes even Twitter (beyond last Nov. 30) and other channels. Yet at the same time I sense an anxiety about the public role – your reluctance to speak publicly, whether in January at Brookings or to reporters on certain subjects. Can you address what you think your public role should be?
- What is the length of the workday for you and your colleagues during the transition of a president (any president)?
- Are you aware that there is a lively “Walter Shaub Fans” Facebook page, as well as a widely-shared Twitter image of your photo and a quote of yours on a t-shirt? What is your reaction to those manifestations of interest in you?
- What are your pastimes/passions when not working?
- The testimony at your confirmation hearing mentioned that your wife, Sheila, and parents were present. Can I say what line of work Sheila is in? (Fairfax County Schools?) Without being specific, is it correct to say you live in the Alexandria area? Correct to say you were born in Ithaca, NY, and raised in northern Virginia and graduated from South Lakes High School in Reston?
- Could we have this conversation in person?

Thank you for your time.

Best,

David

David Montgomery

The Washington Post

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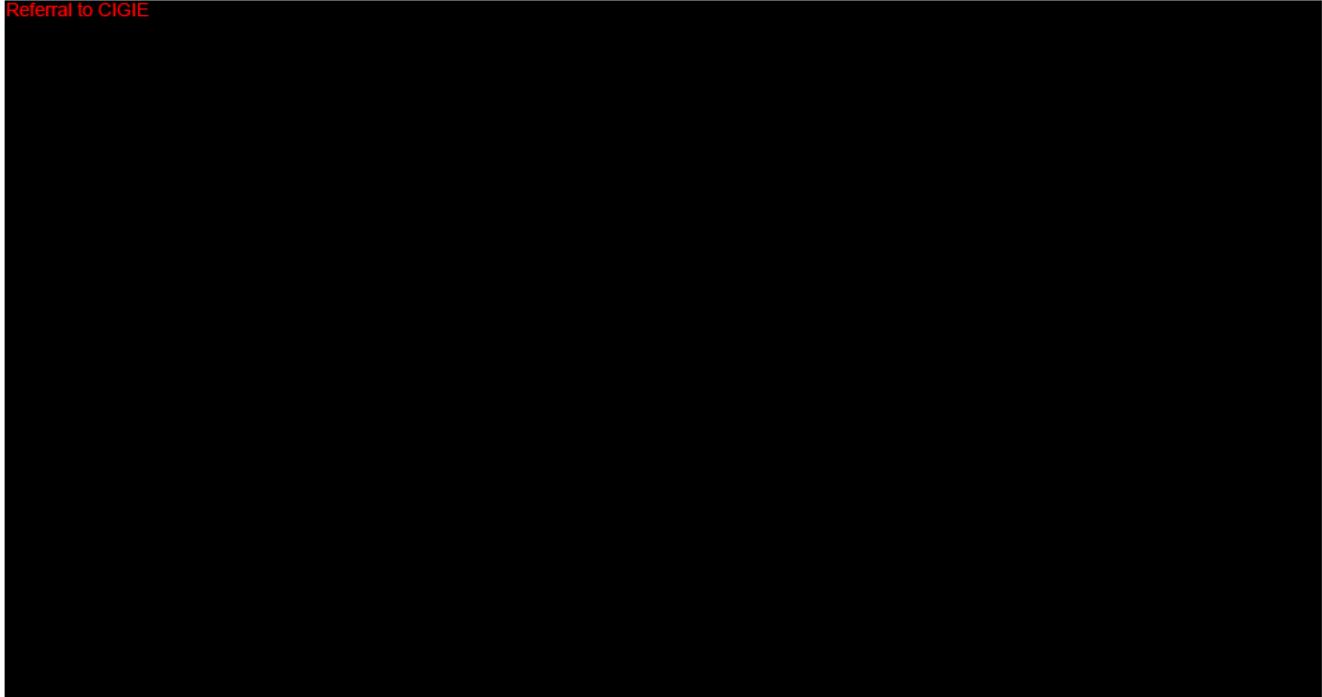
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Referral to DOS



Referral to CIGIE



**From:** Walter M. Shaub [mailto:[wmshaub@oge.gov](mailto:wmshaub@oge.gov)]  
**Sent:** Thursday, March 16, 2017 12:18 PM  
**To:** Dahl, Scott - OIG  
**Subject:** meetings

Sorry for the disconnect today due to a dead phone battery. I'm going to check in with Greg to confirm the upcoming schedule of meetings. I or my designee will be on the calls and join the meetings. At first, I'll bring him with me, and then he and I can alternate as needed.

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)

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Referral to CIGIE



Referral to OPM



**From:** [Walter M. Shaub](#)  
**To:** [Annie Leonard](#)  
**Cc:** [Gabrielle Leyden](#)  
**Subject:** Re: Request for further information regarding Secretary Tillerson and Keystone XL  
**Date:** Friday, March 17, 2017 9:30:44 AM

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1: 00 would be great. My assistant is out today, so I'll follow up with directions later today or Monday. I look forward to meeting with you.

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

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**From:** Annie Leonard  
**Sent:** Thursday, March 16, 2017 10:07 PM  
**To:** Walter M. Shaub  
**Cc:** Gabrielle Leyden  
**Subject:** Re: Request for further information regarding Secretary Tillerson and Keystone XL

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Thanks Walter. I appreciate your openness to meet.

If March 30th isn't good, I will be back to DC again, but perhaps not until May.

I am wide open on the 30th after a breakfast meeting, so could meet anytime after 9:30. Please name a time that works for you. 11? 1?

I would like to bring my colleague Naomi Ages.

And I have cc;ed my assistant, Gabrielle Leyden. Please do pass her name to your assistant and let us know what time works best on your end.

I look forward to meeting.  
Annie

On Tue, Mar 14, 2017 at 9:30 PM, Walter M. Shaub <[wmshaub@oge.gov](mailto:wmshaub@oge.gov)> wrote:

I'll find a way to make March 30 work. If you tell me what time works best for you, I'll have my assistant send you directions. He'll also give you his phone number in case you have any trouble. You can give him a list of anyone you'd like to bring.

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

**From:** Annie Leonard  
**Sent:** Tuesday, March 14, 2017 8:28 PM  
**To:** Walter M. Shaub  
**Subject:** Re: Request for further information regarding Secretary Tillerson and Keystone XL

Hi Walter,

Thanks so much for your generosity of time and information. I would be happy to meet. I am based in our San Francisco office, but in DC at least once a month. The next day that has openings is March 30th. Would anytime on the 30th work for us to meet in person? Meanwhile, I'm happy to connect your office with our local policy expert, Naomi Ages. Is there someone on your team with whom I can put Naomi directly in touch with?

Look forward to speaking and, again, thank you.

Annie Leonard

On Tue, Mar 14, 2017 at 2:52 PM, Walter M. Shaub <[wmshaub@oge.gov](mailto:wmshaub@oge.gov)> wrote:

If you're able to join the meeting, I would be happy to meet with you myself. Next week would be a little difficult, but I could meet with you the following week if you can offer a few dates and times that would work for you.

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](tel:202.482.9292)

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

**From:** Annie Leonard [mailto:(b) (6)]

**Sent:** Tuesday, March 14, 2017 2:47 PM

**To:** Walter M. Shaub

**Subject:** Re: Request for further information regarding Secretary Tillerson and Keystone XL

Director Shaub,

We again appreciate your prompt response to our most recent email. We acknowledge the difficulty and inconvenience that you faced last week. It is clear that our members from across the nation are engaged and relying on your ability to provide clarity and transparency in this new Administration. We also want to thank you for the candidness of our correspondence thus far and the advice you've given us on the best path forward.

We have an open FOIA request with the State Department submitted February 24, 2017 requesting information about Secretary Tillerson's recusals and any waivers sought or granted. We will follow-up with the State Department about that inquiry.

We would still appreciate the opportunity to sit down with a member of your office to discuss the importance of OGE's federal ethics oversight. Please let us know who in your office we should follow-up with.

Best,

Annie Leonard

On Mon, Mar 13, 2017 at 4:23 PM, Walter M. Shaub  
[wmshaub@oge.gov](mailto:wmshaub@oge.gov) wrote:

Ms. Leonard,

Thank you for your correspondence. I appreciate the importance of this issue and understand your interest in the requested information.

Some of the information you have requested is exclusively in the possession of the State Department. Below, I have endeavored to respond to the parts of your inquiry that are within OGE's control.

Although it is your right to do so, I would respectfully request that you consider refraining from launching another telephone campaign aimed at my direct phone line while the State Department considers its response to your request. We were hampered in responding to you last week because the high volume of calls shut down the phone lines of OGE senior leaders, delayed us in following up with State to ascertain the answer to your question, and continued for hours after we had responded. Other oversight activities were also adversely impacted, due both to the lack of phone service and the reassignment of several staff members to try to log the thousands of incoming calls.

To be candid, the recent interest in government ethics from the public has been quite heartening. I am encouraged by the support for the ethics program, and I hope we are honoring the public's trust. At the same time, the volume of calls, emails, and information requests has been daunting and, at times, has strained the resources that this tiny 75-person agency devotes to its oversight work. We are committed to transparency and to communicating with the public, which is why we have increased the resources devoted to responding to information requests. At the same time, if you are supportive of the ethics program, it would be helpful for us to have the full use of our phone lines. A larger agency, such as the State Department, may have greater capacity to handle a high volume of calls.

Here are responses to your questions:

We request that the State Department and the Office of Government Ethics make public

the reasoning for Secretary Tillerson's recusal in the Keystone XL decision, and any

communications with ethics staff about the recusal.

The rationale for his recusal is either a conflict of interest or a desire to avoid even the appearance of a loss of impartiality, as indicated Mr. Tillerson's ethics agreement. That agreement is posted online on OGE's website at the following address:

[https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/02AB20DA8210059D852580CB002C7C35/\\$FILE/Tillerson%20Rex%20W.%20%20finalAmendedEA.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/02AB20DA8210059D852580CB002C7C35/$FILE/Tillerson%20Rex%20W.%20%20finalAmendedEA.pdf)

As explained in his ethics agreement, he is required to recuse from any particular matter in which he has a financial interest. In addition, he is required to recuse from any particular matter involving specific parties in which Exxon or a subsidiary is a party. He has also committed that he will recuse from any particular matter involving specific parties in which a reasonable person with knowledge of the relevant facts would be concerned about his participation. I can confirm that the permit application is a particular matter involving specific parties.

We request that the State Department and the Office of Government Ethics provide

information regarding any other recusals or waivers (either sought or granted) that

Secretary Tillerson has made since his confirmation. It has been reported that President

Trump's Executive Order on ethics removes a requirement for an annual public report

that documents all ethics waivers granted to Executive Branch staff.<sup>1</sup> We believe that this

level of transparency is important for ensuring public accountability and we hope that the

State Department and the Office of Government Ethics will continue to take pro-active

steps to ensure this information is made public.

OGE has not been consulted on a waiver under 18 USC 208. As to waivers of the new ethics pledge, however, the executive order does

not require agencies to consult with OGE. I do not know whether he has received a waiver of the pledge. OGE continues to evaluate the issue of maintaining and disseminating information regarding ethics pledge waivers.

We request that the State Department make public the individuals who will be reviewing

the Keystone XL Presidential Permit, and making that decision in the Secretary's stead.

The State Department may be able to provide this information.

We also request that the State Department and the Office of Government Ethics pledge to

make public Secretary Tillerson's confirmation of divestment and compliance with his

ethics commitments that was promised within 90 days of his confirmation.

The most efficient way to gather this information would be to file a FOIA request after the 90-day divestiture period. You could also request a copy of any Certificate of Divestiture that OGE may issue to the Secretary. OGE has been working hard to respond promptly to all FOIA requests. Despite the significantly increased volume of FOIA requests, our track record for timely responses is still pretty good. Although I anticipate that OGE will be able to respond more quickly than the State Department, you may feel free to file separate requests with OGE and the State Department.

I hope this response is helpful to you. If you need additional information, I will assign a staff member to handle any follow-up request. Thank you again for your interest in the ethics program.

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](tel:202.482.9292)

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

**From:** Annie Leonard [mailto:(b) (6)]  
**Sent:** Monday, March 13, 2017 6:37 PM  
**To:** (b)(6) - Mcmanus's email address ; Walter M. Shaub  
**Cc:** (b)(6) - Huitema's email address (b)(6) - Ethics attorney mailbox email address  
Contact OGE  
**Subject:** Request for further information regarding Secretary Tillerson and Keystone XL

Dear Ms. McManus and Director Shaub,

No attachment found in search

Thank you both for your prompt reply to my letter dated March 8, 2017 regarding Secretary Tillerson and the Keystone XL pipeline. I am writing today with a few follow-up requests regarding this decision. Please see the attached letter.

If you have any questions, please don't hesitate to reach out to me. Thank you again for the work you do.

Sincerely,  
Annie Leonard  
Executive Director  
Greenpeace USA

--

**Annie Leonard**

*If you would like to schedule a call with Annie, please contact  
Gabrielle Leyden at (b) (6)*

Annie Leonard -- Greenpeace USA, Washington DC

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**Annie Leonard**

*If you would like to schedule a call with Annie, please contact  
Gabrielle Leyden at (b) (6) "██████████"*

Annie Leonard -- Greenpeace USA, Washington DC

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**Annie Leonard**

*If you would like to schedule a call with Annie, please contact Gabrielle Leyden  
at (b) (6) "██████████"*

Annie Leonard -- Greenpeace USA, Washington DC

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## Annie Leonard

*If you would like to schedule a call with Annie, please contact Gabrielle Leyden at  
(b) (6)*

 Annie Leonard -- Greenpeace USA, Washington DC

**From:** Schwartz, Benjamin (Casey)  
**To:** Director of OGE  
**Cc:** Shelley K. Finlayson; Matthew A. Marinec  
**Subject:** RE: response to Senator Casey's March 13, 2017  
**Date:** Friday, March 17, 2017 4:47:56 PM

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Received, thank you.

Best,

Ben

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**From:** Director of OGE [mailto:[director@oge.gov](mailto:director@oge.gov)]  
**Sent:** Thursday, March 16, 2017 5:38 PM  
**To:** Schwartz, Benjamin (Casey) **(b) (6)**  
**Cc:** Shelley K. Finlayson <[skfinlay@oge.gov](mailto:skfinlay@oge.gov)>; Matthew A. Marinec <[mamarine@oge.gov](mailto:mamarine@oge.gov)>  
**Subject:** response to Senator Casey's March 13, 2017

Attachment released below

Attached is OGE's response to Senator Casey's March 13, 2017, letter. Please confirm receipt of this message. The original will follow by regular United States mail. Please kindly make a note of this email address ([director@oge.gov](mailto:director@oge.gov)) for any future correspondence with OGE. If you have any questions, please feel free to contact OGE's Chief of Staff, Shelley K. Finlayson, at [skfinlay@oge.gov](mailto:skfinlay@oge.gov), or (202) 482-9314.

(Note: The following link will take you to a speech referenced in a footnote to this response: <https://www.youtube.com/watch?v=R58fJ7Eetbg>. The text of the speech is also included as an enclosure to the attached response.)

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UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

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March 16, 2017

The Honorable Robert P. Casey, Jr.  
United States Senate  
393 Russell Senate Office Building  
Washington, D.C. 20510

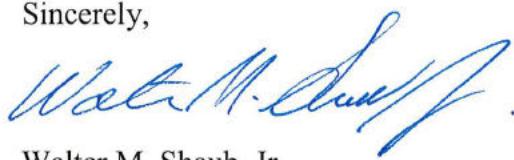
Dear Senator Casey:

I am in receipt of your letter dated March 13, 2017, which raises issues involving the Constitution's emoluments clause and conflict of interest concerns with respect to the President's financial interests.

The emoluments issues are under judicial review and, within the executive branch, are entirely within the purview of the Department of Justice.

As to the conflict of interest issues you raise, Congress has left no doubt that the primary criminal conflict of interest statute is inapplicable to the President.<sup>1</sup> Although this particular statute does not criminalize a President's conflicts of interest, common sense dictates that a President's financial interests can conflict with his duties. As examples in your letter seek to illustrate, a conflict of interest is anything that creates an incentive for a President to put his own financial interests before the interests of the people he serves. Based on the principle that public service is a public trust, I have asserted OGE's longstanding position<sup>2</sup> that the President should conduct himself "as if" he were bound by the criminal conflict of interest statute.<sup>3</sup> Nonetheless, OGE is an executive branch agency that reports to the President and possesses only the limited statutory authority Congress has granted it.<sup>4</sup> OGE has no authority to investigate or order corrective action on the part of the President. Under the Constitution, the authority to oversee the Presidency rests with Congress.

Sincerely,



Walter M. Shaub, Jr.  
Director

Enclosure

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<sup>1</sup> See Ethics Reform Act of 1989, Pub. L. No. 101-194, § 401 (1989); see also 18 U.S.C. §§ 202(c), 208(a) (2012).

<sup>2</sup> See OGE Advisory 83 x 16 (Oct. 20, 1983) (and authorities cited therein).

<sup>3</sup> See <https://www.youtube.com/watch?v=R58fJ7Eetbg>.

<sup>4</sup> See 5 U.S.C. app. §§ 402-403.



**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.

**From:** [Diana Veilleux](#)  
**To:** Director of OGE  
**Date:** Monday, March 20, 2017 12:55:56 PM  
**Attachments:** [BILLS-115hr305lh \(1\).pdf](#)

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Attachment released below



115TH CONGRESS  
1ST SESSION

# H. R. 305

To amend the Ethics in Government Act of 1978 to require the disclosure of certain tax returns by Presidents and certain candidates for the office of the President, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 2017

Ms. ESHOO (for herself, Mrs. DINGELL, Ms. JACKSON LEE, Mr. HUFFMAN, Ms. SLAUGHTER, Ms. SPEIER, Mr. POCAN, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. THOMPSON of California, Ms. BROWNLEY of California, Mr. BEYER, Mrs. WATSON COLEMAN, Ms. MCCOLLUM, Mr. KIND, Mr. PERLMUTTER, Mr. COHEN, Mr. McGOVERN, Mr. SOTO, and Mr. BLUMENAUER) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Ethics in Government Act of 1978 to require the disclosure of certain tax returns by Presidents and certain candidates for the office of the President, and for other purposes.

- 1       *Be it enacted by the Senate and House of Representa-*
- 2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Presidential Tax  
3 Transparency Act”.

4 **SEC. 2. DISCLOSURE OF TAX RETURNS BY PRESIDENTS  
5 AND CERTAIN PRESIDENTIAL CANDIDATES.**

6 (a) IN GENERAL.—Title I of the Ethics in Govern-  
7 ment Act of 1978 (5 U.S.C. App.) is amended—  
8 (1) by inserting after section 102 the following:

9 **“SEC. 102A. DISCLOSURE OF TAX RETURNS.**

10 “(a) DEFINITIONS.—In this section—

11 “(1) the term ‘covered candidate’ means an in-  
12 dividual—

13 “(A) required to file a report under section  
14 101(c); and

15 “(B) who is nominated by a major party  
16 as a candidate for the office of President;

17 “(2) the term ‘covered individual’ means—

18 “(A) a President required to file a report  
19 under subsection (a) or (d) of section 101; and

20 “(B) an individual who occupies the office  
21 of the President required to file a report under  
22 section 101(e);

23 “(3) the term ‘major party’ has the meaning  
24 given the term in section 9002 of the Internal Rev-  
25 enue Code of 1986; and

1                 “(4) the term ‘income tax return’ means, with  
2 respect to any covered candidate or covered indi-  
3 vidual, any return (within the meaning of section  
4 6103(b) of the Internal Revenue Code of 1986) re-  
5 lated to Federal income taxes, but does not in-  
6 clude—

7                 “(A) information returns issued to persons  
8 other than such covered candidate or covered  
9 individual; and

10                 “(B) declarations of estimated tax.

11                 “(b) DISCLOSURE.—

12                 “(1) COVERED INDIVIDUALS.—

13                 “(A) IN GENERAL.—In addition to the in-  
14 formation described in subsections (a) and (b)  
15 of section 102, a covered individual shall in-  
16 clude in each report required to be filed under  
17 this title a copy of the income tax returns of the  
18 covered individual for the 3 most recent taxable  
19 years for which a return has been filed with the  
20 Internal Revenue Service as of the date on  
21 which the report is filed.

22                 “(B) FAILURE TO DISCLOSE.—If an in-  
23 come tax return is not disclosed under subpara-  
24 graph (A), the Director of the Office of Govern-  
25 ment Ethics shall submit to the Secretary of

1           the Treasury a request that the Secretary of  
2           the Treasury provide the Director of the Office  
3           of Government Ethics with a copy of the in-  
4           come tax return.

5           “(C) PUBLICLY AVAILABLE.—Each income  
6           tax return submitted under this paragraph shall  
7           be filed with the Director of the Office of Gov-  
8           ernment Ethics and made publicly available in  
9           the same manner as the information described  
10          in subsections (a) and (b) of section 102.

11          “(D) REDACTION OF CERTAIN INFORMA-  
12          TION.—Before making any income tax return  
13          submitted under this paragraph available to the  
14          public, the Director of the Office of Government  
15          Ethics shall redact such information as the Di-  
16          rector of the Office of Government Ethics, in  
17          consultation with the Secretary of the Treasury  
18          (or a delegate of the Secretary), determines ap-  
19          propriate.

20          “(2) CANDIDATES.—

21          “(A) IN GENERAL.—Not later than 15  
22          days after the date on which a covered can-  
23          didate is nominated, the covered candidate shall  
24          amend the report filed by the covered candidate  
25          under section 101(c) with the Federal Election

1           Commission to include a copy of the income tax  
2           returns of the covered candidate for the 3 most  
3           recent taxable years for which a return has  
4           been filed with the Internal Revenue Service.

5           “(B) FAILURE TO DISCLOSE.—If an in-  
6           come tax return is not disclosed under subpara-  
7           graph (A) the Federal Election Commission  
8           shall submit to the Secretary of the Treasury a  
9           request that the Secretary of the Treasury pro-  
10          vide the Federal Election Commission with the  
11          income tax return.

12          “(C) PUBLICLY AVAILABLE.—Each income  
13          tax return submitted under this paragraph shall  
14          be filed with the Federal Election Commission  
15          and made publicly available in the same manner  
16          as the information described in section 102(b).

17          “(D) REDACTION OF CERTAIN INFORMA-  
18          TION.—Before making any income tax return  
19          submitted under this paragraph available to the  
20          public, the Federal Election Commission shall  
21          redact such information as the Federal Election  
22          Commission, in consultation with the Secretary  
23          of the Treasury (or a delegate of the Secretary)  
24          and the Director of the Office of Government  
25          Ethics, determines appropriate.

1           “(3) SPECIAL RULE FOR SITTING PRESI-  
2 DENTS.—Not later than 30 days after the date of  
3 enactment of this section, the President shall submit  
4 to the Director of the Office of Government Ethics  
5 a copy of the income tax returns described in para-  
6 graph (1)(A).”; and

7           (2) in section 104—

8           (A) in subsection (a)—

9               (i) in paragraph (1), in the first sen-  
10 tence, by inserting “or any individual who  
11 knowingly and willfully falsifies or who  
12 knowingly and willfully fails to file an in-  
13 come tax return that such individual is re-  
14 quired to disclose pursuant to section  
15 102A” before the period; and

16               (ii) in paragraph (2)(A)—

17                   (I) in clause (i), by inserting “or  
18 falsify any income tax return that  
19 such person is required to disclose  
20 under section 102A” before the semi-  
21 colon; and

22                   (II) in clause (ii), by inserting  
23 “or fail to file any income tax return  
24 that such person is required to dis-

1                   close under section 102A” before the  
2                   period;

3                   (B) in subsection (b), in the first sentence  
4                   by inserting “or willfully failed to file or has  
5                   willfully falsified an income tax return required  
6                   to be disclosed under section 102A” before the  
7                   period;

8                   (C) in subsection (c), by inserting “or fail-  
9                   ing to file or falsifying an income tax return re-  
10                  quired to be disclosed under section 102A” be-  
11                  fore the period; and

12                  (D) in subsection (d)(1)—

13                   (i) in the matter preceding subparagraph  
14                  (A), by inserting “or files an income  
15                  tax return required to be disclosed under  
16                  section 102A” after “title”; and

17                   (ii) in subparagraph (A), by inserting  
18                  “or such income tax return, as applicable,”  
19                  after “report”.

20                  (b) AUTHORITY TO DISCLOSE INFORMATION.—

21                  (1) IN GENERAL.—Section 6103(l) of the Inter-  
22                  nal Revenue Code of 1986 is amended by adding at  
23                  the end the following new paragraph:

1               “(23) DISCLOSURE OF RETURN INFORMATION  
2               OF PRESIDENTS AND CERTAIN PRESIDENTIAL CAN-  
3               DIDATES.—

4               “(A) DISCLOSURE OF RETURNS OF PRESI-  
5               DENTS.—

6               “(i) IN GENERAL.—The Secretary  
7               shall, upon written request from the Direc-  
8               tor of the Office of Government Ethics  
9               pursuant to section 102A(b)(1)(B) of the  
10              Ethics in Government Act of 1978, provide  
11              to officers and employees of the Office of  
12              Government Ethics a copy of any income  
13              tax return of the President which is re-  
14              quired to be filed under section 102A of  
15              such Act.

16              “(ii) DISCLOSURE TO PUBLIC.—The  
17              Director of the Office of Government Eth-  
18              ics may disclose to the public the income  
19              tax return of any President which is re-  
20              quired to be filed with the Director pursu-  
21              ant to section 102A of the Ethics in Gov-  
22              ernment Act of 1978.

23              “(B) DISCLOSURE OF RETURNS OF CER-  
24              TAIN CANDIDATES FOR PRESIDENT.—

1                         “(i) IN GENERAL.—The Secretary  
2 shall, upon written request from the Chair-  
3 man of the Federal Election Commission  
4 pursuant to section 102A(b)(2)(B) of the  
5 Ethics in Government Act of 1978, provide  
6 to officers and employees of the Federal  
7 Election Commission copies of the applica-  
8 ble returns of any person who has been  
9 nominated as a candidate of a major party  
10 (as defined in section 9002(a)) for the of-  
11 fice of President.

12                         “(ii) DISCLOSURE TO PUBLIC.—The  
13 Federal Election Commission may disclose  
14 to the public applicable returns of any per-  
15 son who has been nominated as a can-  
16 didate of a major party (as defined in sec-  
17 tion 9002(6)) for the office of President  
18 and which is required to be filed with the  
19 Commission pursuant to section 102A of  
20 the Ethics in Government Act.

21                         “(C) APPLICABLE RETURNS.—For pur-  
22 poses of this paragraph, the term ‘applicable re-  
23 turns’ means, with respect to any candidate for  
24 the office of President, income tax returns for  
25 the 3 most recent taxable years for which a re-

1           turn has been filed as of the date of the nomi-  
2           nation.”.

3           (2) CONFORMING AMENDMENTS.—Section  
4        6103(p)(4) of such Code, in the matter preceding  
5        subparagraph (A) and in subparagraph (F)(ii), is  
6        amended by striking “or (22)” and inserting “(22),  
7        or (23)” each place it appears.

○

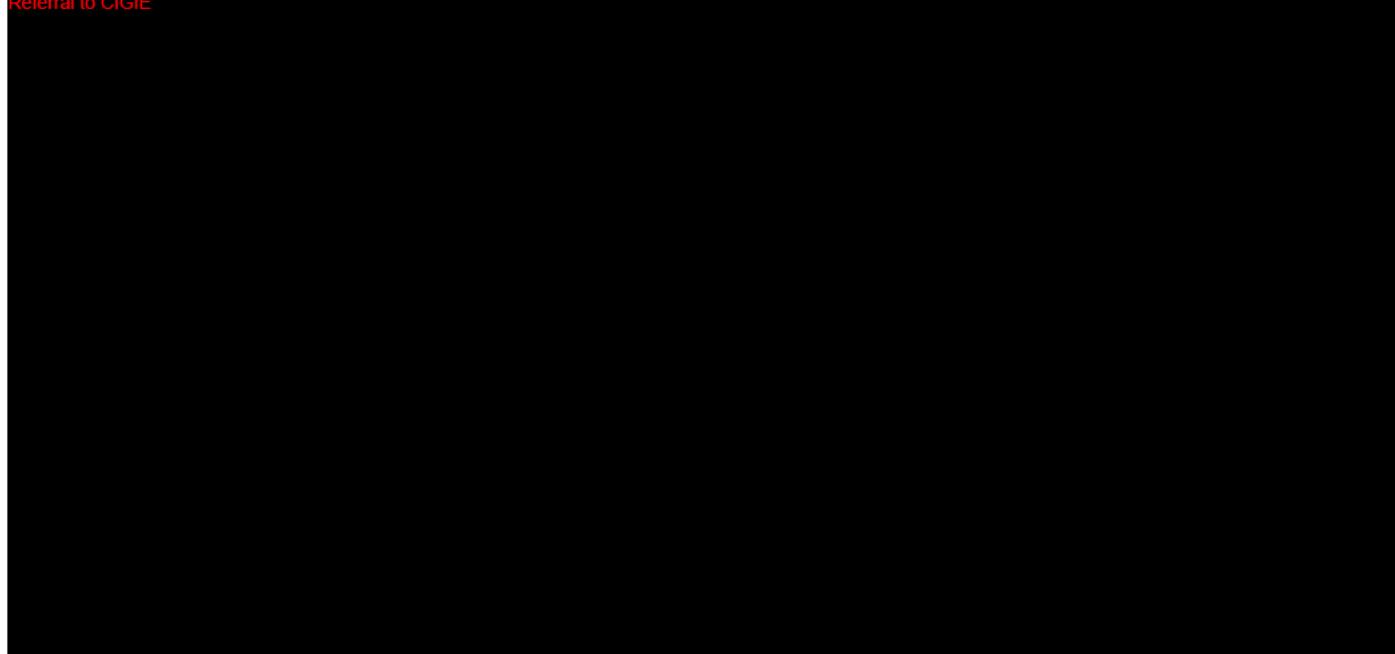
**From:** Brown, Reginald  
**To:** [Walter M. Shaub](#)  
**Cc:** [Raviv, Adam](#); [Kimmitt, Robert](#)  
**Subject:** (b) (6)  
**Date:** Monday, March 20, 2017 1:27:13 PM

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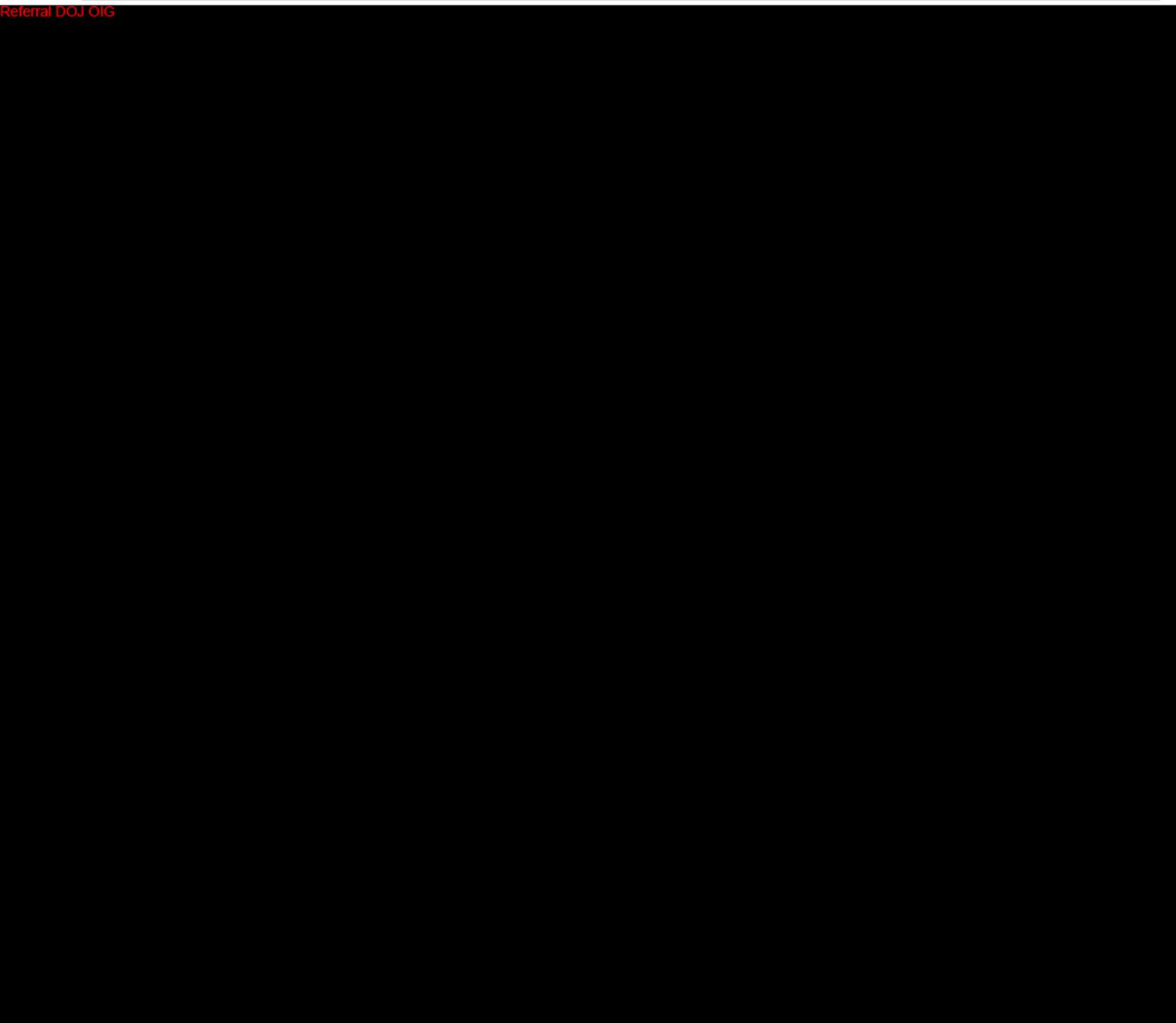
Thanks to your team for the push to get (b) (6) letter finalized. We are hoping to submit everything today or tomorrow. I understand there are a few tweaks. We are happy to sign on assuming nothing exceptionally impactful.

Sent from my iPhone

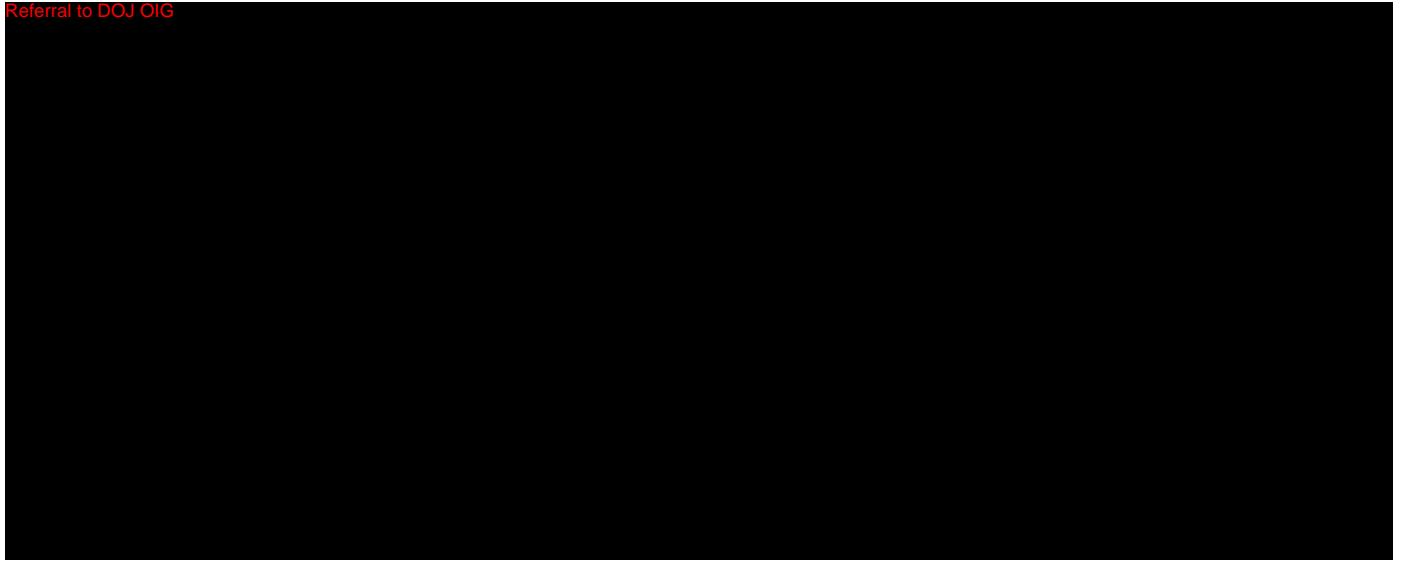
Referral to CIGIE



Referral DOJ OIG



Referral to DOJ OIG



**From:** Scott Amey  
**To:** [Walter M. Shaub](#)  
**Subject:** [GRAYMAIL] Re: Notice published today extending comment period on discretionary trusts  
**Date:** Monday, March 20, 2017 3:55:07 PM

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Great, thanks!

Scott H. Amey  
General Counsel  
(b) (6) [REDACTED]  
Email: (b) (6) [REDACTED]  
Twitter: (b) (6) [REDACTED]

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On Mon, Mar 20, 2017 at 10:02 AM, Walter M. Shaub <[wmshaub@oge.gov](mailto:wmshaub@oge.gov)> wrote:

Scott,

Here's a link to the Federal Register notice.

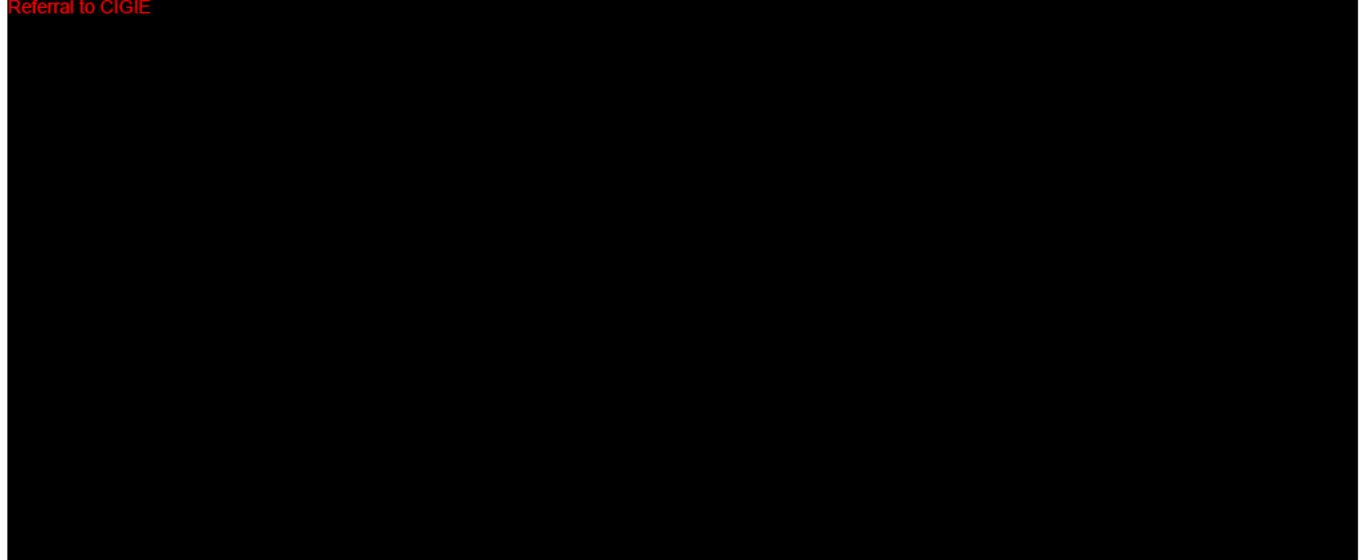
Walt

**From:** Jennifer Matis  
**Sent:** Monday, March 20, 2017 8:31 AM  
**To:** Director of OGE; Matthew A. Marinec; David J. Apol; Shelley K. Finlayson; Diana Veilleux; Seth Jaffe; Leigh J. Francis; Heather A. Jones; Vincent Salamone; Gilbert Carlson; Nicole Stein  
**Subject:** Notice published today extending comment period on discretionary trusts

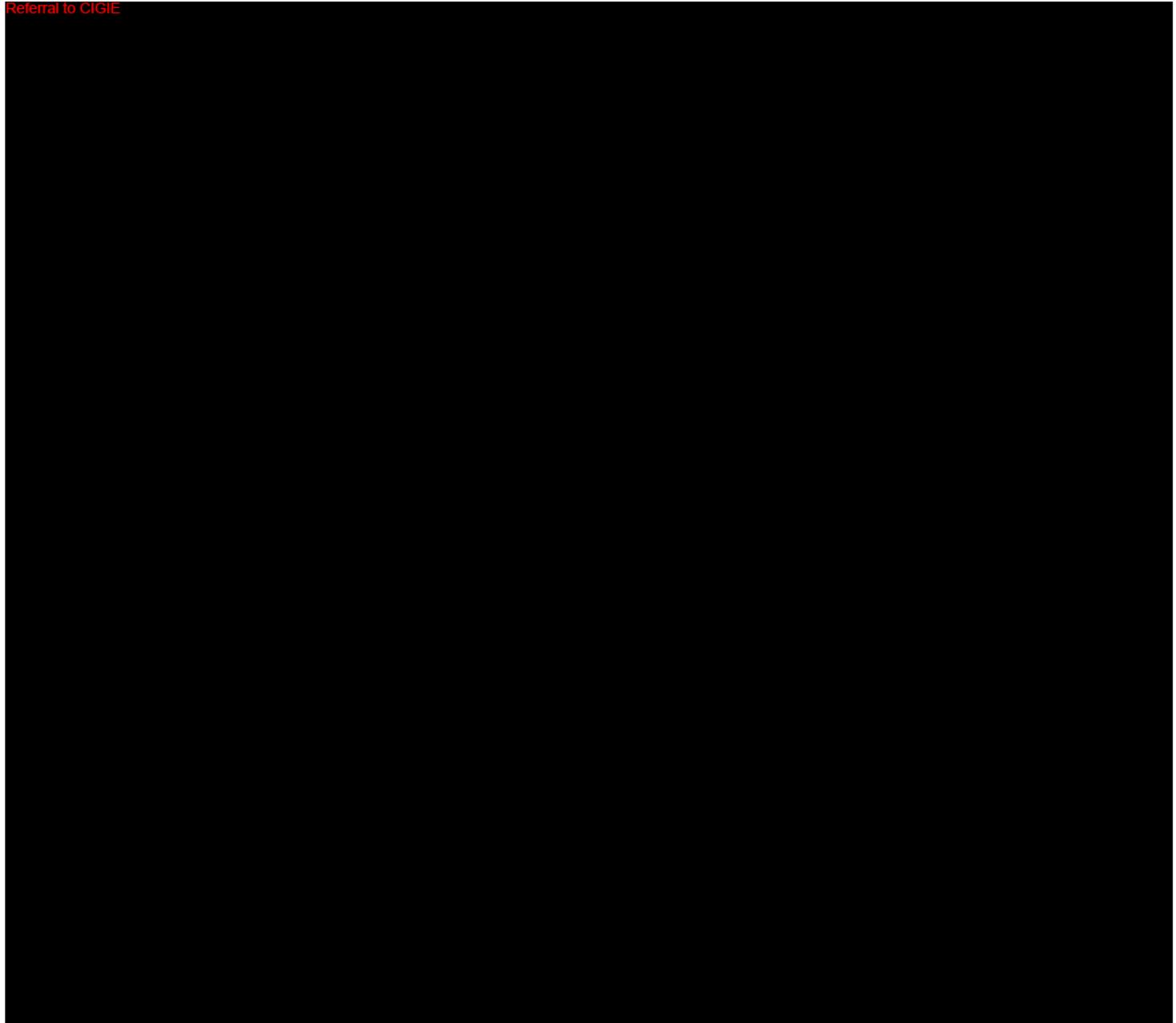
FYI, the notice is available on the Federal Register website here:  
<https://www.federalregister.gov/documents/2017/03/20/2017-05454/request-for-public-input-on-the-application-of-the-criminal-conflict-of-interest-prohibition-to>

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Referral to CIGIE



**From:** [Director of OGE](#)  
**To:** (b)(6) - Nelson's email address  
**Subject:** OGE Response to Letter on Chinese Trademarks  
**Date:** Wednesday, March 22, 2017 5:00:26 PM  
**Attachments:** [OGE Response to Letter on Chinese Trademarks.pdf](#)

---

Attachment released below

Please find attached a letter from OGE Director Walter M. Shaub, Jr.

Thank You,

Matthew Marinec, M.P.P.  
Confidential Assistant to the Director  
U.S. Office of Government Ethics  
1201 New York Ave., NW, Suite 500  
Washington, DC 20005-3917  
Tel. 202.482.9286

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# UNITED STATES OFFICE OF GOVERNMENT ETHICS

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March 22, 2017

Senator Richard Blumenthal  
United States Senate  
706 Hart Senate Office Bldg.  
Washington D.C. 20510

Senator Tom Udall  
United States Senate  
531 Hart Senate Office Bldg.  
Washington D.C. 20510

Senator Bernard Sanders  
United States Senate  
332 Dirksen Senate Office Bldg.  
Washington D.C. 20510

Senator Jeanne Shaheen  
United States Senate  
506 Hart Senate Office Bldg.  
Washington D.C. 20510

Senator Ron Wyden  
United States Senate  
221 Dirksen Senate Office Bldg.  
Washington D.C. 20510

Senator Sherrod Brown  
United States Senate  
713 Hart Senate Office Bldg.  
Washington D.C. 20510

Senator Elizabeth Warren  
United States Senate  
317 Hart Senate Office Bldg.  
Washington D.C. 20510

Senator Thomas R. Carper  
United States Senate  
513 Hart Senate Office Bldg.  
Washington D.C. 20510

Senator Jack Reed  
United States Senate  
728 Hart Senate Office Bldg.  
Washington D.C. 20510

Senator Christopher A. Coons  
United States Senate  
127A Russell Senate Office Bldg.  
Washington DC 20510

Senator Jeffrey A. Merkley  
United States Senate  
313 Hart Senate Office Bldg.  
Washington D.C. 20510

Senator Edward J. Markey  
United States Senate  
255 Dirksen Senate Office Bldg.  
Washington D.C. 20510

Senator Benjamin L. Cardin  
United States Senate  
509 Hart Senate Office Bldg.  
Washington D.C. 20510

Senator Margaret Wood Hassan  
United States Senate  
330 Hart Senate Office Bldg.  
Washington D.C. 20510

Senator Patty Murray  
United States Senate  
154 Russell Senate Office Bldg.  
Washington D.C. 20510

Senator Kirsten Gillibrand  
United States Senate  
478 Russell Senate Office Bldg.  
Washington D.C. 20510

Senator Debbie Stabenow  
United States Senate  
731 Hart Senate Office Bldg.  
Washington D.C. 20510

Senator Maria Cantwell  
United States Senate  
511 Hart Senate Office Bldg.  
Washington D.C. 20510

Dear Senators:

I am in receipt of your March 15, 2017, letter requesting the interpretation and advice of the U.S. Office of Government Ethics (OGE) regarding the applicability of the bribery statute to China's recent award of certain trademarks to the President. OGE was not consulted in connection with this matter, but OGE does not render opinions on the bribery statute, 18 U.S.C. § 201.<sup>1</sup> Pursuant to a Memorandum of Understanding with the Department of Justice (DOJ), OGE may render opinions on 18 U.S.C. §§ 202-209; however, within the executive branch, 18 U.S.C. § 201 remains exclusively within the purview of DOJ.

Sincerely,

Walter M. Shaub, Jr.  
Director

cc: Mr. Raymond Hulser  
Chief, Public Integrity Section  
U.S. Department of Justice

<sup>1</sup> OGE is also not authorized "to make any finding that a provision of title 18, United States Code, or any criminal law of the United States outside of such title, has been or is being violated." 5 U.S.C. app. § 402(f)(5).



**From:** Fred Wertheimer  
**To:** [Walter M. Shaub](#)  
**Subject:** Letter to White House Counsel re Ivanka Trump and Request for OGE Director Shaub  
**Date:** Friday, March 24, 2017 2:25:46 PM  
**Attachments:** [Watchdog Groups Letter to McGahn re Ivanka Trump 3.23.17.pdf](#)

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Attachment released below

To Walter Shaub:

Attached is a letter sent today by Democracy 21, CREW and the Campaign Legal Center to White House Counsel Don McGahn that challenges the arrangement that has been made for Ivanka Trump to work in the White House and that was approved by the White House Counsel's office.

We are requesting that you examine this matter and take whatever steps you believe may be appropriate.

The attached letter also is being sent to Representatives Cummings and Chaffetz with the same request.

If you have any questions please feel free to contact me.

Thank you for your attention to this matter.

Fred

Fred Wertheimer

Democracy 21

2000 Massachusetts Avenue, NW

Washington, DC 20036

Phone: (b) (6)

Fax: 202-355-9606

Follow me on [Twitter](#)  
Like Democracy 21 on [Facebook](#)

March 23, 2017

Donald F. McGahn II  
White House Counsel  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Mr. McGahn:

We are writing to express our deep concern about the highly unusual and inappropriate arrangement that is being proposed for Ivanka Trump, the President's daughter, to play a formalized role in the White House without being required to comply with the ethics and disclosure requirements that apply to White House employees.

As described in published reports, Ms. Trump in her role as White House adviser is assuming many of the indicia of a White House employee—she will have a West Wing office; she will receive a security clearance; she will be issued government communications devices and, according to these reports, she will participate in high-level White House meetings on a regular basis and provide advice to the President on a broad range of issues.

Under her arrangement, however, as *The New York Times* reports, she will “not hold a formal job at the White House and therefore is not likely to be considered a federal employee under the ethics rules, which prohibit government workers from participating in matters that can enrich their personal business interests. . . .”<sup>1</sup>

This arrangement appears designed to allow Ms. Trump to avoid the ethics, conflict-of-interest and other rules that apply to White House employees.

As described by *Politico*, “In everything but name, Trump is settling in as what appears to be a full-time staffer in her father’s administration, with a broad and growing portfolio—except she is not being sworn in, will hold no official position and is not pocketing a salary, her attorney said.”<sup>2</sup>

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<sup>1</sup> R. Abrams, “Despite a Trust, Ivanka Trump Still Wields Power Over Her Brand,” *The New York Times* (March 21, 2017).

<sup>2</sup> A. Karni, “Ivanka Trump set to get West Wing office as role expands,” *Politico* (March 20, 2017).

There are multiple problems with the arrangement that Ms. Trump has negotiated. But according to the report in *Politico*, a spokeswoman for Ms. Trump said “her role was signed off on by the White House counsel’s office. . . .”<sup>3</sup>

It is hard to believe that the White House Counsel’s office has approved this arrangement, given previous opinions by the Department of Justice’s Office of Legal Counsel (OLC). If you have given approval to this arrangement, however, we urge you to reconsider your position in light of the issues discussed in this letter.

The basic problem in the proposed relationship is that it appears to be trying to create a middle space that does not exist. On the one hand Ms. Trump’s position will provide her with the privileges and opportunities for public service that attach to being a White House employee. On the other hand, she remains the owner of a private business who is free from the ethics and conflicts rules that apply to White House employees.

But Ms. Trump is either a White House employee subject to the rules that apply to other White House employees or she is not entitled to the rights and opportunities for service that are available to White House employees.

The Office of Legal Counsel recently explained why this kind of scheme does not work, in an opinion it issued to address whether President Trump could appoint his son-in-law, Jared Kushner, to the White House staff without running afoul of the anti-nepotism law that otherwise prevents a public official from appointing a relative to public office.

OLC concluded that the anti-nepotism law does not apply to a President’s appointments to his White House staff and therefore that Mr. Kushner could take a staff position as a White House employee.<sup>4</sup> OLC also noted that “the conflict of interest laws do apply to employees of the White House Office.”<sup>5</sup> On the other hand, OLC acknowledged that a President’s relatives, in their capacity as private citizens, can have “an informal, essentially personal advisory relationship” with the President without becoming federal employees who are “subject to the conflict of interest laws in title 18.”

But, OLC made clear, the President cannot have it both ways:

A President wanting a relative’s advice on governmental matters therefore has a choice: to seek that advice on an unofficial, ad hoc basis without conferring the status and imposing the responsibilities that accompany formal White House positions; or to appoint his relative to the White House under title 3 and subject him to substantial restrictions against conflicts of interest. In choosing his personal staff, the President enjoys an unusual degree of freedom, which

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<sup>3</sup> *Id.*

<sup>4</sup> Department of Justice Office of Legal Counsel, “Application of the Anti-Nepotism Statute to a Presidential Appointment in the White House Office” (January 20, 2017).

<sup>5</sup> *Id.* at 14.

Congress found suitable to the demands of his office. Any appointment to the staff, however, carries with it a set of legal restrictions, by which Congress has regulated and fenced in the conduct of federal officials.<sup>6</sup>

That is the core problem with the proposed arrangement for Ms. Trump: she is seeking the “status” of assuming what is in fact, if not in name, a “formal White House position” (one that includes a West Wing office, a security clearance, and an issues portfolio), but at the same time the arrangement avoids the “set of legal restrictions” that accompany such positions.

The impermissibility of this arrangement is also demonstrated by a 1977 OLC opinion that is cited and discussed in the 2017 OLC opinion. The earlier opinion<sup>7</sup> addressed whether a regular but informal adviser to President Jimmy Carter should be treated as a government employee.

OLC concluded that the adviser’s general practice of giving informal policy advice to the President did not make him a government employee. But his work on one particular issue—when he “called and chaired a number of meetings that were attended by employees of various agencies in relation to this work,” and “assumed considerable responsibility for coordinating the Administration’s activities in that particular area”—did, in the words of the 2017 opinion, “cross a line and made him a government employee for purposes of that work.”<sup>8</sup>

Published reports quote Ms. Trump’s attorney as saying that her job “will be to serve as the president’s ‘eyes and ears’ while providing broad-ranging advice, not just limited to women’s empowerment issues.”<sup>9</sup> The description of what will be provided to Ms. Trump in her White House role, combined with the broad portfolio she will have, makes her a government employee under the applicable standards.

Ms. Trump plans to decline to take the oath of office that other White House staff must take. While the oath of office may seem like a mere formality, it is in fact a commitment by an employee that creates a fiduciary relationship between the employee and the United States, and that imposes an obligation on the employee to “well and faithfully discharge the duties” of her office.

Ms. Trump also says that she will voluntarily comply with ethics rules.

According to *Politico*, Ms. Trump “plans to adhere to the same ethics and records retention rules that apply to government employees . . . even though she is not technically an employee.” Of course, voluntary compliance with the law is just that—voluntary. This means that Ms. Trump is free to comply or not, as she sees fit and with no legal sanctions for not

<sup>6</sup> *Id.* (citations omitted) (emphases added).

<sup>7</sup> Department of Justice Office of Legal Counsel, “Conflict of Interest—Status of an Informal Presidential Advisor as a ‘Special Government Employee’” (Feb. 24, 1977).

<sup>8</sup> 2017 Op. at 13 n.7.

<sup>9</sup> A. Karni, *Politico*, *supra*.

complying. If voluntary compliance with the law was sufficient to safeguard the public interest embodied in the ethics and conflicts rules, then all federal employees could be similarly held to a voluntary standard. But of course that is not, and should not be, the law. The fact that Ms. Trump is not accepting a salary does not change the need for mandatory compliance.

Ms. Trump also has not agreed to separate herself in any meaningful way from her ownership of her business enterprises. Instead, like her father, she is maintaining her ownership interest in the businesses and transferring day-to-day control to a trust that will be managed by her brother-in-law and her sister-in-law.

All of Ms. Trump's business and financial interests should be fully be disclosed, along with any trust arrangements, in a manner consistent with the rules that apply to other government employees, and then should be assessed by the White House and OGE to determine the most appropriate means of resolving any potential conflicts of interest.

In sum, under the proposed arrangement for Ms. Trump, she will not be a White House employee and will continue to own businesses that emphasize her brand name. As such, she will not make the commitment set forth in the oath of office that White House employees take and will remain unbound by government ethics and conflicts of interest rules, except to the extent that Ms. Trump voluntarily chooses to comply with them. This arrangement does not work and needs to be revised.

We urge you to reconsider your approval of the arrangement proposed for Ms. Trump, to take appropriate steps to revise it to comply with the OLC opinions cited above, and to ensure that any potential conflicts of interest between Ms. Trump's service in the White House and her ownership of her businesses are properly addressed.

Sincerely,

/s/ Fred Wertheimer

Fred Wertheimer  
President  
Democracy 21

/s/ Norman L. Eisen

Ambassador (ret.) Norman L. Eisen, Chair  
Richard Painter, Vice Chair  
Noah Bookbinder, Executive Director  
Citizens for Responsibility and Ethics in Washington

/s/ Lawrence M. Noble

Lawrence M. Noble  
General Counsel  
Campaign Legal Center

**From:** Gorelick, Jamie  
**To:** [Walter M. Shaub](#)  
**Subject:** call?  
**Date:** Friday, March 24, 2017 3:49:10 PM

---

Walt –

Two minutes for a call?

Jamie

**Jamie S. Gorelick | WilmerHale**

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Washington, DC 20006 USA

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Referral to Treasury

Referral to Treasury

Referral to Treasury

**From:** Matt Myers  
**To:** [Walter M. Shaub](#)  
**Subject:** Letter to Attorney General Sessions  
**Date:** Monday, March 27, 2017 1:23:45 PM  
**Attachments:** [Recusal Letter 3.27.17.pdf](#)

---

Attachment released below

Dear Mr. Shaub:

Please find attached a letter to Attorney General Sessions from the American Cancer Society Cancer Action Network, the American Heart Association, the Campaign for Tobacco-Free Kids and Truth Initiative, regarding the importance of recusing former tobacco lawyers now in the Justice Department from matters concerning litigation against the tobacco industry.

Please feel free to contact me if you have any questions.

Sincerely,

Matthew L Myers  
President  
Campaign for Tobacco-Free Kids  
1400 I Street, NW, Suite 1200  
Washington, DC 20002  
1-(b) (6)  
1-202-296-5427 (fax)  
(b) (6)



March 27, 2017

The Honorable Jeff Sessions  
Attorney General of the United States  
U.S. Department of Justice  
Robert F. Kennedy Building  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530-2001

Dear Attorney General Sessions:

We write to urge that, in all of its tobacco-related litigation, the Department of Justice (“DOJ” or “the Department”) take transparent steps to avoid the serious breaches of ethical standards that would arise if attorneys who have previously represented tobacco product manufacturers or other tobacco-related businesses in private practice were to switch sides and represent the United States government. As explained below, we have immediate concerns about Noel Francisco, the current nominee for Solicitor General, as well as Chad Readler, currently Acting Assistant Attorney General of the Civil Division, but the issue is broader than these two individuals.

The Department of Justice has a laudable history of endeavoring to hold itself to the highest ethical standards, recognizing that each of its employees “has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws, and ethical principles above private gain.”<sup>1</sup> The Department, to this end, requires that its employees abide by the principles of ethical standards applicable to federal employees,<sup>2</sup> including the obligation to “act impartially and not give preferential treatment to any private organization or individual,”<sup>3</sup> and the requirement that employees “endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in [the applicable federal law].”<sup>4</sup>

Consistent with these ethical principles, senior government attorneys have routinely recused themselves or been recused based on their prior work in private practice. During the George W. Bush administration, for example, Treasury Department General Counsel David Aufhauser recused himself from a case involving R.J. Reynolds Tobacco Company (“R.J. Reynolds”) reportedly because the law firm at which he had previously been a partner “has worked for [R.J. Reynolds] and other tobacco companies.”<sup>5</sup> Solicitor General Theodore Olsen and Principal Deputy Solicitor

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<sup>1</sup> *Do It Right*, U.S. Dep’t of Justice, <https://www.justice.gov/jmd/do-it-right> (last visited Mar. 9, 2017).

<sup>2</sup> See *id.*

<sup>3</sup> 5 C.F.R. § 2635.101(b)(8).

<sup>4</sup> *Id.* § 2635.101(b)(14).

<sup>5</sup> Myron Levin, *High Court Refuses Cigarette Suit*, L.A. Times (Nov. 5, 2002), <http://articles.latimes.com/2002/nov/05/business/fi-smoke5>; see also Brief for the United States as Amicus Curiae at 18 n.\*\*, *Attorney Gen. of Canada v. R.J. Reynolds Tobacco Holdings, Inc.*, No. 01-1317 (U.S. Oct. 2002) (“The General Counsel is recused in this case.”).

General Paul Clement also did not participate in that same case, reportedly because they or their former law firms had worked on the matter.<sup>6</sup> During the Obama administration, Solicitor General Don Verrilli and Principal Deputy Solicitor General Ian Gershengorn recused themselves from a case concerning copyright protections for broadcast television programs apparently because, when they were in private practice, they had worked on a different case that raised a similar issue.<sup>7</sup> Associate Attorney General Thomas Perrelli similarly recused himself from several cases relating to terrorist detainees, reportedly because his former law firm “worked on behalf of detainees while he served on the firm’s management committee and on its appellate and Supreme Court practice groups.”<sup>8</sup>

If attorneys at the Department of Justice have worked in law firms that represented tobacco product manufacturers, they should not participate on behalf of the United States in matters in which such companies, including their former clients, are adverse to the government. The major companies in this industry often join in litigation against the federal government because they typically have the same or very similar interests. Lawyers who have worked in firms that have represented tobacco product companies in litigation against the United States should therefore be recused from any tobacco-related litigation while they serve at the Department. Failure to adopt such a recusal policy would risk eroding the Department’s longstanding commitment to federal ethics standards.

Such ethical issues would arise if Noel Francisco, current nominee for Solicitor General, were to participate in tobacco-related litigation at the Department. Mr. Francisco, a former partner at Jones Day, has long represented R.J. Reynolds in tobacco litigation. For example, he represented R.J. Reynolds in the continuing litigation over a district court order forcing R.J. Reynolds and other defendants in a landmark RICO lawsuit brought by the United States to make corrective statements disclosing the previously hidden truth about cigarettes as a remedy for their decades-long conspiracy to defraud the American people.<sup>9</sup> Mr. Francisco also argued two of the most important cases involving constitutional challenges to the federal regulation of the tobacco industry in recent years. He represented R.J. Reynolds in *Discount Tobacco City & Lottery, Inc. v. United States*,<sup>10</sup> a case that challenged a host of provisions in the Family Smoking Prevention and Tobacco Control Act of 2009 (“Tobacco Control Act”) on constitutional grounds, and argued that case before the U.S. Court of Appeals for the Sixth Circuit. He also represented R.J. Reynolds in its challenge to the

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<sup>6</sup> See Levin, *supra* note 5. The Campaign for Tobacco Free-Kids urged the recusal of General Olsen in this case as “necessary to avoid any perceived or actual conflict of interest in the Administration’s approach to this case.” *Bush Administration Should Support Canada’s Right to Sue R.J. Reynolds in Smuggling Case Now Before U.S. Supreme Court*, Campaign for Tobacco-Free Kids (May 13, 2002), [http://www.tobaccofreekids.org/press\\_releases/post/id\\_0492](http://www.tobaccofreekids.org/press_releases/post/id_0492).

<sup>7</sup> See Jonathan Handel, *Aereo Backstory: One Supreme Court Case, Three Recusals, One ‘Unrecusal,’ Much Uncertainty*, The Hollywood Reporter (Apr. 22, 2014), <http://www.hollywoodreporter.com/thr-esq/aereo-backstory-one-supreme-court-698094>; see also Brief for the United States as Amicus Curiae Supporting Petitioners at 34, *Am. Broadcasting Cos. v. Aereo, Inc.*, 134 S. Ct. 2498 (2014) (“The Solicitor General and the Principal Deputy Solicitor General are recused in this case.”).

<sup>8</sup> See Stephen Clark, *GOP Seeks More Answers on Justice Officials Who Defended Terror Suspects*, Fox News (Feb. 24, 2010), <http://www.foxnews.com/politics/2010/02/24/gop-seeks-answers-justice-officials-defended-terror-suspects.print.html>.

<sup>9</sup> See *United States v. Philip Morris USA Inc.*, 786 F.3d 1014 (D.C. Cir. 2015) (listing Mr. Francisco as appearing on the briefs for appellants). Mr. Francisco is listed as the lead attorney for R.J. Reynolds in the two most recent briefs filed by the RICO defendants in their latest appeal to the D.C. Circuit concerning the corrective statements remedy. See Appellants’ Opening Brief, *United States v. Phillip Morris USA, Inc.*, Nos. 16-5101 & 16-5127 (D.C. Cir. Sept. 9, 2016); Appellants’ Reply Brief, *United States v. Philip Morris USA Inc.*, Nos. 16-5101 & 16-5127 (D.C. Cir. Dec. 22, 2016).

<sup>10</sup> 674 F.3d 509 (6th Cir. 2012).

constitutionality of requiring graphic warning labels on cigarette packs and advertising, as promulgated by the FDA pursuant to the Tobacco Control Act, and he argued that case in both the district court and the court of appeals.<sup>11</sup> Given his prominent role in representing the tobacco industry in litigation, Mr. Francisco should not be permitted to participate in the government's defense of laws he attacked in private practice or laws that his former client attacks in the future.

We are also concerned that a serious ethical lapse has already occurred. Chad Readler, who currently serves as Acting Assistant Attorney General of the Civil Division, regularly represented R.J. Reynolds when he was a partner at Jones Day.<sup>12</sup> During that time, R.J. Reynolds submitted comments to the Food and Drug Administration ("FDA") opposing, on First Amendment and other grounds, parts of an FDA rule that deemed additional categories of tobacco products subject to FDA's statutory authority.<sup>13</sup> After the rule was finalized, several lawsuits were filed challenging it. In one case, *Cyclops Vapor 2, LLC v. U.S. Food & Drug Admin.*, No. 2:16-cv-556 (M.D. Ala.), the plaintiffs contend that parts of the deeming rule violate the First Amendment. Despite the fact that his former client, R.J. Reynolds, in its comments on the deeming rule, made the same First Amendment arguments as to the type of tobacco product manufactured by the plaintiff in *Cyclops Vapor*, Mr. Readler has been listed as counsel representing the United States in that case.

Mr. Readler's participation in *Cyclops Vapor* or related litigation is not appropriate and, if continued, would give the appearance of a conflict of interest and risk the reputation of the Department of Justice for strict adherence to well recognized ethical standards. Before Mr. Readler joined DOJ, the Department defended the FDA rule, filing a brief in a similar case vigorously defending the legality of the rule and its critical importance to public health.<sup>14</sup> With Mr. Readler now on the *Cyclops Vapor* case, the United States has filed a motion requesting an extension "to more fully consider the issues raised."<sup>15</sup> Given Jones Day's representation of Reynolds in tobacco litigation, including on First Amendment issues, Mr. Readler should not be involved in the consideration of the government's position in litigation concerning this critical aspect of tobacco regulation.

Our concerns extend beyond Mr. Readler and Mr. Francisco. Jones Day has for many years been one of the principal firms representing R.J. Reynolds in numerous litigated matters, many of them involving litigation against the federal government. R.J. Reynolds has been one of Jones Day's largest clients.<sup>16</sup> We believe that existing ethical standards would be compromised if any former

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<sup>11</sup> *R.J. Reynolds Tobacco Co. v. FDA*, 696 F.3d 1205 (D.C. Cir. 2012).

<sup>12</sup> See, e.g., *Chad A. Readler*, The Federalist Society, <http://www.fed-soc.org/experts/detail/chad-a-readler> (last visited Mar. 9, 2017) ("In product liability matters, Chad represents clients including R.J. Reynolds . . . and has represented R.J. Reynolds in commercial speech litigation."); *Chad A. Readler*, FindLaw (Jan. 7, 2014), [http://pview.findlaw.com/view/2209863\\_1](http://pview.findlaw.com/view/2209863_1) (listing three cases in which Mr. Readler represented R.J. Reynolds Tobacco Company); Brian Meyer, *R.J. Reynolds Challenging City's Effort to Restrict Posting of Tobacco Ads*, Buff. News (Sept. 3, 2005), <http://buffalonews.com/2005/09/03/r-j-reynolds-challenging-citys-effort-to-restrict-posting-of-tobacco-ads/> (quoting Mr. Readler in advocacy for R.J. Reynolds Tobacco Company, which was then threatening to sue the city of Buffalo for its efforts to "wipe out tobacco ads around schools, playgrounds and day care centers").

<sup>13</sup> See Comment by James E. Swauger, VP – Regulatory Oversight, RAI Services Company (Aug. 8, 2014), available at <https://www.regulations.gov/document?D=FDA-2014-N-0189-76048>.

<sup>14</sup> See Memorandum in Opposition to Plaintiffs' Motions for Summary Judgment and in Support of Defendants' Cross-Motion for Summary Judgment, *Nicopure Labs, LLC v. FDA*, No. 16-878 (D.D.C. Aug. 16, 2016).

<sup>15</sup> Defendants' Consent Motion to Extend Deadlines, *Cyclops Vapor 2, LLC v. U.S. Food & Drug Admin.*, No. 2:16-cv-556 (M.D. Ala. Mar. 1, 2017). The Campaign for Tobacco-Free Kids has been granted leave to file an amicus brief on behalf of the government in this case.

<sup>16</sup> See Roy Strom, *A Quiet Law Firm with a Famous Client*, The American Lawyer (Mar. 1, 2017) (describing Jones Day's representation of R.J. Reynolds as "[o]ne of its longest-lasting relationships").

partner of Jones Day, which has worked tirelessly on behalf of the tobacco industry, participates in the Justice Department's defense of tobacco regulations or other actions by FDA affecting the industry. This recusal policy should apply not only to lawyers in DOJ, but also to lawyers in the White House Counsel's Office and attorneys who work at federal agencies. It also should apply to lawyers from other law firms that have participated in litigation on behalf of tobacco-industry clients.

We ask that the Department of Justice uphold its longstanding commitment to the principles of federal ethics laws and ensure that attorneys who have worked in law firms that represented the tobacco industry state publicly that they will not participate in tobacco-related litigation as an employee of the United States. Such recusals are essential to ensure the appearance of impartiality and to give the public the greatest possible confidence that decisions about the federal government's litigation positions are taken solely based on the facts and the law to advance the public health and the public interest.

Sincerely,



Christopher W. Hansen  
President  
American Cancer Society Cancer Action  
Network



Matthew L. Myers  
President  
Campaign for Tobacco Free Kids



Nancy A. Brown  
Chief Executive Officer  
American Heart Association



Robin Koval  
CEO and President  
Truth Initiative

cc: Cynthia K. Shaw  
Director, Departmental Ethics Office

Walter Shaub, Jr.  
Director, U.S. Office of Government Ethics

Referral to CIGIE

**From:** [Walter M. Shaub](#)  
**To:** ["Craig Holman"](#)  
**Subject:** RE: trying again  
**Date:** Monday, March 27, 2017 5:42:30 PM

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Thanks, Craig. I actually liked that you pointed out the lack of enforcement authority. I was mostly just annoyed by the article's patently false spin on OGE's handling of the matter. I figured they probably failed to share the details of the thing with you, and I wanted to flag the issue for you in case anyone comes back for another quote on the issue. Thanks again for all of your support for OGE's work!

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:** Craig Holman (b) (6) [REDACTED]  
**Sent:** Monday, March 27, 2017 4:55 PM  
**To:** Walter M. Shaub  
**Subject:** Re: trying again

Thanks for correcting me, Walter. I'll be more careful next time.

The reporter never showed me the document. He stated that the transaction was not reported and asked if it should have been. He certainly didn't tell me that it was indeed disclosed on page 10.

When I highlighted the lack of enforcement authority, I meant no offense to you or OGE, both of whom I very much respect. I just want OGE to have that authority. In fact, I finished drafting a legislative proposal to that effect for Jamin Ruskin over the weekend.

Craig Holman, Ph.D.  
Public Citizen  
TEL: (b) (6) / CELL (b) (6) [REDACTED]

On Mar 27, 2017, at 11:53 AM, Walter M. Shaub <[wmshaub@oge.gov](mailto:wmshaub@oge.gov)> wrote:

Hi Craig,

I sent you a message, but I got a bounce back notice indicating that it was stopped by your system's filters. I'm trying again with a different subject line.

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:** Monday, March 27, 2017 11:06 AM  
**To:** 'Craig Holman'  
**Subject:** news story

Hi Craig,

I just read the story about John Podesta in the partisan political advocacy blog, The Daily Caller. The blog article insinuates that OGE had an improper motivation in not requiring this filer to include in the Transaction Section of his New Entrant financial disclosure report (Schedule B) a transaction that occurred before he entered government. I was surprised by your quote:

Well Podesta should certainly have been more upfront in filling this out. Clearly, it should have been fully disclosed," said Craig Holman, a lobbyist for the liberal group Public Citizen which was founded by Ralph Nader. "That's the point of the personal financial disclosure forms, especially for anyone entering the White House," he told TheDCNF in an interview.

I'm not sure if you noticed the prominent bold text instruction at the top of the page that plainly states that New Entrant filers do not complete the transaction section of the report. Here's a snapshot of the relevant page of his 278 report, which the political advocacy blog posted:

<image005.jpg>

Also, I'm not sure if you're aware that the applicable regulation clearly provides that transactions occurring before one enters government are not reportable. Here's a snapshot of the relevant regulation:

<image006.jpg>

We've been consistent in holding every filer to the same standard. For example, we didn't make any of the following filers complete the Transaction Section (Schedule B in the old form, Part 7 in the new form) in their New Entrant and Nominee reports: *Scott*

*Pruitt, Rex Tillerson, Betsy DeVos, Jared Kushner, Don McGahn, Stefan Passantino, Stephen Miller, Rene Acosta, Blair Anderson, David Petreus, Jeff Sessions, Robert Lighthizer, John Michael "Mick" Mulvaney, David Shulkin ,Dina Powell, Katie Walsh, Andrew Bremberg, Rick Dearborn, or anyone else.*

Also, if you look at Page 10 of the report that the political advocacy blog posted, the filer actually disclosed the asset in question in Schedule A. (See <http://www.documentcloud.org/documents/1227013-john-podesta-white-house-financial-disclosure-form.html>)

In light of these circumstances, I hope you'll consider correcting the record if anyone asks a follow up questions on this matter or if you appear on any TV shows. I'm not concerned for the filer's sake, but I am annoyed by the patently false allegation that OGE somehow cut someone a break for improper reasons.

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)

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**From:** [Jennifer Matis](#)  
**To:** [Shelley K. Finlayson](#); [Diana Veilleux](#)  
**Cc:** [Director of OGE](#)  
**Subject:** FW: Wyden Letter to Dir. Shaub  
**Date:** Tuesday, March 28, 2017 7:49:23 AM  
**Attachments:** [Wyden Shaub Letter on Mnuchin RPD Comments.pdf](#)

---

Attachment released below

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](mailto:jennifer.matis@oge.gov)

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

Follow OGE on Twitter: @OfficeGovEthics

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**From:** Goshorn, Daniel (Finance) (b) (6)  
**Sent:** Monday, March 27, 2017 3:03 PM  
**To:** Jennifer Matis  
**Cc:** Nicholson, Ian (Finance)  
**Subject:** Wyden Letter to Dir. Shaub

Attachment released below

Hi Jen,

Attached is a letter from Sen. Wyden to Dir. Shaub. Can you help us get a copy to him?

Thanks,  
Dan

Daniel J. Goshorn  
Investigative Counsel  
Senate Finance Committee, Minority Staff  
(b) (6) (main)  
(b) (6) (direct)

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JOSHUA SHEINKMAN, DEMOCRATIC STAFF DIRECTOR

# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

March 27, 2017

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

Dear Director Shaub,

I am writing regarding troubling comments made by Steven Mnuchin in his capacity as Treasury Secretary during a live interview with Mike Allen from Axios.<sup>1</sup>

In response to a reader question asking for a movie recommendation, Sec. Mnuchin responded “I’m not allowed to promote anything that I’m involved in. So I just want to have the legal disclosure, you’ve asked me the question, and I am not promoting any product. But you should send all your kids to ‘Lego Batman’.” Lego Batman is a movie produced by Ratpac-Dune Entertainment, a film production company founded by Sec. Mnuchin and in which he holds a significant financial interest. Sec. Mnuchin also described Avatar, another film produced by Ratpac-Dune, as his favorite movie, and described The Wolf of Wall Street and The Big Short, two films not produced by Ratpac-Dune, as “complete misrepresentations.”

I am concerned that despite his “legal disclosure,” these comments may constitute a violation of Secretary Mnuchin’s January 10, 2017 ethics agreement. In that agreement, Sec. Mnuchin asserted the following:

Within 120 days of my confirmation, I will divest my interests in Ratpac-Dune Entertainment Holdings LLC. With regard to these interests, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of the entity until I have divested it, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

According to Sec. Mnuchin’s Office of Government Ethics (OGE) form 278e, Ratpac-Dune Entertainment Holdings LLC holds a film agreement with Warner Bros. and Ratpac-Dune

<sup>1</sup> <https://www.c-span.org/video/?425894-1/treasury-secretary-says-hes-optimistic-house-will-pass-health-care-bill-today>

receives an income stream with respect to each film it invests in. Specifically, Sec. Mnuchin's form 278e notes Ratpac-Dune "receives the 'ultimates' for each film 6 weeks after the film is released." Ratpac-Dune also holds an ongoing copyright interest in the films it produces. Therefore, I am concerned that Sec. Mnuchin's comments may be seen to have a predictable effect on the financial interests of the entity.

OGE regulations require Sec. Mnuchin to notify the Finance Committee with evidence of compliance with the terms of his ethics agreement. At this time, Sec. Mnuchin has provided the Committee no evidence that he has divested his interests in Ratpac-Dune Entertainment Holdings LLC, and I assume he still holds this interest.

Regardless of Sec. Mnuchin's personal financial interest in films produced by Ratpac-Dune, OGE regulations state that "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 enterprise" with limited exceptions.<sup>2</sup> I am concerned that Sec. Mnuchin's comments may also be interpreted as an explicit endorsement of films produced by Ratpac-Dune, in violation of OGE regulations.

As the director of the Office of Government Ethics, you have the authority to review potential ethics violations and notify the employee's agency of any potential violation. I request that you review Sec. Mnuchin's comments, and report any findings to me and the Treasury Department.

Sincerely,

  
Ron Wyden  
Ranking Member

---

<sup>2</sup> 5 C.F.R. § 2635.702(c).

**From:** [Shelley K. Finlayson](#)  
**To:** [Diana Veilleux](#); Director of OGE  
**Subject:** Fw: Letter from Senators Warren and Carper  
**Date:** Wednesday, March 29, 2017 10:24:38 AM  
**Attachments:** [2017.03.29 Letter to Shaub re Ivanka Trump role in WH.pdf](#)

Attachment released below

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

**From:** Savage, Susannah (Warren) (b) (6) >  
**Sent:** Wednesday, March 29, 2017 8:42 AM  
**To:** Shelley K. Finlayson  
**Cc:** Berrios, Roberto (HSGAC)  
**Subject:** Letter from Senators Warren and Carper

Hi Shelley,

Attachment released below

Please see the attached letter from Senators Warren and Carper.

Best,

**Susannah Savage**

Special Assistant for Oversight and Investigations  
Office of Senator Elizabeth Warren

(b) (6)

United States Senate  
WASHINGTON, DC 20510

March 29, 2017

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

Dear Director Shaub,

We write today to request information about the ethics rules that President Trump's daughter, Ivanka Trump, will be required to comply with, or has indicated she will voluntarily comply with, in her role as an advisor to the President. We also request your assistance with understanding the role your office will play in ensuring Ms. Trump's compliance with these rules.

According to recent reports, Ivanka Trump, could soon begin serving as an advisor to the President.<sup>1</sup> As of March 20, 2017, Ms. Trump had already attended several meetings with high level political figures, including German Chancellor Angela Merkel<sup>2</sup>, and has taken steps to begin working in the White House:

"The powerful first daughter has secured her own office on the West Wing's second floor ... She is also in the process of obtaining a security clearance and is set to receive government-issued communications devices this week. In everything but name, [Ms.] Trump is settling in as what appears to be a full-time staffer in her father's administration, with a broad and growing portfolio."<sup>3</sup>

Ms. Trump will be, according to her attorney, "the president's 'eyes and ears' ... providing broad-ranging advice."<sup>4</sup>

Ms. Trump and the White House have suggested that she will not be an official government employee – a different approach than that taken by her husband, who is formally serving as a Senior Advisor to the President. Despite this assertion, Ms. Trump stated in

---

<sup>1</sup> Annie Karni, "Ivanka Trump set to get West Wing office as role expands," *Politico*, March 20, 2017 (online at <http://www.politico.com/story/2017/03/ivanka-trump-white-house-236273>).

<sup>2</sup> "Ivanka Trump's influence in White House on show at job training session with Angela Merkel," *The Telegraph* (March 18, 2017) (online at <http://www.telegraph.co.uk/news/2017/03/18/ivanka-trumps-influence-white-house-show-job-training-session/>).

<sup>3</sup> Annie Karni, "Ivanka Trump set to get West Wing office as role expands," *Politico*, March 20, 2017 (online at <http://www.politico.com/story/2017/03/ivanka-trump-white-house-236273>).

<sup>4</sup> *Id.*

December 2016 that she would “voluntarily follow all of the ethics rules placed on government employees.”<sup>5</sup> Her attorney earlier confirmed that she “plans to adhere to the same ethics and records retention rules that apply to government employees.” It is therefore important to determine which ethics rules apply to Ms. Trump, which disclosures she will be required to make to demonstrate her compliance, and whether her compliance with these rules will be monitored and enforced.

Ethics rules are important. Federal conflict of interest laws prohibit an “officer or employee of the executive branch” – including those with positions at the White House – from participating in matters that have a direct impact on their personal and their family members’ financial interests.<sup>6</sup> Ms. Trump has substantial interests at stake: for example, she has retained ownership of Ivanka Trump Marks LLC, a retail clothing brand.<sup>7</sup>

Ms. Trump’s increasing, albeit unspecified, White House role, her potential conflicts of interest, and her commitment to voluntarily comply with relevant ethics and conflicts of interest laws have resulted in substantial confusion. To better understand the relevant rules and precedents, we ask that you provide the following information no later than April 13, 2017:

1. Has the White House sought OGE guidance or has OGE provided guidance to the White House regarding Ms. Trump’s White House role? Should Ms. Trump violate this guidance, what disciplinary actions could OGE or the Designated Agency Ethics Official in the White House Office of Legal Counsel take?
2. Do you have any knowledge of which government officials made the determination that Ms. Trump would take on an increasingly significant White House role without becoming an official White House employee? What was the basis of that decision? Were these individuals in the White House, in OGE, or in another federal government agency?
3. Please provide an overview of relevant laws, precedents, and legal opinions regarding Ms. Trump’s White House role.
  - a. Is Ms. Trump’s White House role consistent with these laws, precedents, and legal opinions?
  - b. If Ms. Trump is not following relevant laws, precedents, and legal opinions, what are the consequences for her? Which government officials are responsible for determining and enforcing these consequences?

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<sup>5</sup> *Id.*

<sup>6</sup> 18 U.S.C. § 208.

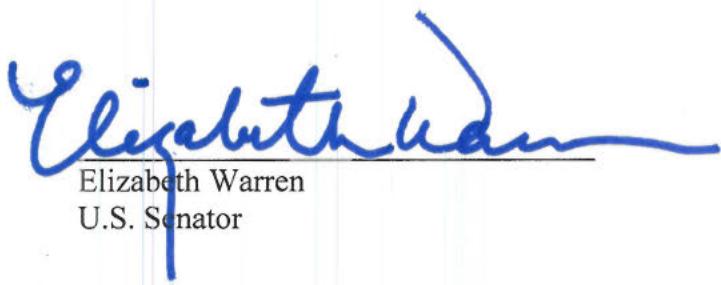
<sup>7</sup> Caleb Melby, Lindsey Rupp, and Bill Allison, “Documents Show Jared Kushner, Ivanka Trump to Divest Some Assets,” *Bloomberg Politics* (March 17, 2017) (online at <https://www.bloomberg.com/politics/articles/2017-03-17/documents-show-jared-kushner-ivanka-trump-to-divest-some-assets>).

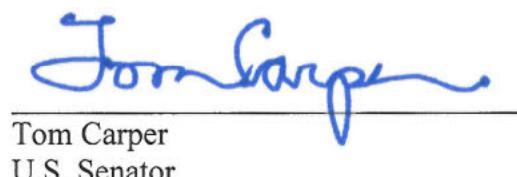
4. If Ms. Trump was an official government employee in the White House, what financial disclosures would be required of her? When and how would this information be disclosed?
5. If Ms. Trump was an official government employee in the White House, what divestments would be required of her?
  - a. When and how would these requirements be disclosed?
  - b. How would your office or other relevant officials determine whether she had complied with these divestment requirements?
  - c. What would the consequences be if she did not do so, and which government officials would be responsible for determining and enforcing these consequences?
6. If Ms. Trump was an official government employee in the White House, from what issues would she be required to recuse herself in advising the President or otherwise acting in an official capacity?
  - a. When and how would these recusal requirements be disclosed?
  - b. How would your office or other relevant officials determine whether she had complied with these required recusals?
  - c. What would the consequences be if she did not do so, and which government officials would be responsible for determining and enforcing these consequences?
7. If Ms. Trump was an official government employee in the White House, what other relevant ethics rules would apply, and how would they be enforced?

If you or members of your staff have any questions about this request, please do not hesitate to ask your staff to contact Susannah Savage with Senator Warren's staff at 202-224-4543 or Roberto Berrios with Senator Carper's staff at 202-224-2627.

With best personal regards, we are

Sincerely yours,

  
Elizabeth Warren  
U.S. Senator

  
Tom Carper  
U.S. Senator

**From:** Gorelick, Jamie  
**To:** [Walter M. Shaub](#)  
**Subject:** quick call?  
**Date:** Wednesday, March 29, 2017 2:43:36 PM

---

Walt –

Want to give you an update on the matter we last discussed.

J

**Jamie S. Gorelick | WilmerHale**  
1875 Pennsylvania Avenue NW  
Washington, DC 20006 USA  
+1 202 663 6500 (t)  
+1 202 663 6363 (f)  
[jamie.gorelick@wilmerhale.com](mailto:jamie.gorelick@wilmerhale.com)

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**From:** [Walter M. Shaub](#)  
**To:** ["Passantino, Stefan C. EOP/WHO"](#)  
**Cc:** [David J. Apol](#)  
**Subject:** (b)(5)  
**Date:** Thursday, March 30, 2017 5:56:49 PM  
**Attachments:** (b)(5) [REDACTED]  
[REDACTED]  
(b)(5)

1 page attachment withheld in full - (b)(5); 2  
page attachment withheld in full - (b)(5)

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Stefan,

Here are two versions of the (b)(5). One version has (b)(5). The other has (b)(5)  
[REDACTED].

I think for your purposes (b)(5)  
[REDACTED].

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:** Gorelick, Jamie  
**To:** [Walter M. Shaub](#)  
**Subject:** call?  
**Date:** Thursday, March 30, 2017 6:34:09 PM

---

Do you have minute for quick call?

Jamie

**Jamie S. Gorelick | WilmerHale**

1875 Pennsylvania Avenue NW  
Washington, DC 20006 USA  
+1 202 663 6500 (t)  
+1 202 663 6363 (f)  
[jamie.gorelick@wilmerhale.com](mailto:jamie.gorelick@wilmerhale.com)

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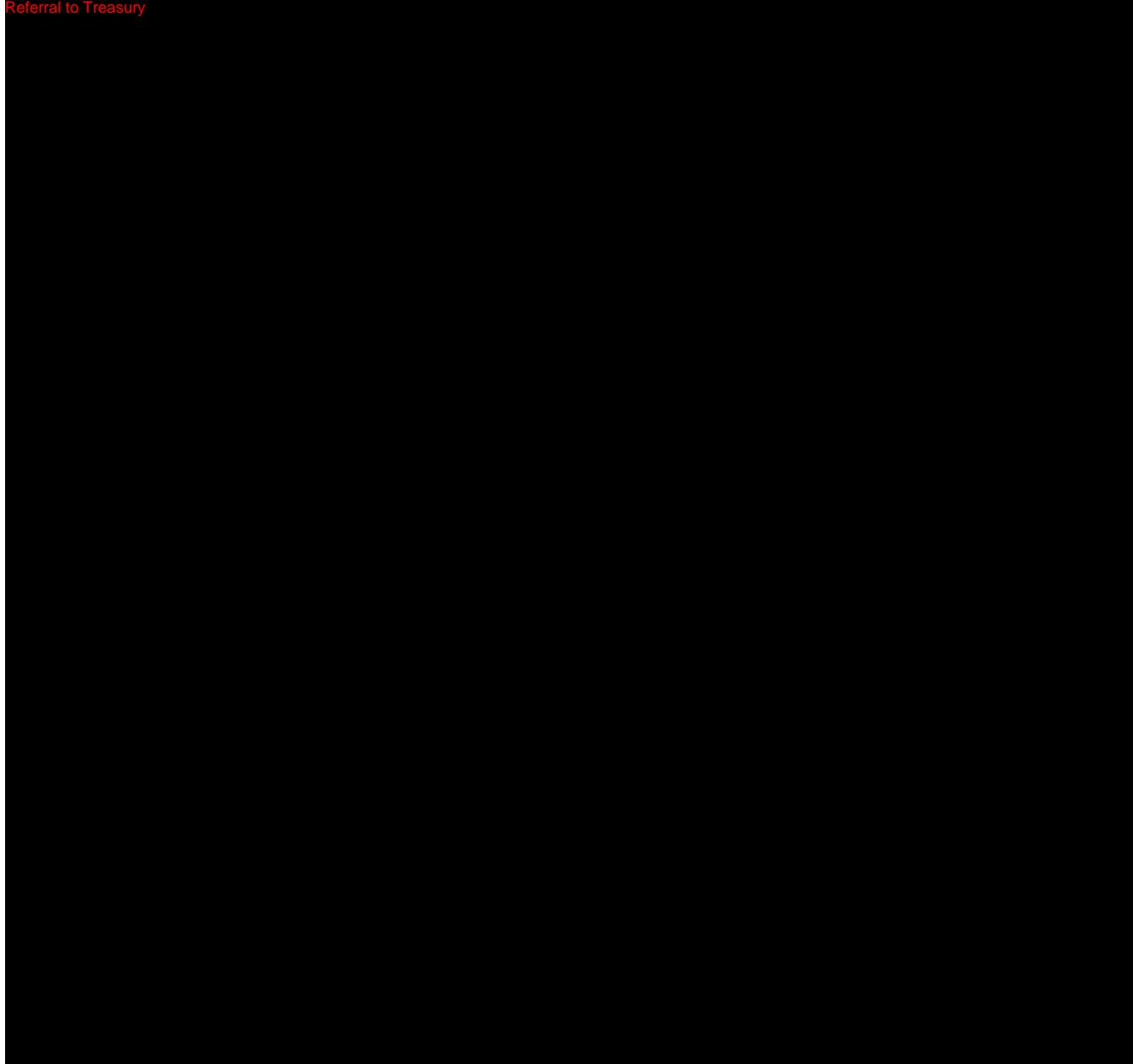
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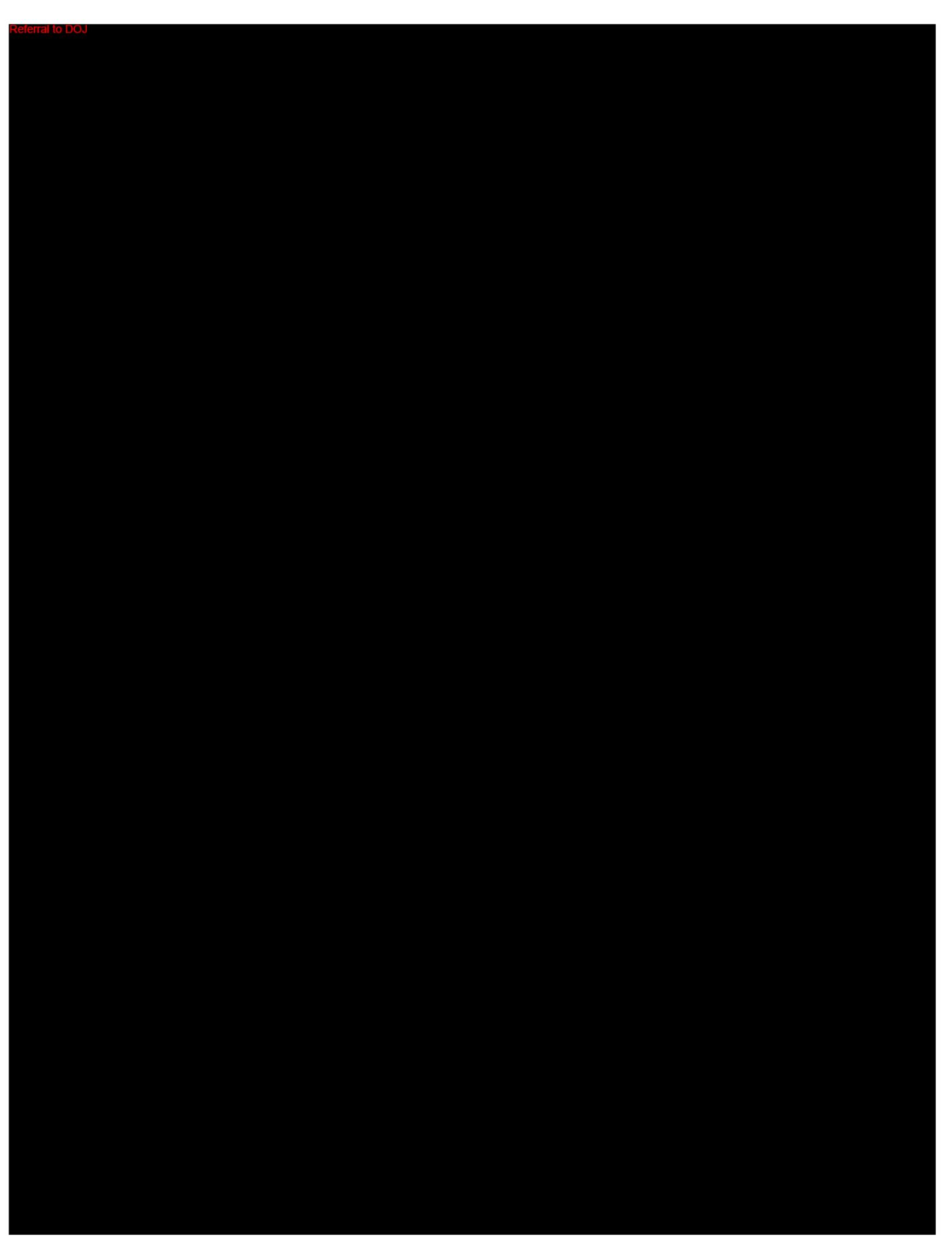
Referral to Treasury

Referral to Treasury



Referral to Treasury

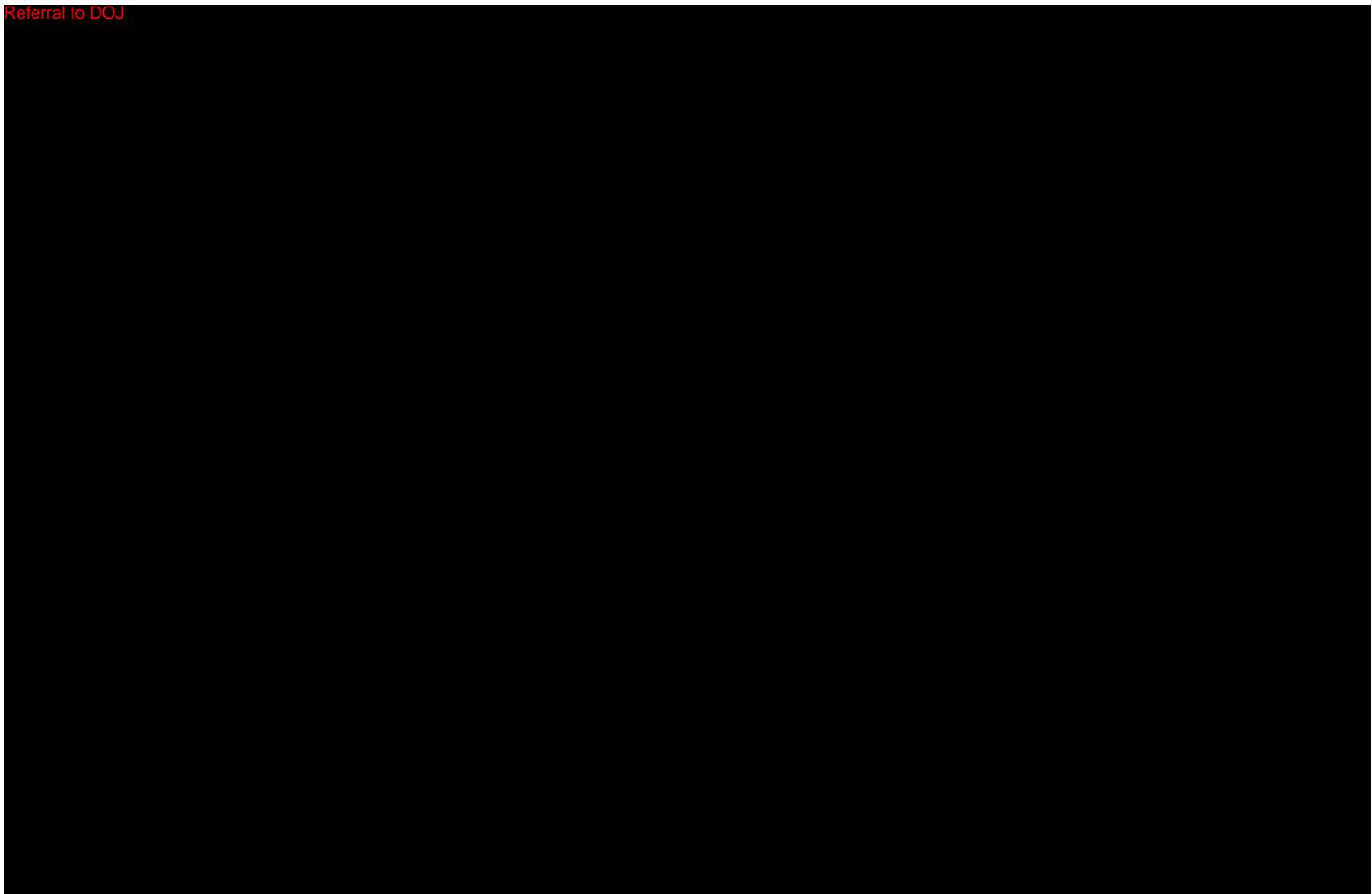
Referral to Treasury



Referral to DOJ



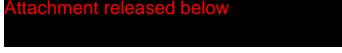
Referral to DOJ



**From:** [Elaine Newton](#)  
**To:** Director of OGE  
**Subject:** WH Briefing on financial disclosure reports  
**Date:** Friday, March 31, 2017 1:41:28 PM  
**Attachments:** [WH Press Release \(3-31-17\).pdf](#)

---

Attachment released below



## Elaine Newton

---

**From:** Lipton, Eric (b) (6)  
**Sent:** Friday, March 31, 2017 12:45 PM  
**To:** Elaine Newton  
**Subject:** Fwd: Background Briefing on Financial Disclosure Forms

FYI...We just got this.  
also FYI, please do believe me when I say that I am just trying to do my job.  
Not trying to be difficult. But we have to answer questions for the public.

ERIC

Eric Lipton  
*The New York Times*  
Washington Bureau  
(b) (6) office  
(b) (6) mobile

----- Forwarded message -----

From: White House Press Office (b) (6)  
Date: Fri, Mar 31, 2017 at 12:34 PM  
Subject: Background Briefing on Financial Disclosure Forms  
To: (b)(6) - Eric Lipton's email address

THE WHITE HOUSE

Office of the Press Secretary

---

FOR PLANNING PURPOSES ONLY//NOT REPORTABLE

March 31, 2017

### Background Briefing on Financial Disclosure Forms

This afternoon, Senior White House Compliance and Ethics Counsel will hold a background briefing on financial disclosure forms. The briefing will be conducted in person and via

conference call at 2:30PM EDT, and the information will be embargoed until 5:00PM EDT. Please find the dial-in information below. The number of lines is limited and available on a first-come-first-served basis, so please limit to one per outlet.

In Person: White House Briefing Room

Participant

(b)(6) - Telephone bridge access info

Access Cod

###

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Unsubscribe

The White House · 1600 Pennsylvania Avenue, NW · Washington DC 20500 (b) (6)

**From:** [Shelley K. Finlayson](#)  
**To:** Director of OGE; Diana Veilleux  
**Subject:** Fw: Letter from RM Cummings  
**Date:** Friday, April 07, 2017 9:59:54 AM  
**Attachments:** [2017-04-07 EEC to Shaub-OGE re Kellyanne Conway Conflicts of Interest \(002\).pdf](#)

---

Attachment released below



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

---

**From:** Boyd, Krista **(b) (6)**  
**Sent:** Friday, April 7, 2017 9:37 AM  
**To:** Shelley K. Finlayson  
**Subject:** Letter from RM Cummings

---

Attachment released below



Shelley,

Attached please find a letter to Director Shaub from Ranking Member Cummings. Please let me know if you have any questions.

Thank you,  
Krista

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
MINORITY (202) 225-5051

<http://oversight.house.gov>

April 7, 2017

The Honorable Walter Shaub, Jr.  
Director  
Office of Government Ethics  
1201 New York Avenue, N.W.  
Washington, D.C. 20005

Dear Director Shaub:

We are writing to request information about the ongoing relationship between Kellyanne Conway, Counselor to the President, and the Polling Company, Inc./WomanTrend (the Polling Company), a political consulting company Ms. Conway founded in 1995.<sup>1</sup> Past clients of the Polling Company include Altria, American Express, Boeing, Harris Teeter, Major League Baseball, and PayPal.<sup>2</sup>

Although Ms. Conway resigned as President and CEO of the Polling Company effective January 20, 2017, it appears that she has not divested her ownership interest. Given the opportunity to clarify Ms. Conway's current ownership interest in the Polling Company, the White House issued the following statement:

Kellyanne Conway resigned from the company and has had no management responsibility since before she was sworn in as Counselor to The President. Mrs. Conway, who has signed the Ethics Pledge, has been working with the Office of the White House Counsel to ensure she is fully compliant with her legal and ethical obligations in connection with her former company and her duties in the White House. While she is in the process of divesting her assets, like all White House employees in a similar situation, this process requires submission of ethics documentation to the Office of Government Ethics to obtain a Certificate of Divestiture from OGE prior to selling the asset. As is the case for many other employees, this process is still underway.<sup>3</sup>

---

<sup>1</sup> *Kellyanne Conway Biography*, Huffington Post (online at [www.huffingtonpost.com/author/kellyanne-conway](http://www.huffingtonpost.com/author/kellyanne-conway)) (accessed Mar. 27, 2017).

<sup>2</sup> The Polling Company, *Sampling of Former Corporate and Political Clients* (online at [www.pollingcompany.com/clients](http://www.pollingcompany.com/clients)) (accessed Mar. 27, 2017).

<sup>3</sup> *Is Kellyanne Conway Breaking the Law?*, Slate (Mar. 24, 2017) (online at [www.slate.com/articles/news\\_and\\_politics/politics/2017/03/is\\_kellyanne\\_conway\\_breaking\\_a\\_major\\_crimeal\\_conflict\\_of\\_interest\\_statute.html](http://www.slate.com/articles/news_and_politics/politics/2017/03/is_kellyanne_conway_breaking_a_major_crimeal_conflict_of_interest_statute.html)).

The Polling Company's most recent annual report, which was dated February 13, 2017, and filed with the Commonwealth of Virginia State Corporation Commission, lists Ms. Conway as "Director."<sup>4</sup> Ms. Conway filed a financial disclosure on March 13, 2017, reporting that she held the position of President and CEO of the Polling Company until January 2017.<sup>5</sup>

In response to a request to review any certificates of divestiture or ethics waivers issued to Ms. Conway, a spokesperson for your office stated that the Office of Government Ethics (OGE) "is at liberty to speak on what is available and received at OGE and we have not received any documents regarding Kellyanne Conway."<sup>6</sup> OGE has since received Ms. Conway's financial disclosure, but it is unclear whether any additional information has been provided to OGE.

You have previously explained that "regulations applicable to the White House Office provide that, 'Employees of the Executive Office of the President are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635.'"<sup>7</sup> Accordingly, 5 CFR part 2635.702, which precludes an executive branch employee from using "public office for his own private gain," would apply to Ms. Conway.

If Ms. Conway continues to have a financial stake in the Polling Company while employed as Counselor to the President, she has potential conflicts of interest that are unknown to the public because a complete client list for the Polling Company is not publicly available. In addition, because the White House has not released any ethics agreement or waivers of ethics requirements that they have with Ms. Conway, it is unclear how the White House is addressing these potential conflicts of interest.

For these reasons, we ask that you provide answers to the following questions, as well as the documents requested below:

---

<sup>4</sup> *2016 Annual Report*, The Polling Company (Feb. 13, 2017) (online at [www.scribd.com/document/341757083/Polling-Company-2016-Report](http://www.scribd.com/document/341757083/Polling-Company-2016-Report)). The annual report also lists Ms. Conway as CEO, but on February 14, 2017, a representative from the Polling Company informed the Commonwealth of Virginia State Corporation Commission that Ms. Conway had been replaced as CEO. *See Is Kellyanne Conway Breaking the Law?*, Slate (Mar. 24, 2017) (online at [www.slate.com/articles/news\\_and\\_politics/politics/2017/03/is\\_kellyanne\\_conway\\_breaking\\_a\\_major\\_cr](http://www.slate.com/articles/news_and_politics/politics/2017/03/is_kellyanne_conway_breaking_a_major_cr)onflict\_of\_interest\_statute.html).

<sup>5</sup> Kellyanne Conway, Executive Branch Personnel Public Financial Disclosure Report (Mar. 13, 2017) (online at <http://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2017/04/01011234/Conway-Kellyanne.pdf>).

<sup>6</sup> *Is Kellyanne Conway Breaking the Law?*, Slate (Mar. 24, 2017) (online at [www.slate.com/articles/news\\_and\\_politics/politics/2017/03/is\\_kellyanne\\_conway\\_breaking\\_a\\_major\\_cr](http://www.slate.com/articles/news_and_politics/politics/2017/03/is_kellyanne_conway_breaking_a_major_cr)onflict\_of\_interest\_statute.html).

<sup>7</sup> Letter from Walter M. Shaub, Jr., Director, Office of Government Ethics, to Eric R. Bolinder, Counsel, Cause of Action Institute (Feb. 17, 2017). Director Shaub also cited 64 Fed. Reg. 12,881, acknowledging that 5 C.F.R. part 2635 "established uniform standards of ethical conduct that apply to all executive branch personnel."

- (1) Please describe the application process and procedural requirements for issuing certificates of divestiture, including the average time OGE takes to render decisions.
- (2) Once an executive branch employee becomes aware that divestiture may be necessary due to potential or actual conflicts of interest, what measures, including but not limited to recusal, must an employee take while the employee continues to own that asset?
- (3) Please describe the process by which an employee must seek recusal pending resolution of the employee's divestiture of an asset, including which official receives the recusal application and which official makes the final determination on the extent to which an employee should be recused.
- (4) Please provide a copy of Ms. Conway's financial disclosure form as certified by OGE when it becomes available.
- (5) What communications, including documents, has OGE received from White House officials, Ms. Conway, or her representatives regarding her ethics filings, ethical obligations, or potential divestiture from the Polling Company? Please provide copies of these documents and any OGE responses to these communications.
- (6) If OGE has received any documents regarding Ms. Conway's divestiture from the Polling Company, on what dates did OGE receive the documents?
- (7) Has a certificate of divestiture been issued for Ms. Conway?
- (8) Is OGE aware of any waivers that have been granted that would allow Ms. Conway to avoid recusal while continuing to have an ownership interest in the Polling Company?

Please provide a response to this request by April 18, 2017. If you have any questions please contact Kapil Longani with my staff at 202-225-5051. Thank you for your consideration of this request.

Sincerely,



Elijah E. Cummings  
Ranking Member

cc: The Honorable Jason Chaffetz, Chairman

Referral to FTC OIG

**From:** Roberts, Blake  
**To:** [Walter M. Shaub](#); [David J. Apol](#)  
**Subject:** Disclaimers  
**Date:** Thursday, April 20, 2017 1:32:07 PM  
**Attachments:** [image002.png](#)  
[image003.png](#)  
[image004.png](#)

---

FYI – Thank you for the guidance!

Instagram



ivankatrump  [Edit Profile](#) 

2,883 posts 3.4m followers 1,069 following

Ivanka Trump Entrepreneur + passionate advocate for the education and empowerment of women and girls. This is my personal page. Views expressed are my own.

Twitter



**Ivanka Trump** 

@IvankaTrump

Wife, mother, sister, daughter.  
Entrepreneur & advocate for the  
education & empowerment of women &  
girls. This is my personal page. Views  
expressed are my own.

Facebook

 **About**

Wife, mother, sister and daughter. Entrepreneur + passionate advocate for the education and empowerment of women and girls. NYC native, living in DC. This is my personal page. Views expressed here are my own.

**Blake Roberts | WilmerHale**

1875 Pennsylvania Avenue NW

Washington, DC 20006 USA

+1 202 663 6920 (t)

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[blake.roberts@wilmerhale.com](mailto:blake.roberts@wilmerhale.com)

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**From:** Roberts, Blake  
**To:** [Walter M. Shaub](#); [David J. Apol](#)  
**Subject:** Press Release re Book  
**Date:** Thursday, April 20, 2017 3:51:46 PM

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Walt and Dave,

Following on our discussion last week, I wanted to let you know that Ivanka posted the following statement to her personal Facebook page regarding the book. I've highlighted a paragraph addressing the government ethics issue.

Thanks,  
Blake

Empowering women has been central to my mission throughout my career, and with my book, Women Who Work, I hope to do just that. The book equips readers with the best advice, tips and skills I've learned over the years from many incredible people, on subjects including identifying opportunities, leading teams, starting companies, managing work and family, and building cultures where multidimensional women can thrive—now and in the future.

Like many other professional women, I have juggled the demands that come with growing my family and building my businesses, and I realize that I am more fortunate than most.

In order to extend the reach of those who will benefit from this book, I have established the Ivanka M. Trump Charitable Fund to receive the unpaid portion of my advance and future royalties received from Women Who Work and to make grants to charitable organizations that support the economic empowerment for women and girls.

In the first wave of giving, the Fund will make grants of \$100,000 each to the National Urban League and Boys & Girls Clubs of America, two innovative, forward-thinking organizations that have made it a priority to promote entrepreneurship and educational opportunities for women and girls in underserved communities.

With my grant to the National Urban League, the organization will launch a new Women's Initiative as part of its signature Entrepreneurship Center Program, which currently operates at 13 locations across the country. The Women's Initiative will focus on giving women the mentorship and tools they need to start and grow successful businesses and achieve economic self-sufficiency.

The grant to Boys & Girls Clubs of America will go toward the organization's national Science, Technology, Engineering and Math (STEM) program for girls and underrepresented youth. Women make up half of the total U.S. college-educated workforce, but less than one-third of the STEM workforce. Boys & Girls Clubs' STEM program and STEM Centers for Innovation are helping produce a generation of STEM-ready youth who are equipped to fill the jobs of the future, become our next generation of innovators and solve our nation's most critical challenges.

**In light of government ethics rules, I want to be clear that this book is a personal project. I wrote it at a different time in my life, from the perspective of an executive and an entrepreneur, and the manuscript was completed before the election last November. Out of an abundance of caution and to avoid the appearance of using my official role to promote the book, I will not publicize the book through a promotional tour or media appearances.**

I am extremely proud of this book and grateful to the many people who lent their voices and shared their stories in its pages. It is my sincere hope that Women Who Work serves as a powerful resource and that the book proceeds further benefit women and girls through the great work of the National Urban League and Boys & Girls Clubs of America.

###

The Ivanka M. Trump Charitable Fund (the “Fund”) is a donor advised fund that supports the economic empowerment of women and girls. Ivanka Trump is the grant advisor to the Fund and sole member of IT WWW Pub, LLC (the “LLC”), which receives royalties from the publication of Women Who Work. The LLC will contribute a minimum \$425,000 to the Fund, which is the unpaid portion of the advance, net of expenses. In addition, the LLC will contribute all future royalties it receives that are in excess of the advance to the Fund during the period from May 1, 2017 to May 1, 2022.

**Blake Roberts | WilmerHale**

1875 Pennsylvania Avenue NW

Washington, DC 20006 USA

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+1 202 663 6363 (f)

[blake.roberts@wilmerhale.com](mailto:blake.roberts@wilmerhale.com)

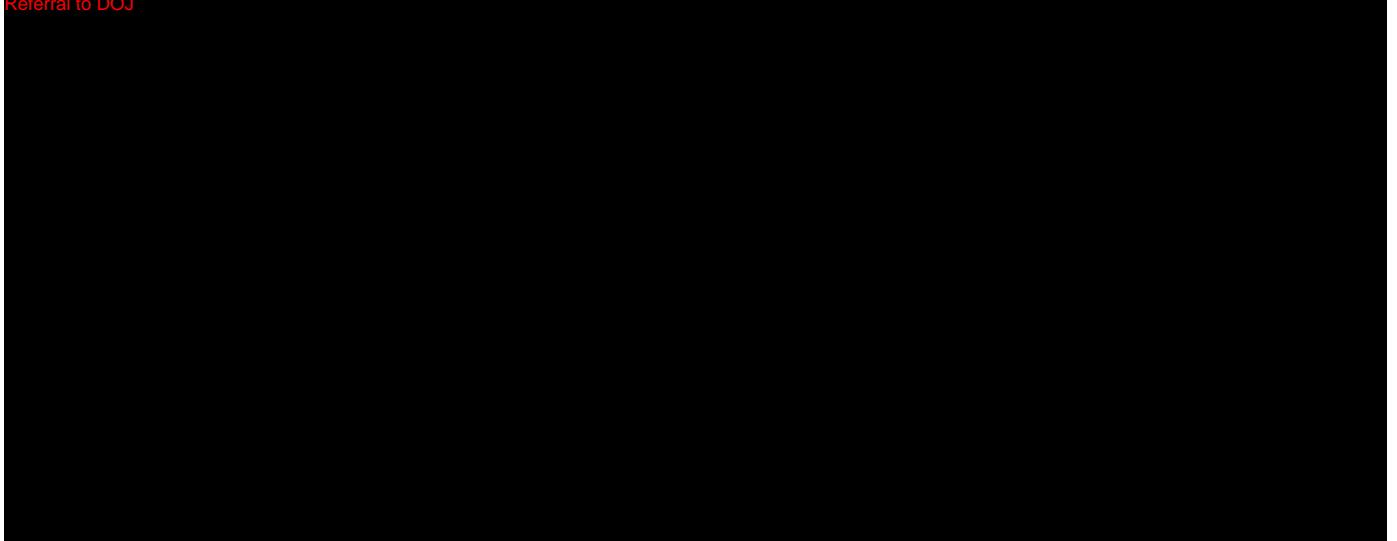
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Referral to DOJ



**From:** Bykowicz, Julie  
**To:** [Walter M. Shaub](#)  
**Subject:** Checking in  
**Date:** Friday, April 21, 2017 10:02:32 AM

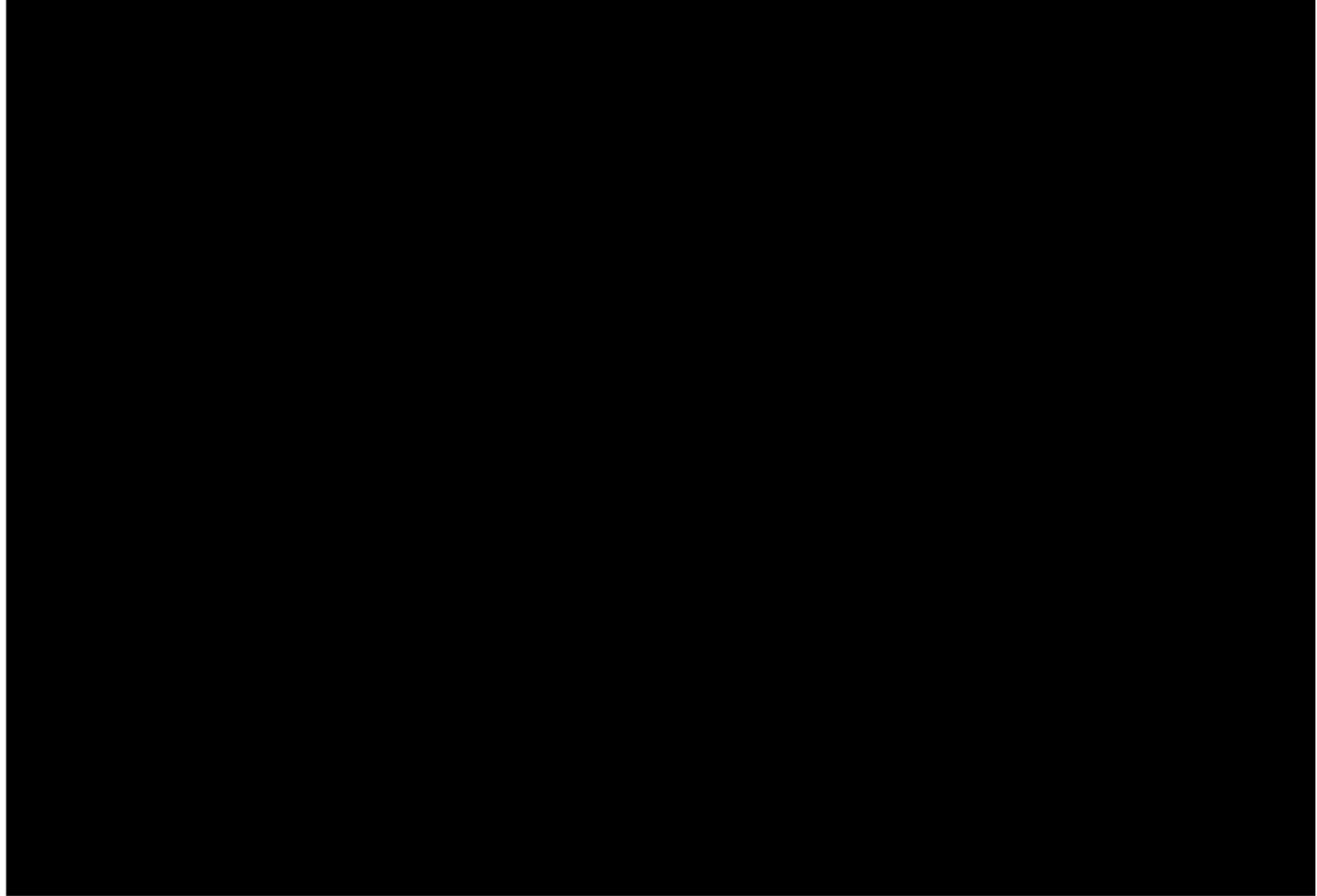
---

Good morning! I wanted to check and see whether anything has changed in terms of WH communication to your office following the NYT story last weekend. Perhaps they have now told you they will alert you to waivers?

Happy to speak with you on background if better. Number below.

Julie Bykowicz  
White House Reporter  
Associated Press  
Mobile: (b) (6)  
Twitter: (b) (6)

Referral to CIGIE



Referral to DOL OIG



**From:** [Director of OGE](#)  
**To:** (b)(6) - Brian Papp's email address  
**Subject:** Letter to Senators Warren and Carper  
**Date:** Tuesday, April 25, 2017 6:06:18 PM  
**Attachments:** [Letter to Senators Warren and Carper.pdf](#)

---

Attachment released below



Please find attached letter from OGE Director Walter M. Shaub, Jr.

The original will follow by standard mail.

Thank You,

Matthew Marinec, M.P.P.  
Confidential Assistant to the Director  
U.S. Office of Government Ethics  
1201 New York Ave., NW, Suite 500  
Washington, DC 20005-3917  
Tel. 202.482.9286

Visit OGE's website: [www.oge.gov](http://www.oge.gov)  
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UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

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April 25, 2017

The Honorable Elizabeth Warren  
United States Senator  
317 Hart Senate Office Building  
Washington D.C. 20510

The Honorable Thomas R. Carper  
United States Senator  
513 Hart Senate Office Building  
Washington D.C. 20510

Dear Senators Warren and Carper:

I am in receipt of your letter dated March 29, 2017, requesting information about the ethics rules that apply to Ms. Ivanka Trump in her capacity as an advisor to the President.

At the time of your letter, it was unclear whether the White House would recognize Ms. Trump as having the status of an executive branch employee. Although OGE was not consulted by the White House on this issue, I contacted both Ms. Trump's attorney and the White House's ethics official on March 24, 2017, to express OGE's view that Ms. Trump appeared to meet the legal standard to be considered an employee covered by the executive branch ethics rules.<sup>1</sup> During those conversations, both Ms. Trump's attorney and the White House's ethics official seemed open to the possibility of recognizing Ms. Trump's status as an employee through a formal appointment. Thereafter, on March 29, 2017, the White House announced Ms. Trump's decision to accept a formal appointment as an executive branch employee.<sup>2</sup> With her newly recognized status as an executive branch employee, Ms. Trump is covered by the ethics laws and regulations applicable to executive branch employees.

Executive branch employees are subject to a variety of ethics laws and rules designed to ensure the impartiality of the government's decision making. These authorities include the anti-bribery and criminal conflict of interest statutes;<sup>3</sup> the Ethics in Government Act;<sup>4</sup> the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct);<sup>5</sup> certain restrictions established in President Bush's 1989 Executive Order on ethics;<sup>6</sup> the Stop Trading on

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<sup>1</sup> Others had raised similar concerns publicly. See, e.g., Julie Bykowicz, *Ivanka Trump: A White House Force, Just Not An Employee*, BLOOMBERG (Mar. 24, 2017), <https://goo.gl/1dX33U>; Jackie Northam and Marilyn Geewax, *Ivanka Trump's Move To The White House Raises Questions About Ethics*, NATIONAL PUBLIC RADIO (Mar. 21, 2017), <https://goo.gl/9o56B3>.

<sup>2</sup> See Abby Phillip, *Ivanka Trump reverses course, will become a government employee*, THE WASHINGTON POST (Mar. 29, 2017), <https://goo.gl/Greyeh>; see also Office of the Press Secretary, *Background Press Briefing on Financial Disclosure Forms from the White House Office of the Press Secretary*, THE WHITE HOUSE (Mar. 31, 2017), <https://goo.gl/hbWGAf>.

<sup>3</sup> 18 U.S.C. §§ 201-209.

<sup>4</sup> 5 U.S.C. app. §§ 101 *et seq.*

<sup>5</sup> 5 C.F.R. part 2635.

<sup>6</sup> Exec. Order 12674 (Apr. 12, 1989), as amended by Exec. Order 12731 (Oct. 17, 1990).



Congressional Knowledge Act;<sup>7</sup> and other legal provisions. Certain political appointees are also subject to additional restrictions established in Executive Order 13770 (Jan. 28, 2017). Presidential appointees in the White House are subject to these authorities to the same extent as other executive branch employees.<sup>8</sup>

Of particular relevance to your inquiry, Ms. Trump is now subject to financial disclosure requirements. Like other appointees, Ms. Trump must file new entrant financial disclosure reports within 30 days of appointment to the government.<sup>9</sup> These reports include information about the financial interests of the filers, their spouses, and their dependent children, as well as certain positions outside the government.<sup>10</sup> The White House is authorized to grant an extension, upon a showing of good cause, of up to 45 days and, upon a written showing of good cause, a second extension of up to 45 additional days.<sup>11</sup> The approval of a second extension must be in writing.<sup>12</sup> After appointees file their reports, the White House's ethics officials review the reports for compliance with financial disclosure requirements and substantive ethics requirements.<sup>13</sup> White House ethics officials are expected to work with an appointee to resolve any potential conflicts of interest that they identify through their review of the financial disclosure reports.<sup>14</sup>

In addition to filing a new entrant report, Ms. Trump must satisfy other financial disclosure requirements. She will have to file periodic transaction reports within 30 days of receiving notice of any covered transaction.<sup>15</sup> She will have to file an annual financial disclosure report by May 15 each year.<sup>16</sup> In addition, she will have to file a termination financial disclosure report within 30 days of terminating her federal service.<sup>17</sup> The process for resolving conflicts of interest identified during the review of these subsequently filed financial disclosure reports is the same as that associated with new entrant financial disclosure reports.

With regard to your questions about the steps Ms. Trump must take to remedy any potential or actual conflicts of interest identified through her financial disclosures, the primary criminal conflict of interest statute prohibits senior White House appointees and other executive branch employees from participating personally and substantially in particular matters directly and predictably affecting their financial interests.<sup>18</sup> Among other things, this prohibition extends to the financial interests of companies in which they have ownership interests.<sup>19</sup> It is important to note, however, that the criminal conflict of interest statute is not a prohibited holdings statute. Instead, it requires an appointee to refrain from participating in the particular matter affecting the appointee's

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<sup>7</sup> Pub. L. No. 112–105, 126 Stat. 291 (2012), as amended.

<sup>8</sup> Note, however, the Department of Justice (DOJ) recently opined that the anti-nepotism statute does not apply to the White House Office. *See Application of the Anti-Nepotism Statute to a Presidential Appointment in the White House Office*, OFFICE OF LEGAL COUNSEL, U.S. DEP'T JUSTICE, 41 Op. O.L.C. 1 (Jan. 20, 2017). DOJ's decision is applicable to Ms. Trump. *See id.*

<sup>9</sup> 5 U.S.C. app. § 101(a).

<sup>10</sup> 5 U.S.C. app. § 102.

<sup>11</sup> 5 C.F.R. § 2634.201(f).

<sup>12</sup> *Id.*

<sup>13</sup> 5 U.S.C. app. § 106(a); 5 C.F.R. § 2634.605.

<sup>14</sup> 5 U.S.C. app. § 106(a); 5 C.F.R. § 2634.605.

<sup>15</sup> 5 U.S.C. app. § 103(l).

<sup>16</sup> 5 U.S.C. app. § 101(d).

<sup>17</sup> 5 U.S.C. app. § 101(e).

<sup>18</sup> See 18 U.S.C. § 208(a).

<sup>19</sup> See, e.g., OGE Informal Advisory Opinion 92 x 2 (1992).

financial interests or the financial interests of persons whose interests are imputed to the appointee.<sup>20</sup> Thus, the most common mechanism for resolving conflicts of interest is to recuse from particular matters that would affect the appointee's personal and imputed financial interests.

Recusal is not the only means for resolving conflicts of interest. Other remedies for resolving conflicts of interest can include reassignment, divestiture, waiver, or the establishment of a qualified blind or diversified trust.<sup>21</sup> In some cases, an employee can rely on an exemption to the criminal conflict of interest statute.<sup>22</sup> OGE and the Department of Justice have established regulatory exemptions for certain types of financial interests because the conflicts of interest they pose are too remote or inconsequential to be likely to affect the integrity of an employee's service to the government.<sup>23</sup>

The White House can direct an appointee to sell, or otherwise divest, an asset in order to avoid a conflict of interest.<sup>24</sup> If selling the asset will result in a capital gain, the appointee may be eligible for a Certificate of Divestiture to offset the tax burden of complying with the government's conflict of interest requirements.<sup>25</sup> Pending the divestiture, the appointee must recuse from particular matters in which the asset poses a conflict of interest. Recusal is achieved by not participating in a particular matter.<sup>26</sup> A White House appointee is not normally required to file a disqualification statement or other document regarding the recusal.<sup>27</sup> Thus, the important requirement is only that the appointee not participate.

Only after the White House has certified the appointee's financial disclosure report does the White House transmit the report to OGE.<sup>28</sup> OGE then conducts a second-level review.<sup>29</sup> As part of this review process, OGE advises White House ethics officials of any deficiencies in an appointee's compliance with financial disclosure requirements. In turn, the White House ethics officials work with the appointee who filed the report in order to resolve them. It is normal for an appointee to make changes to a financial disclosure report and to add information during this review process. After the report is revised, OGE seeks information about how the White House is addressing any potential conflicts of interest identified during the review process. OGE then makes a determination regarding apparent compliance with financial disclosure and conflict of interest rules and either certifies or declines to certify the financial disclosure report.<sup>30</sup>

In response to your specific inquiry, the ethics provisions and requirements discussed above are generally applicable to Ms. Trump. For example, the primary criminal conflict of interest statute

<sup>20</sup> See 18 U.S.C. § 208(a).

<sup>21</sup> See, e.g., Memo from Amy L. Comstock, Director, U.S. Office of Gov't Ethics, to Designated Agency Ethics Officials, *Nominee Ethics Agreements*, DO-01-013 (2001) (discussing remedies for conflicts of interest in the analogous case of Presidential nominees); 5 C.F.R. pt. 2634, subpt. D.

<sup>22</sup> 18 U.S.C. § 208(b)(2).

<sup>23</sup> See 5 C.F.R. pt. 2640, subpt. B.

<sup>24</sup> See 5 C.F.R. § 2635.403(b).

<sup>25</sup> 26 U.S.C. § 1043; 5 C.F.R. pt. 2634, subpt. J.

<sup>26</sup> 5 C.F.R. § 2640.103(d).

<sup>27</sup> 5 C.F.R. § 2640.103(d)(2). But see Stop Trading on Congressional Knowledge Act of 2012, Pub. L. No. 112-105, § 17, 126 Stat. 291, 303-04 (requiring notice of recusal in the limited case of an appointee negotiating for post-government employment).

<sup>28</sup> 5 U.S.C. app. § 103(c).

<sup>29</sup> 5 U.S.C. app. § 106(a).

<sup>30</sup> 5 U.S.C. app. § 106(b); 5 C.F.R. § 2634.605.

prohibits Ms. Trump from participating in particular matters affecting her financial interests, including the financial interests of Trump family businesses and other companies in which she has an ownership interest.<sup>31</sup> That conflict of interest statute also covers her spouse's financial interests, which are imputed to her.<sup>32</sup> Another statute prohibits her from representing any person, including any family business organized as a legal entity, before the government.<sup>33</sup> She is also subject to the Standards of Conduct.<sup>34</sup> If, as has been reported,<sup>35</sup> she is not receiving a salary, she is not covered by a prohibition on supplementation of government salary or a prohibition on earning outside income ordinarily applicable to appointees at her level.<sup>36</sup>

The White House is responsible for providing Ms. Trump with ethics support and advice. This support includes new employee ethics training within three months of her appointment and, thereafter, ethics training on an annual basis.<sup>37</sup> The White House is also responsible for monitoring compliance with the remedies put in place to resolve actual or apparent conflicts of interest. In addition, White House officials and Ms. Trump's representatives are free to consult with OGE if they require assistance in addressing any ethics issues that arise.<sup>38</sup>

I hope this explanation addresses the issues your letter raises. If members of either of your staffs have questions, OGE's Chief of Staff, Shelley K. Finlayson, is available to assist them. She can be reached at 202-482-9292.

Sincerely,



Walter M. Shaub, Jr.  
Director

<sup>31</sup> 18 U.S.C. § 208(a).

<sup>32</sup> *Id.*

<sup>33</sup> See 18 U.S.C. § 205.

<sup>34</sup> See 5 C.F.R. pt. 2635.

<sup>35</sup> See Gabrielle Levy, *Ivanka Trump's New Official Job: Special Assistant to the President*, U.S. NEWS AND WORLD REPORT, (Mar. 29, 2017), <http://bit.ly/2paFxO0>.

<sup>36</sup> See 18 U.S.C. § 209(c); Exec. Order 12674, § 102 (Apr. 12, 1989), as amended by Exec. Order 12731 (Oct. 17, 1990).

<sup>37</sup> 5 C.F.R. pt. 2638, subpt. C.

<sup>38</sup> For example, OGE recently provided verbal advice to Ms. Trump's representatives on ways to comply with the Standards of Conduct in connection with a deal for a book that was written before she entered government.

**From:** [Walter M. Shaub](#)  
**To:** (b)(6) [McGahn, Donald F. EOP/WHO](#)  
**Cc:** [Passantino, Stefan C. EOP/WHO](#)  
**Subject:** letter from OGE Director W. Shaub  
**Date:** Thursday, July 06, 2017 12:58:41 PM  
**Attachments:** [Letter from W Shaub.pdf](#)

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Attachment released below

Please see the attached letter.

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)

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

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July 6, 2017

The President of the United States  
The White House  
1600 Pennsylvania Avenue, NW  
Washington DC 20500

Dear Mr. President:

I am resigning from my position as Director of the U.S. Office of Government Ethics effective Wednesday, July 19, 2017.

The great privilege and honor of my career has been to lead OGE's staff and the community of ethics officials in the federal executive branch. They are committed to protecting the principle that *public service is a public trust*, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain. I am grateful for the efforts of this dedicated and patriotic assembly of public servants, and I am proud to have served with them.

Respectfully,



Walter M. Shaub, Jr.  
Director



**From:** [Director of OGE](#)  
**To:** [REDACTED]  
[REDACTED] (b) (6) - Donald McGahn's email address  
**Cc:** [REDACTED]  
[REDACTED] (b) (6) - Steven F. Passamino's email address  
**Subject:** Letter from OGE Director W Shaub 6-28-17  
**Date:** Wednesday, June 28, 2017 5:00:50 PM  
**Attachments:** [Letter from OGE Director W Shaub 6-28-17.pdf](#)

---

Attachment released below

Please find attached letter from OGE Director Walter M. Shaub, Jr. Please confirm receipt. The original will follow by standard mail. Please direct questions to Kelsey Phipps at 202-482-9318.

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)

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UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

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June 28, 2017

The Honorable Elizabeth Warren  
United States Senator  
317 Hart Senate Office Bldg.  
Washington, DC 20510

The Honorable Thomas R. Carper  
United States Senator  
513 Hart Senate Office Bldg.  
Washington, DC 20510

The Honorable Elijah E. Cummings  
Member of Congress  
2163 Rayburn House Office Bldg.  
Washington, DC 20510

The Honorable Sheldon Whitehouse  
United States Senator  
530 Hart Senate Office Bldg.  
Washington, DC 20510

The Honorable Patrick Leahy  
United States Senator  
437 Russell Senate Office Bldg.  
Washington, DC 20510

Dear Members of Congress:

I write in response to your May 16, 2017, letter regarding the White House's Designated Agency Ethics Official and Deputy Counsel to the President, Stefan C. Passantino.

As noted in your letter, executive branch employees are subject to a variety of ethics laws and rules designed to ensure the impartiality of the government's decision making. These authorities include the anti-bribery and criminal conflict of interest statutes;<sup>1</sup> the Ethics in Government Act;<sup>2</sup> the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct);<sup>3</sup> certain restrictions established in President Bush's 1989 Executive Order on ethics;<sup>4</sup> the Stop Trading on Congressional Knowledge Act;<sup>5</sup> and other legal provisions. Certain political appointees are also subject to additional restrictions established in Executive Order 13770.<sup>6</sup> Presidential appointees in the White House, including its Designated Agency Ethics official, are subject to these authorities to the same extent as other employees.

Of relevance to your inquiry, Mr. Passantino is subject to restrictions with respect to former clients under the Standards of Conduct and Executive Order 13770.<sup>7</sup> Under the Standards of Conduct, he may not participate in any "particular matter involving specific parties" in which

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<sup>1</sup> 18 U.S.C. §§ 201-209.

<sup>2</sup> 5 U.S.C. app. §§ 101 *et seq.*

<sup>3</sup> 5 C.F.R. part 2635.

<sup>4</sup> Exec. Order 12674 (Apr. 12, 1989), as amended by Exec. Order 12731 (Oct. 17, 1990).

<sup>5</sup> Pub. L. No. 112-105, 126 Stat. 291 (2012), as amended.

<sup>6</sup> See section 1 of Exec. Order 13770 (Jan. 28, 2017).

<sup>7</sup> See section 1(6) of Exec. Order 13770 (Jan. 28, 2017); 5 C.F.R. § 2635.502(a), (b)(iv).



a client he served in the past year is a party or represents a party, whenever he or his agency determines that a “reasonable person” with knowledge of the relevant facts would question his impartiality in the matter.<sup>8</sup> This Standards of Conduct restriction is narrower than the separate restriction under the Executive Order. The Executive Order restriction covers any “particular matter involving specific parties” in which a client he served in the two-year period prior to his appointment is a party or represents a party; it also covers most communications and meetings involving such a client.<sup>9</sup> Unlike the Standards of Conduct restriction, the Executive Order restriction is not subject to the “reasonable person” test.

Neither restriction applies if the former client is an executive agency or, when acting in an official capacity, an employee of one.<sup>10</sup> As OGE advised Mr. Passantino, he may participate in a matter in which the former client is involved in an official capacity as an executive branch employee. However, as OGE also advised Mr. Passantino, he may not participate if the former client is acting in a personal capacity, whether or not the former client is an executive branch employee. Accordingly, Mr. Passantino advised OGE that he would recuse from personnel matters involving individuals who had been his clients during the relevant time periods.

As to your inquiry regarding Secretary Carson and Secretary Price, Mr. Passantino was required to recuse from their nominations. These former clients were acting in their personal capacities in connection with their consideration for cabinet posts in the new Administration, from the time of their initial consideration through the time of their appointments. As with all White House appointees, OGE lacks direct knowledge of most of Mr. Passantino’s official activities, but OGE does regularly interact with him in connection with Presidential nominations. OGE’s staff reports that he did not participate in communications between OGE and the White House in connection with the nominations of Secretary Carson and Secretary Price.

As to your inquiry regarding Mr. Passantino’s other former client, Carl Icahn, the analysis is more complex. The White House has taken the legal position that Mr. Icahn does not meet the applicable standard to be regarded as an executive branch employee.<sup>11</sup> Based on this legal position,<sup>12</sup> Mr. Icahn’s involvement in a matter before the White House would occur solely in his personal capacity.<sup>13</sup> As such, Mr. Passantino is subject to the former client restrictions with respect to Mr. Icahn. For that reason, it is concerning that your letter cites a news report that

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<sup>8</sup> See 5 C.F.R. § 2635.502(a), (c).

<sup>9</sup> See section 2(s) of Exec. Order 13770 (Jan. 28, 2017).

<sup>10</sup> See 5 C.F.R. § 2635.502 (recusal from certain matters involving a “covered person”); see also 5 C.F.R. § 2635.102(k) (“person” does not include an executive agency or any officer or employee thereof).

<sup>11</sup> See Eric Lipton, *Icahn Raises Ethics Flags With Dual Roles as Investor and Trump Adviser*, THE NEW YORK TIMES (Mar. 26, 2017) (noting that the applicability of government ethics laws to Mr. Icahn turns on whether he is an executive branch employee), available at <https://goo.gl/NOiM18>; see also Eric Wolff, *Icahn’s ethanol push fuels ethics storm*, POLITICO (Mar. 10, 2017), available at <https://goo.gl/xr5JSW> (citing a 1977 opinion of the Office of Legal Counsel and explaining that the question as to whether Mr. Icahn qualifies as an employee is a legal one).

<sup>12</sup> See *Status of an Informal Presidential Advisor as a “Special Government Employee,”* 1 Op. O.L.C. 20 (1977) (holding that an individual who performs certain roles for the White House should be regarded as an employee, even absent an identifiable act of appointment), available at <https://goo.gl/POj4pa>. OGE lacks access to sufficient information about the roles Mr. Icahn performs for the White House to present the question to the U.S. Department of Justice for its determination.

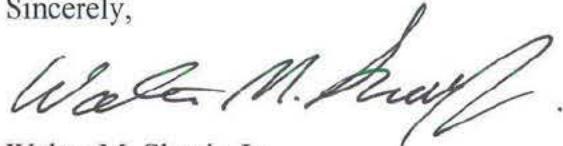
<sup>13</sup> See section 1(6) of Exec. Order 13770 (Jan. 28, 2017); see also 5 C.F.R. §§ 2635.102(k), 2635.502(a), (b)(iv).

Mr. Passantino delivered the White House's legal position on Mr. Icahn's employment status to the media.<sup>14</sup>

OGE lacks the information needed to assess this news report. Specifically, OGE does not know whether Mr. Passantino participated in the formulation of the White House's legal position, which was a "particular matter involving specific parties" in which Mr. Icahn was a party. OGE also does not know the factual circumstances surrounding Mr. Passantino's reported delivery of that legal position to the media, which could also have been a "particular matter involving specific parties" in which Mr. Icahn was a party.<sup>15</sup> However, the White House is in a position to ascertain the relevant facts and is responsible for monitoring its appointees' compliance with ethics requirements, including those established under Executive Order 13770 and the Standards of Conduct.<sup>16</sup> Therefore, by copy of this letter, I am bringing the matter to the attention of the Counsel to the President for his review and a determination as to whether action is warranted.<sup>17</sup>

I hope this information addresses the issues your letter raises. If members of your staff have questions, OGE's Chief of Staff, Shelley K. Finlayson, is available to assist them. She can be reached at 202-482-9314.

Sincerely,



Walter M. Shaub, Jr.  
Director

cc. The Honorable Donald F. McGahn II  
Counsel to the President

<sup>14</sup> Jennifer A. Dlouhy, Ari Natter, and Bill Allison, '*Purest Definition of a Conflict': Icahn's \$126 Million Gain on Biofuel Deal Draws Criticism*', BLOOMBERG MARKETS (Feb. 27, 2017; updated Mar 1, 2017) ("Bloomberg") ("He is simply a private citizen whose opinion the president respects and whom the president speaks with from time to time,' said Stefan Passantino, deputy counsel to the president for compliance and ethics. 'Mr. Icahn does not have a position with the administration nor a policymaking role.'"), available at <https://goo.gl/9tphTH>.

<sup>15</sup> See 5 C.F.R. § 2641.201(h).

<sup>16</sup> When questions arise as to an appointee's compliance, the law authorizes OGE only to make a recommendation that the employing agency look into the matter and consider taking appropriate action. See 5 U.S.C. app.

<sup>17</sup> § 402(f)(2)(A)(ii)(I). If an agency were to decline the recommendation, OGE's only recourse would be to notify the President. See 5 U.S.C. app. § 402(f)(2)(A)(iv)(II).

<sup>17</sup> I note that, based on a review of documents recently released by the White House, Mr. Passantino does not appear to have received a waiver or authorization to deliver the White House's legal position to the media. See *Ethics Pledge Waivers Released by the White House*, WHITE HOUSE PRESS OFFICE (May 31, 2017), available at <https://goo.gl/MYKr2I>. The most nearly applicable document is an Executive Order waiver addressed to all appointees in the Executive Office of the President (EOP) that covers certain communications with news organizations. See Mem. from the Counsel to the President to Appointees in the Exec. Office of the President, *Waiver Certification Under Section 3 of Executive Order 13770 for Communications and Meetings with News Organizations* (undated), available at <https://goo.gl/3MEJWr>. However, that waiver does not cover the restriction under Executive Order 13770 regarding participation in a "particular matter involving specific parties," nor does it cover the separate Standards of Conduct restriction. (There are also questions as to the waiver's validity, inasmuch as it is unsigned, undated, expressly retroactive, and issued by a member of the class of persons it purports to cover.)