



September 16, 2021

Hon. Emory A. Rounds, III
Director
U.S. Office of Government Ethics
1201 New York Ave., NW, Suite 500
Washington, DC 20005

Re: Request for Investigations of Termination Financial Disclosure Reports

Dear Director Rounds:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Government Ethics (“OGE”) exercise its monitoring and investigation authority to determine whether Marc Short, former Chief of Staff for Vice President Pence, violated the Ethics in Government Act (“EIGA”) and OGE regulations by failing to file a termination public financial disclosure report (“termination report”) when he left the White House in January 2021.

To “ensure confidence in the integrity of the Federal Government by demonstrating that they are able to carry out their duties without compromising the public trust,” the EIGA requires high-level federal officials like Mr. Short to publicly disclose their personal financial interests.¹ As a result of numerous, unsuccessful attempts by CREW to obtain a copy of Mr. Short’s termination report from the White House and several other federal agencies, there is a reasonable basis to believe that Mr. Short did not file his termination report when he departed the White House in January 2021, in violation of the EIGA.

CREW’s inability to obtain a copy of Mr. Short’s termination report more than 200 days after he departed the White House raises more than individual compliance issues. It also highlights a systemic risk that arises during presidential transitions with respect to missing White House termination reports. Although termination reports must be filed by covered White House officials like Mr. Short within 30 days of their departure,² even the best presidential transitions can become chaotic, with reporting requirements getting lost in the shuffle. To address this risk, CREW further requests that OGE conduct a comprehensive review to ensure there is a process in place for presidential transitions to collect any missing reports required to be filed by departing White House officials. Once collected, OGE can then make the reports publicly available pursuant to the EIGA through its official website and, if warranted, refer any individual who knowingly and willfully fails

¹ 5 C.F.R. § 2634.104(a).

² 5 U.S.C. app. 4 § 101(e); 5 C.F.R. §2634.201(e).

to file their termination report to the Department of Justice (“DOJ”), which has authority to bring civil actions in federal district court and seek civil penalties of up to \$50,000.³

Background

Marc Short served as a senior White House official on two separate occasions. First, from January 2017 to July 2018, he worked as President Donald J. Trump’s Director of Legislative Affairs.⁴ Then, from March 2019 to January 2021, he served as the Vice President’s Chief of Staff.⁵ In both capacities, Mr. Short served as an “Assistant to the President.”⁶ Mr. Short timely filed his new entrant and annual reports for his first position,⁷ and when Mr. Short’s White House employment was terminated the first time, he filed the mandated termination report within the 30-day time frame.⁸

Shortly after his return to the White House in March 2019, Mr. Short filed the EIGA public financial disclosure report required for new entrants, which revealed that he and his spouse held stocks in more than 100 businesses that could pose potential conflicts of interest.⁹ Notably, Mr. Short, who was actively engaged in the Trump administration’s coronavirus task force,¹⁰ held individual stocks totaling between \$500,000 and \$1.6 million in companies that soon became integral to the Trump administration’s response to the Covid-19 epidemic, including Johnson & Johnson, CVS, Walmart, and Thermo Fischer Scientific.¹¹ There is no record, however, that Mr. Short divested any of these holdings or obtained a waiver to engage in particular matters involving said companies’ financial interests,¹² even after he sought a certificate of divestiture from OGE to address his conflicts of interest, albeit unsuccessfully.¹³ Because his conflicts of interest appeared to violate 18 U.S.C. § 208, CREW filed a complaint with the Federal Bureau of Investigation requesting an investigation.¹⁴

³ 5 U.S.C. app. 4 § 104(a)(1).

⁴ See Marc Short, New Entrant Public Financial Disclosure Report, Feb. 20, 2017, <https://bit.ly/2TgVsEX>; Marc Short, Termination Public Financial Disclosure Report, Aug. 15, 2018, <https://bit.ly/2TV5DUd>.

⁵ Marc Short, New Entrant Public Financial Disclosure Report, Apr. 9, 2019, <https://bit.ly/3zOzP4U>. Although news reports indicate Mr. Short was continuing to serve Vice President Pence during and after the electoral college process, it isn’t fully clear when Mr. Short’s tenure as Chief of Staff ended. According to news reports, President Trump barred Mr. Short from the White House following Vice President Pence’s role in certifying the results of the 2020 election on January 7, 2021, but it is not known if Mr. Short continued to be employed until the Trump administration ended on January 20. Josh Dawsey and Ashley Parker, [Inside the remarkable rift between Donald Trump and Mike Pence](https://www.washingtonpost.com/news/energy-environment/wp/2021/01/11/inside-the-remarkable-rift-between-donald-trump-and-mike-pence/), *Washington Post*, Jan. 11, 2021, <https://wapo.st/3sWeofS>.

⁶ See Short, New Entrant Report, Feb. 20, 2017; Short, New Entrant Report, Apr. 9, 2019.

⁷ Short, New Entrant Report, Feb. 20, 2017; Marc Short, Annual Public Financial Disclosure Report, May 15, 2018, <https://bit.ly/3DDDVzu>.

⁸ Marc Short, Termination Public Financial Disclosure Report, Aug. 15, 2018, <https://bit.ly/2TV5DUd>.

⁹ Short, New Entrant Report, Apr. 9, 2019; Walter Shaub and Meredith Lerner, [Does the Vice President’s Chief of Staff Have a Coronavirus Conflict Of Interest?](https://www.crew.org/does-the-vice-presidents-chief-of-staff-have-a-coronavirus-conflict-of-interest/), *CREW*, Apr. 23, 2020, <https://bit.ly/3sVOKI9>.

¹⁰ Ashley Parker, Yasmeen Abutaleb, and Josh Dawsey, [Trump administration has many task forces but still no plan for beating covid-19](https://www.washingtonpost.com/news/energy-environment/wp/2020/04/11/trump-administration-has-many-task-forces-but-still-no-plan-for-beating-covid-19/), *Washington Post*, Apr. 11, 2020, <https://wapo.st/2WC5wju>.

¹¹ Short, New Entrant Report, April 9, 2019; see also Tim Mak, [Pence Chief of Staff Owns Stocks That Could Conflict With Coronavirus Response](https://www.npr.org/2020/05/28/pence-chief-of-staff-owns-stocks-that-could-conflict-with-coronavirus-response/), *NPR*, May 28, 2020, <https://n.pr/2V2kA9E>.

¹² See Marc Short, Annual Public Financial Disclosure Report, June 19, 2020, <https://bit.ly/3zOmAkB>.

¹³ Mak, *NPR*, May 28, 2020. See 5 C.F.R. § 2634.1001(a) (“Certificates of Divestiture” issued by OGE “allow an eligible person to defer paying capital gains tax on property sold to comply with conflict of interest requirements.”).

¹⁴ Letter from Noah Bookbinder to FBI Director Christopher A. Wray, June 3, 2020, <https://bit.ly/2YaLRYE>.

Following his January 2021 departure from the White House, CREW made several, unsuccessful attempts to obtain Mr. Short's final termination report from OGE:

- CREW submitted an April 12, 2021 request to OGE for Mr. Short's termination report by filing the requisite OGE Form 201, to which OGE responded that there were "no documents available." See Exhibit A.
- OGE responded to CREW's June 25 request by indicating that it had "no documents in the OGE database that match your request." See Exhibit B.
- OGE similarly responded to CREW's July 22 request by stating it had "no document available" for Mr. Short. See Exhibit C.

CREW also submitted OGE Form 201 requests to the White House and several other agencies, including the General Services Administration ("GSA") and the Office of General Counsel Ethics Division in the Office of Administration ("OA"), which were met with equally unsuccessful results:

- The White House, now operating under the Biden administration, responded on June 29 to CREW's request by stating it could not provide any information because "[t]his individual is not a [White House Office] staffer" and suggested CREW "reach out to the agency they work for." See Exhibit D.
- The GSA, which provides support to the both the incoming and outgoing administrations during presidential transitions,¹⁵ responded on June 30 by stating it did not have any reports for Mr. Short. See Exhibit E.
- The Office of General Counsel Ethics Division in OA, which is "exclusively dedicated to providing uniform administration support and services to all units of the Executive Office of the President ("EOP"),¹⁶ responded on June 30 by stating it would "neither provide nor confirm termination reports from the prior administration," and referred CREW to OGE "as they are records of the Office of Government Ethics." See Exhibit F.

Legal Analysis

Mr. Short's Failure to File a Termination Report

High-ranking executive branch officials, such as Mr. Short, are required to disclose their financial interests and resolve all conflicts before engaging in a particular matter that affects companies or industries in which they are invested.¹⁷ If Mr. Short did not file a termination report after leaving the White House for the second time, the omission raises questions about whether Mr. Short knowingly violated federal ethics rules to avoid disclosing inappropriate financial conflicts of interest.

The EIGA requires individuals who occupy covered positions to file a final public financial disclosure report on or before the thirtieth day after leaving their position, unless

¹⁵ See U.S. General Services Administration official website, [GSA's Role in Presidential Transitions](https://bit.ly/3BuoqYN), <https://bit.ly/3BuoqYN>.

¹⁶ The United States Government Manual, Executive Office of the President, Office of Administration, <https://bit.ly/38oMzDt>.

¹⁷ 5 U.S.C. app. 4 § 101; 18 U.S.C. § 208; 5 C.F.R. § 2640.103(a)(1).

they have accepted another covered position.¹⁸ Among the positions covered by the EIGA are “employee[s] in the [E]xecutive [B]ranch” whose “basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule,”¹⁹ and “any civilian employee” in the EOP “who holds a commission of appointment from the President.”²⁰ The EIGA further authorizes the Attorney General to bring a civil action against any individual “who knowingly and willfully fails to file or report” disclosures required under the statute.²¹ Federal courts have held that a willful failure to comply with EIGA reporting requirements occurs “when [an] individual ‘intentionally disregards the statute or is indifferent to its requirements.’”²² Violators of these requirements are subject to civil penalties.²³

Mr. Short almost certainly served in a covered position and thus was required to submit a termination report within 30 days of his termination. Although his exact salary as Vice President Pence’s Chief of Staff has not been publicly reported, the fact that he filed a 2019 new entrant report and a 2020 annual report are clear evidence that he served in a covered position. Also, given that his first White House salary of \$179,700 was in the highest range offered to White House staff,²⁴ his Chief of Staff salary most likely was comparable, and likewise exceeded the applicable \$132,552 reporting threshold.²⁵ Further, because he again held the title “Assistant to the President,” he likely was appointed pursuant to 3 U.S.C. § 105(a)(2)(A) and received a commission of appointment from President Donald J. Trump.²⁶

Mr. Short’s failure to file appears to be knowing and willful. Because Mr. Short had previously worked as a senior advisor in the Trump administration and had successfully completed the new entrant, annual, and termination reports in that position, he was fully aware of the financial disclosures required of high-ranking executive officials when he returned to the White House in 2019. Furthermore, over 200 days have passed since Mr. Short and the Trump administration left the White House. Even if he unknowingly failed to file a termination report promptly after termination, Mr. Short has had ample time to rectify the omission.

After repeated requests, CREW has been unable to obtain a copy or confirm the existence of Mr. Short’s termination report. Given that Mr. Short played an integral role in the coronavirus task force and also disclosed financial interests in companies that worked

¹⁸ 5 U.S.C. app. 4 § 101(e).

¹⁹ 5 U.S.C. app. 4 § 101(f)(3).

²⁰ 5 U.S.C. app. 4 § 101(f)(8).

²¹ 5 U.S.C. app. 4 § 104(a).

²² *United States v. Gant*, 268 F. Supp. 2d 29, 33-34 (D.D.C. 2003) (quoting *United States v. Tarver*, 642 F. Supp. 1109, 1111 (D. Wyo. 1986)).

²³ 5 U.S.C. app. 4 § 104(a). For instance, DOJ is currently pursuing legal action and a civil penalty of \$61,585 against another former Trump administration employee, Omarosa Manigault Newman, alleging that she willfully failed to file her termination report when she disregarded repeated reminders from the White House Counsel’s Office that her report was due. See *United States v. Newman*, 2021 WL 1026019, *1 (D.D.C. Mar. 17, 2021).

²⁴ Executive Office of the President, Annual Report to Congress on White House Personnel, *White House Office*, June 30, 2017, <https://bit.ly/3zxEQiu>; Executive Office of the President, Annual Report to Congress on White House Personnel, *White House Office*, June 29, 2018, <https://bit.ly/3jq7oVp>.

²⁵ See OGE Legal Advisory, *Effect of Pay Adjustments on Ethics Provisions for Calendar Year 2021*, LA-21-01, Jan. 5, 2021, <https://bit.ly/3zumuyK>.

²⁶ See The White House Transition Project 1997-2017, *White House Staff and Organization: Ten Observations*, at 7, <https://bit.ly/3mKpOLN> (“There are approximately 25 people who hold the commissioned title of Assistant to the President and work at the highest salary level.”).

closely with the Trump administration's pandemic-related efforts, review of his termination report is critical to maintaining transparency and trust in the federal government.

The EIGA mandates that the Director of OGE monitor and investigate compliance with financial disclosure reporting obligations and refer cases of noncompliance to the Attorney General.²⁷ Therefore, CREW respectfully requests that OGE determine whether or not Mr. Short filed his termination report pursuant to 5 U.S.C. app 4 § 101 and, if not, take appropriate corrective action, including but not limited to referral of the matter to DOJ. In the unlikely event that OGE determines that Mr. Short did file a termination report, CREW respectfully requests that a copy be promptly released to CREW.

Compliance Issues Expose Systemic Risks During Presidential Transitions

The difficulty CREW has experienced in attempting to obtain a copy of Mr. Short's termination report also raises issues of systemic risk, which arise during a presidential transition when there is no process in place to collect missing termination reports from departing White House officials once the outgoing administration has left office. Agency ethics officials are not only required to make appropriate referrals to DOJ,²⁸ but a review of lawsuits filed by DOJ for missing termination reports reveals that the agency in which the former employee worked normally is in the best position to track missing reports and report noncompliance to the DOJ.²⁹ However, following a presidential transition, the outgoing administration has no authority to track and collect missing White House termination reports, which leaves a significant void that undermines public confidence in the integrity of the public financial disclosure process.

Because OGE is the "supervising ethics office for the executive branch, providing overall leadership and oversight of the executive branch ethics program,"³⁰ and is statutorily charged with monitoring and investigating compliance with public financial disclosure reporting obligations,³¹ OGE should conduct a comprehensive review to ensure there is a process in place during presidential transitions to track, collect, and maintain a repository of public financial disclosure reports for all qualifying White House officials, including those whose employment has been terminated as a result of an election. If no process currently exists for departing White House officials, OGE should establish a system to collect and make publicly available on its official website any missing termination reports from former White House officials,³² or refer any individual who knowingly and willfully fails to file their termination report to DOJ, which has authority to bring civil actions and seek civil penalties of up to \$50,000.³³

²⁷ 5 U.S.C. app. 4 § 402(b)(3).

²⁸ 5 C.F.R. § 2638.104(c)(8)(iv).

²⁹ See generally *Newman*, 2021 WL 1026019; *United States v. Lairy*, 2020 WL 4039176 (D.D.C. July 17, 2020); *United States v. Chaney*, 2005 WL 8178308 (D.D.C. Feb. 28, 2005); *Gant*, 268 F. Supp. 2d 29.

³⁰ 5 C.F.R. § 2638.108.

³¹ 5 U.S.C. app. 4 § 402(b)(3).

³² 5 U.S.C. app. 4 § 105(b)(1); STOCK Act, Pub. L. 112-105 § 11(b)(3).

³³ 5 U.S.C. app. 4 § 104(a)(1).

Conclusion

Periods of transition can be chaotic, when reporting requirements may go unnoticed and unfulfilled. Thus, in addition to determining whether Mr. Short filed his termination report as required by the EIGA, a comprehensive review by OGE is necessary to ensure that measures are in place during presidential transition periods to track and collect missing termination reports from departing White House officials, like Mr. Short, so that OGE can make them publicly available or refer any individual who knowingly and willfully fails to file their public financial disclosure report to DOJ for appropriate action.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Noah Bookbinder', with a long horizontal flourish extending to the right.

Noah Bookbinder
Executive Director

Attachments: Exhibits A - F

October 19, 2021

Hon. Emory A. Rounds, III
Director
U.S. Office of Government Ethics
1201 New York Ave., NW, Suite 500
Washington, DC 20005

Re: Request for Investigations of Termination Financial Disclosure Reports

Dear Director Rounds:

This letter follows up on Citizens for Responsibility and Ethics in Washington's ("CREW") September 16, 2021, letter to the Office of Government Ethics ("OGE") requesting an investigation into whether Marc Short, former Chief of Staff for Vice President Mike Pence, failed to file a termination public financial disclosure report when he left the White House in January 2021, and for a review of the process for presidential transitions to collect any missing reports required to be filed by departing White House officials.¹

Days after CREW filed its request, OGE publicly released Mr. Short's 2021 termination report on its official website.² CREW appreciates OGE's efforts to make Mr. Short's termination report publicly available.

However, while Mr. Short's termination report shows that he timely filed it on January 12, 2021, we are nevertheless concerned that OGE officially "declined" to certify his report and did not make it publicly available until September 21, more than eight months after it was filed and more than five months after CREW submitted the first of its six requests for it. We are further concerned that Mr. Short's termination report indicates that White House ethics officials from the Trump administration did not certify it for compliance with applicable ethics laws and regulations prior to their leaving office,³ seemingly leaving it in limbo.

The delay in making Mr. Short's termination report publicly available not only appears to fall outside the 30-day timeframe mandated by the Ethics in Government Act of 1978 ("EIGA"),⁴ but undermines public confidence in government transparency, which is integral to OGE's public financial disclosure system. To prevent similar issues from arising in the future, CREW again urges OGE to review its processes and procedures for making financial disclosure reports publicly available during presidential transitions consistent with OGE guidance:

¹ Letter to OGE Director Emory A. Rounds, III from Noah Bookbinder, Sept. 16, 2021, <https://bit.ly/3abAqT7>.

² Marc Short, Termination Public Financial Disclosure Report, Jan. 12, 2021, <https://bit.ly/3DebRBI>.

³ *Id.*

⁴ See 5 U.S.C. app. § 105(b)(1).

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Financial disclosure is vital to promoting public confidence by increasing accountability and transparency for officials at the highest levels of government. Failure to make reports promptly available in response to appropriate requests significantly undermines this confidence.⁵

To this end, OGE's processes and procedures should ensure that OGE staff are adequately assigned to and have the means to follow up on White House termination reports, particularly when they have not yet been certified by departing White House ethics officials, and to ensure they are released within the 30-day timeframe mandated by EIGA, whether or not they have been certified by OGE or outgoing White House ethics officials.⁶ Moreover, OGE should broadly evaluate whether there are sufficient processes and procedures to track, collect, and maintain a repository of public financial disclosure reports for all qualifying White House officials during presidential transitions.

With regard to Mr. Short, OGE's decision to officially decline to certify his termination report raises the specter that his report may not only contain insufficient information, but indicate more serious conflict of interest concerns.⁷ Because the deficiencies contained in Mr. Short's termination report are not publicly known, we encourage OGE, if it has not already done so, to work with Mr. Short to resolve any technical defects that may have prevented his report from being certified by White House ethics officials and OGE, and if applicable, to refer any material deficiencies or conflicts of interest to the Department of Justice for any appropriate action.⁸

We appreciate your attention to this matter.

Sincerely,



Noah Bookbinder
Executive Director

⁵ Memorandum to Designated Agency Ethics Officials from OGE Director Emory A. Rounds, III, Prompt Release of Public Financial Disclosure Reports, PA-18-03, Dec. 6, 2018, <https://bit.ly/3lfqGhf>.

⁶ *Id.*

⁷ See, e.g. Memorandum to Designated Agency Ethics Officials from OGE General Counsel, Deadlines and Procedures for Annual Public Financial Disclosure Reports of Executive Branch Employees (2021 Filing Cycle), PA-21-02, Apr. 22, 2021, <https://bit.ly/3iTP4U7> (advising agencies that OGE may decline to certify 2021 annual reports for which it has not received sufficient information and for other reasons, "including the filer's unresolved potentially conflicting holding or position, non-compliance with applicable ethics rules, or continued non-compliance with the ethics agreement").

⁸ See 5 U.S.C. app. 4 § 104(a).



CITIZENS FOR
RESPONSIBILITY &
ETHICS IN WASHINGTON

April 18, 2024

The Honorable Christopher Wray
Director, Federal Bureau of Investigation
U.S. Department of Justice
935 Pennsylvania Ave., NW
Washington, D.C. 20535-0001

Corey Amundson
Chief, Public Integrity Section
U.S. Department of Justice
1301 New York Ave., 10th Floor
Washington, D.C. 20005

Re: False Statement Disclosures about Non-Existent Liabilities on Former President Donald J. Trump's Public Financial Disclosure Reports

Dear Director Wray and Mr. Amundson,

Citizens for Responsibility and Ethics in Washington ("CREW") respectfully requests that the Federal Bureau of Investigation and the Public Integrity Section investigate whether former President Donald J. Trump knowingly and willfully made material false statements in violation of 18 U.S.C. § 1001(a)(2) by reporting more than \$50 million owed to one of his own companies, Chicago Unit Acquisition LLC ("Chicago Loan"), as a liability on all nine public financial disclosure reports ("PFDs") he filed with the Federal Election Commission ("FEC") and the Office of Government Ethics ("OGE") between 2015 and 2023, even though the loan appears to have never existed. If the Chicago Loan never existed, as was recently disclosed by a court-appointed monitor, then Mr. Trump may have made false statements in violation of 18 U.S.C. § 1001(a)(2) each time he listed it as a liability on one of his PFDs.

The Chicago Loan appears to have evolved out of a debt restructuring deal undertaken by Mr. Trump in 2012 when he made a discounted prepayment on debt owed to one of his lenders on his Chicago hotel project.¹ It is not clear why Mr. Trump

¹ Dan Alexander, *The Ultimate Donald Trump Mystery That Couldn't Be Solved Before Election Day*, Forbes, Nov. 3, 2020, <https://www.forbes.com/sites/danalexander/2020/11/03/the-ultimate-donald-trump-mystery-that-couldnt-be-solved-before-election-day/?sh=63b451c554ae> [hereinafter Alexander]. The Chicago Loan stemmed originally from a \$130 million note held by Fortress Investment Group for Trump's Chicago

would have reported a non-existent loan as a liability owed to one of his own companies, but some reporting suggests that the deal could be part of a tax-avoidance scheme, known as debt parking, that has been used by taxpayers to purchase debt and then leave it in a separately-owned entity rather than incur tax liability on debt which has been forgiven, while others theorize that the loan may be owed to a secret third party.² If it was part of a debt-parking scheme, Mr. Trump's treatment of the Chicago Loan on his PFDs would reinforce the perception that Mr. Trump continued to owe debt on the Chicago project.³ Without weighing in on the legality and tax consequences of these types of deals, this perception would be undermined if the Chicago Loan was indeed non-existent.

Background

Mr. Trump has filed nine PFDs in total since 2015.⁴ Mr. Trump reported the Chicago Loan as a liability on all nine PFDs he filed either as a candidate or as president, including four candidate reports filed with the FEC in 2015, 2016, April 2023, and August 2023; four annual reports filed with OGE between 2017 and 2020 while serving as president; and his termination report filed with OGE in 2021.⁵ Mr. Trump reported the Chicago Loan as a liability by listing Chicago Unit Acquisition LLC as the creditor for a "springing" loan incurred in 2012 for "TIHT Chicago" with a value of "over \$50,000,000" and at an interest rate of "Prime +5%."⁶ It is not known

hotel project (known as "TIHT Chicago"). Trump apparently purchased back the Fortress debt for \$48 million in March 2012 when Fortress agreed to accept a discounted prepayment on a Mezzanine Loan, forgiving more than \$100 million.

² *Id.*; Roger Sollenberger, *Trump's \$50 million Mystery Debt Looks Like "Tax Evasion,"* Daily Beast, Jan. 28, 2024,

<https://www.thedailybeast.com/trumps-dollar50-million-mystery-debt-looks-like-tax-evasion?ref=home> [hereinafter Sollenberger]; Russ Choma, *Donald Trump Has Never Explained a Mysterious \$50 Million Loan. Is It Evidence of Tax Fraud?*, Mother Jones, Nov./Dec. 2019 Issue, <https://www.motherjones.com/politics/2019/09/donald-trump-has-never-explained-a-mysterious-50-million-chicago-unit-acquisition-loan-is-it-evidence-of-tax-fraud/> [hereinafter Choma].

³ Ordinarily, a taxpayer who has debt canceled for an amount less than the full amount owed must include the amount of canceled debt in their income. See 26 U.S.C. § 61(a)(11); I.R.S. Publ'n 4681, *Canceled Debts, Foreclosures, Repossessions and Abandonments*, Jan. 3, 2024, <https://www.irs.gov/pub/irs-pdf/p4681.pdf>. However, by purchasing the loan as part of a debt restructuring and parking it in a separately-owned entity, some taxpayers apparently have attempted to avoid tax liability. Sollenberger, *supra* note 2; Choma, *supra* note 2.

⁴ See attached list of PFDs filed by Trump between 2015 and August, 2023 (Attachment A).

⁵ *Id.*

⁶ 2015 PFD - August, 2023 PFD, at part 8. See David Enrich, Russ Buettner, Mike McIntire and Susanne Craig, *How Trump Maneuvered His Way Out of Trouble in Chicago*, New York Times, Oct. 27, 2021, <https://www.nytimes.com/2020/10/27/business/trump-chicago-taxes.html> (The "springing" loan reported on Mr. Trump's PFDs appears to derive from a \$130 million loan owed to Fortress Investment Group, a hedge fund and private equity company. The Fortress debt obligation was a "so-called mezzanine loan, which meant that it would be repaid only after the Deutsche Bank debt had been satisfied. Because of the greater risk, the Fortress loan came with a double-digit interest rate. The agreement with Fortress also required Mr. Trump's 401 Mezz Venture to pay a \$49 million 'exit fee' when it repaid the loan.")

what terms and conditions underlie the “springing” nature of the Chicago Loan. However, reporting indicates that this type of loan is made to “borrowers who are viewed as credit risks,” but it is not the type of loan that “someone is likely to impose on himself” since it allows the “lender to impose harsh repayment terms if certain criteria aren’t met.”⁷

When running as a candidate for federal office, filers are required to file their PFDs with the FEC, but once they are elected and sworn in, presidents are required to file their PFDs with OGE.⁸ When he signed each of his nine PFDs, Mr. Trump, like other filers, certified that the “statements I have made in this report are true, complete and correct to the best of my knowledge.”⁹

There is now credible evidence, however, that Mr. Trump’s statements regarding the Chicago Loan were not true. In a January 26, 2024 report, a court-appointed monitor, former federal district court judge Barbara Jones, revealed that she was told by the Trump Organization that the Chicago Loan “never existed.”¹⁰ Judge Jones served for 16 years as a U.S. District Court Judge for the Southern District of New York before leaving for private practice in 2013 to focus on corporate monitorships, compliance issues, internal investigations and arbitrations and mediations.¹¹ Judge Jones was appointed by New York Supreme Court Justice Arthur F. Engoron in November 2022 to monitor Trump financial statements and financial disclosures after he found preliminarily that Mr. Trump and his co-defendants had a “propensity to engage in persistent fraud by submitting false and misleading Statements of Financial Condition.”¹² Her appointment was subsequently extended

⁷ Choma, *supra* note 2.

⁸ 5 U.S.C. §§ 13103(c)-(f), 13105(b)-(e).

⁹ 2015 PFD - August, 2023 PFD, at cover page.

¹⁰ Letter from Court-Appointed Monitor Barbara Jones to New York Supreme Court Justice Arthur F. Engoron, January 26, 2024, *People v. Donald J. Trump, et al.*, Index No. 452564/2022. (p. 8, fn 6), <https://www.documentcloud.org/documents/24388438-barbara-jones-trump-lette> [hereinafter January 26, 2024 Letter.]

¹¹ See Barbara S. Jones, Partner, Bracewell LLP website (last visited Feb. 29, 2024) <https://bracewell.com/people/barbara-s-jones>.

¹² [Supplemental Monitorship Order](https://perma.cc/T52A-2B9D) at 1, *People v. Donald J. Trump, et al.*, Index No. 452564/2022 (Nov. 17, 2022), <https://perma.cc/T52A-2B9D> (“[T]he duties of the Monitor shall include, but not be limited to, monitoring of: (1) the submission of financial information to any accounting firm compiling a 2022 Statement of Financial Condition (‘SFC’) for Donald J. Trump; (2) the submission of all financial disclosures to any persons or entities, including, without limitation, lenders, insurers, and taxing authorities; and (3) any corporate restructuring, disposition or dissipation of any significant assets.”); [Decision and Order](https://perma.cc/5ANV-74WX) at 88, *People v. Donald J. Trump, et al.*, Index No. 452564/2022 (Feb. 16, 2024), <https://perma.cc/5ANV-74WX> (“The Court hereby concludes and orders that Judge Jones shall continue in her role as Independent Monitor for a period of no less than three years. However, Judge Jones’s role and duties shall be enhanced from those operative during the preliminary injunction, as her observations over the past 14 months indicate that still more oversight is required. In particular, the Trump Organization shall be required to obtain prior approval—not, as things are now, subsequent review—from Judge Jones before submitting any financial disclosure to a third party, so that such disclosure may be reviewed beforehand for material misrepresentations.”).

for at least three years and her monitoring authority enhanced when Justice Engoron later entered a final judgment against Mr. Trump and his co-defendants finding them liable for civil fraud.¹³

In her status report to Justice Engoron, Judge Jones disclosed that she had “several” discussions with representatives of the Trump Organization and was told there were “no loan agreements that memorialize the [Chicago] loan.”¹⁴ Initially, Judge Jones was also told that “it was a loan that was believed to be between Donald J. Trump, individually, and Chicago Unit Acquisition for \$48 million.”¹⁵ But, in later discussions, she was told by the Trump Organization that “*it has determined that this [Chicago] loan never existed*” and it “would be removed from any upcoming forms submitted to the Office of Government Ethics.”¹⁶

In response to the monitor’s report, Mr. Trump’s lawyers accused her of “falsehoods” and “deliberate mischaracterizations,” and denied that she was told that the loan “never existed.”¹⁷ Mr. Trump’s defense lawyers produced as part of a court filing a copy of an “internal memorandum,” dated December 4, 2023, which they said had been provided to the monitor.¹⁸ That memorandum, however, does not evidence the loan’s prior existence. It merely represents that as of December 4, 2023, “no amounts are due or payable” and “no liabilities or obligations are outstanding” for the “Trump International Hotel & Tower Chicago - \$48,000,000 Springing Loan from Chicago Unit Acquisition LLC to 401 Mezz Venture LLC.”¹⁹

Not only has the Trump Organization never publicly produced a loan agreement or other documentation setting forth its terms and conditions,²⁰ but there are several other factors that would indicate that the Chicago Loan never constituted a *bona fide* debt obligation. There is no public record of the loan, which is contrary to how most real estate loans of that magnitude are handled.²¹ Further, Mr. Trump’s own comments from 2016 seemed to discount the loan’s legitimacy: Mr.

¹³ Decision and Order, *supra* note 12, at 88.

¹⁴ January 26, 2024 Letter, *supra* note 10.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Letter from Trump’s Lawyers to Justice Engoron, January 29, 2024, at 5 [hereinafter January 29, 2024 Letter],

https://iapps.courts.state.ny.us/fbem/DocumentDisplayServlet?documentId=rOkPFBkpiRoTmPJ_PLUS_cUP43Q==&system=prodhttp://ny.us/fbem/DocumentDisplayServlet?documentId=rOkPFBkpiRoTmPJ_PLUS_cUP43Q==&system=prod.

¹⁸ Exhibit G to January 29, 2024 Letter, *supra* note 17 [hereinafter December 4 Memorandum].

¹⁹ *Id.*

²⁰ January 26, 2024 Letter, *supra* note 10.

²¹ See Choma, *supra* note 2 (“Most loans are documented in public records, but Mother Jones could locate no documentation of a loan owned by Chicago Unit Acquisition. The Cook County Recorder of Deeds has records concerning the original Deutsche Bank loan for the Chicago project; the Deutsche Bank loan that replaced it; and the Fortress loan. But the Recorder of Deeds has no filings related to Chicago Unit Acquisition.”).

Trump told the *New York Times*, “[w]e don’t assess any value to [the loan] because we don’t care... I have the mortgage. That is all there is. Very simple. I am the bank.”²²

Reporting a liability owed to yourself on a PFD is highly unusual. In this case, Mr. Trump was not listed personally as the creditor. Rather, he listed the creditor as “Chicago Acquisition Unit LLC,” an entity owned entirely by Mr. Trump as part of the Trump Organization.²³ As the holder of that debt, there are several reporting irregularities that pertain to Mr. Trump’s Chicago Loan. If the Chicago Loan had been a *bona fide* debt obligation worth more than \$50 million, Mr. Trump would have had a corresponding obligation to report it as a “receivable” or similar asset with a comparable value on part 2 of his PFDs as required by the Ethics in Government Act (“EIGA”).²⁴ However, between 2015 and April 2023, Mr. Trump failed repeatedly to report the loan as a \$50 million plus receivable asset held by Chicago Unit Acquisition LLC on part 2 of his PFDs. Although the company was included on part 2 of his April 2023 PFD, he reported that it had no value, income or underlying assets.²⁵ Prior to the April 2023 disclosure, he listed Chicago Unit Acquisition LLC as an asset on part 2 only once before, when Mr. Trump disclosed on his 2015 PFD that the LLC consisted of “residential real estate,” which he valued at “\$1,001 - \$15,000.”²⁶ His treatment of the Chicago Unit Acquisition LLC in those instances never made sense since an asset value of between \$1,001 to \$15,000 or less does not comport with the \$50 million plus value he reported as a liability owed to the LLC. As the *New York Times* reported, the LLC was “valued on Mr. Trump’s financial statements as practically worthless despite holding a multimillion-dollar loan.”²⁷ Nor did Mr.

²² Susanne Craig, *Trump Boasts of Rapport With Wall St., but the Feeling Is Not Quite Mutual*, *New York Times*, May 23, 2016,

<https://www.nytimes.com/2016/05/24/business/dealbook/donald-trump-relationship-bankers.html>.

²³ August, 2023, PFD, part 2, Schedule 1, items 29, 29.1, 40, and 41 (reporting a 100% ownership interest of Chicago Unit Acquisition LLC by DJT Holdings LLC, which in turn is 99% owned by The Donald J. Trump Revocable Trust, dated April 7, 2014, and 1% owned by DJT Holdings Managing Member LLC, which in turn is 100% owned by The Donald J. Trump Revocable Trust, dated April 7, 2014); Decision and Order, *People v. Donald J. Trump, et al.* (Donald J. Trump is the “sole beneficiary of the Donald J. Trump Revocable Trust, [dated April 7, 2014], under which all Trump Organization assets are held”).

²⁴ 5 U.S.C. §§ 13103-13104 (filers both as candidates and incumbents are required to disclose “the identity and category of value of any interest in property held during the preceding calendar year in a trade or business, or for investment or the production of income, which has a fair market value which exceeds \$1,000 as of the close of the preceding calendar year, excluding any personal liability owed to the reporting individual by a spouse or by a parent, brother, sister, or child of the reporting individual or of the reporting individual’s spouse”); 5 C.F.R. § 2634.301(a)-(d). *See also* Alexander *supra* note 1 (“Since the value of the debt was listed at over \$50 million, it would make sense if Chicago Unit Acquisition LLC, the creditor on the liability, was in turn worth more than \$50 million. But instead, Trump listed the value of the asset at just \$1,001 to \$15,000. Every year since, the president has recorded the value on his financial disclosures as nothing at all. ‘There should be an offsetting entry somewhere,’ said Harvard real estate professor Richard Peiser. ‘I can’t explain that.’”)

²⁵ Apr. 14, 2023 PFD, part 2, item 30 (reporting the underlying asset as “N/A”, the value as “None (or less than \$1,001),” and income as “None (or less than \$201)”).

²⁶ 2015 PFD, part 2, item 9.

²⁷ Craig, *supra* note 22.

Trump report Chicago Acquisition Unit LLC on part 2 of his PFDs filed between 2016 and 2021. Rather, he listed it on an attachment to those PFDs as part of his “ownership structure,” explaining that the reason the LLC was not disclosed on part 2 is that it had “no independent value or income.”²⁸ Not until August 2023 did Mr. Trump report on part 2 for the first time that the Chicago Unit Acquisition LLC had a \$50 million plus underlying asset that held an “intercompany receivable from filer (neither entity has booked any interest income or expense).”²⁹ But that single disclosure does not negate his repeated failure to recognize the loan and its value as a *bona fide* receivable asset on the eight previously filed PFDs nor does it comport with the more recent disclosures made to Judge Jones that the Chicago Loan “never existed.”

Potential Violations

To maintain public confidence in the integrity of the federal government, the Ethics in Government Act of 1978 requires public filers such as Mr. Trump, as a candidate and as president,³⁰ to report the “identity and category of value of the total liabilities owed to any creditor . . . which exceed \$10,000 at any time during the preceding calendar year.”³¹ The implementing regulations require that each financial disclosure report “identify and include a brief description of the filer’s liabilities exceeding \$10,000 owed to any creditor at any time during the reporting period, and the name of the creditors to whom such liabilities are owed.”³² Public filers similarly must report assets they hold that exceed \$1,000 and income received in excess of \$200.³³ The purpose of requiring public financial disclosure by high-level government officials is to “prevent conflicts of interest,” ensure “confidence in the integrity of the Federal Government” and demonstrate officials can serve “without compromising the public trust.”³⁴

Failure to fully and accurately report information on PFDs filed with the executive branch can result in civil penalties and criminal prosecution. EIGA provides for civil penalties of up to \$50,000, and imprisonment of up to one year for

²⁸ 2016 PFD, Schedule (Exhibit A), item 28; 2017 PFD, Schedule (Exhibit A), item 28; 2018 PFD, Schedule (Exhibit A), item 28; 2019 PFD, Schedule (Exhibit A), item 28; 2020 PFD, Schedule (Exhibit A), item 28; 2021 PFD, Schedule (Exhibit A), item 28 (the heading on Schedule (Exhibit A) and explanatory note that corresponds to Chicago Acquisition Unit LLC indicates that the “reason” for not disclosing the LLC on Part 2 is that it has “no independent value or income, not inactive nor dormant, not part of an entity structure or license deal.”)

²⁹ August, 2023, PFD, part 2, Schedule 1, item 29.1 (reporting the underlying asset value as “Over \$50,000,000” and income as “None”).

³⁰ 5 U.S.C. § 13103(c)-(f).

³¹ 5 U.S.C. § 13104(a)(4).

³² 5 C.F.R. § 2634.305. The reporting period for liabilities for candidate reports is the preceding calendar year and the current year within 31 days of the day of filing. 5 C.F.R. § 2634.310(b)(3). The reporting period for liabilities for annual reports is the preceding calendar year. 5 C.F.R. § 2634.310(a).

³³ 5 U.S.C. § 13104(a)(1) and (3).

³⁴ 5 C.F.R. § 2634.104(a)-(b).

knowingly and willfully falsifying any information required to be reported.³⁵ Federal law further prohibits anyone from knowingly and willfully making “any materially false, fictitious, or fraudulent statement or representation” in any matter within the jurisdiction of the executive, legislative or judicial branch, with violations punishable by up to five years imprisonment.³⁶ Because the statute of limitations for 18 U.S.C. § 1001 violations is five years, however, only PFDs filed in the past five years that contained a material false statement would be subject to potential prosecution.³⁷

The court monitor’s January 26, 2024 report disclosing that the Chicago Loan “never existed” constitutes credible evidence that Mr. Trump made a false statement when he represented on his PFDs that he owed more than \$50 million to the Trump-owned Chicago Unit Acquisition LLC for the Chicago project. The Chicago Loan was one of several loans that the court monitor focused on as part of her ongoing review of Mr. Trump’s financial statements and disclosures.³⁸ The court monitor observed that the Chicago Loan was one of five “intercompany loans,” each totaling more than \$5 million, that was included on listings of assets and liabilities provided to OGE and other financial statements and balance sheets, but which lacked any documentation establishing terms and conditions.³⁹ In her report, she relayed that she had discussed the Chicago Loan with the Trump Organization “several times” and in her “recent discussions with the Trump Organization, it indicated that *it has determined that this loan never existed.*”⁴⁰

There is no question that Judge Jones is a credible witness, having served for 16 years as a U.S. District Court Judge for the Southern District of New York before leaving for private practice to focus on corporate monitorships and other compliance issues.⁴¹ Based on her extensive legal experience and expertise, Justice Engoron appointed her to monitor the Trump Organization’s financial statements and financial disclosures.⁴² Even though Mr. Trump’s lawyers now accuse Judge Jones of “falsehoods” and “deliberate mischaracterizations,” in his February 16, 2024 final decision, Justice Engoron noted that “the Court did not appoint Judge Jones randomly or arbitrarily or by happenstance. Rather, she was the only one of the three candidates that both sides proposed for the position of independent monitor.”⁴³

³⁵ 5 U.S.C. § 13106(a)(1)-(2).

³⁶ 18 U.S.C. § 1001(a)(2).

³⁷ 18 U.S.C. § 3282.

³⁸ January 26, 2024 Letter, *supra* note 10, at 8.

³⁹ *Id.*

⁴⁰ January 26, 2024 Letter, *supra* note 10, at 8, n. 6 (emphasis added).

⁴¹ See Barbara S. Jones, Partner, Bracewell LLP website.

⁴² Lukas Alpert, *Meet the former organized-crime prosecutor now overseeing the Trump Organization*, The Morning Star, Feb. 17 2024.

<https://www.morningstar.com/news/marketwatch/20240217247/meet-the-former-organized-crime-prosecutor-now-overseeing-the-trump-organization>; Nov. 17, 2022 Supplemental Monitorship Order and Decision and Order, *People v. Donald J. Trump, et al.*

⁴³ Feb. 16, 2024 Decision and Order, at fn. 56.

Thus, Judge Jones was appointed because both sides recognized her experience, expertise and independence.

Nor does the “internal memorandum” produced in defense of Mr. Trump constitute sufficient proof of the Chicago Loan’s prior existence. That memorandum only serves to confirm that there were no liabilities or obligations owed on the purported loan as of December 2023, which is effectively meaningless. That nothing was owed at the end of 2023 does not establish that something was owed at some prior point. They have produced no loan agreements or similar documentation that memorialized the loan’s terms and conditions to prove its prior existence during the reporting periods covered by his PFDs. Nor does the “internal memorandum” address other factors that undermine the Chicago Loan’s legitimacy, such as Mr. Trump’s repeated failure to recognize it as a receivable asset with a comparable value on part 2 of the eight PFDs filed prior to August 2023 or his 2016 admission to the *New York Times* that the loan had no value.

Mr. Trump’s false statements regarding the Chicago Loan are likely “material” for purposes of 18 U.S.C. § 1001(a). Under section 1001(a), a false statement is “material” when it is “reasonably likely to influence” a government official “in making a determination required to be made.”⁴⁴ Government ethics officials necessarily rely on PFD filers to accurately report assets, income and liabilities as part of the public financial disclosure process.⁴⁵ When asset, income or liability information is falsely reported by a president, a candidate for president or other filer, it directly influences government ethics officials in assessing whether the filer is in compliance with applicable laws and regulations. This is the very determination ethics officials are statutorily mandated to make as part of the public financial disclosure process.⁴⁶ Furthermore, materially false statements undermine the integrity of the disclosure system, and the federal government more broadly, because they erode the public’s faith in ethics officials’ ability to detect potential conflicts of interest and verify our elected officials’ capacity to serve the public good.

Violation of 18 U.S.C. § 1001 also requires that the defendant either knew of the falsehood, “acted with a conscious purpose to avoid learning the truth,” or “acted ‘with reckless disregard of whether the statement was true.’”⁴⁷ Mr. Trump personally verified the Chicago Loan – one of not more than 16 liabilities that he reported – on

⁴⁴ See *United States v. Rigas*, 490 F.3d 208, 234 (2d Cir. 2007) (quoting *Weinstock v. United States*, 231 F.2d 699, 701 (D.C. Cir. 1956)).

⁴⁵ 5 C.F.R. § 2634.602(a). Asset, income, and liabilities that meet applicable reporting thresholds are required to be reported by EIGA, 5 U.S.C. § 13104(a), (b) and (d).

⁴⁶ 5 U.S.C. § 13108(b)(1). Relevant ethics statutes include EIGA (5 U.S.C. § 13101, et seq.), bribery and illegal gratuities (18 U.S.C. § 201(b) and (c)), federal conflict of interest laws (18 U.S.C. §§ 203, 205, 207 - 209), the Foreign Gifts and Decorations Act (5 U.S.C. § 7342), and their implementing regulations.

⁴⁷ See *United States v. Egenberg*, 441 F.2d 441, 444 (2d Cir. 1971).

each of the nine PFDs he filed with the FEC and OGE.⁴⁸ Mr. Trump attested to his knowledge of the Chicago Loan disclosure when he signed each PFD filed with the executive branch and certified that the “statements I have made in this report are true, correct, and complete to the best of my knowledge.”⁴⁹ Meanwhile, he expressly acknowledged the loan disclosure itself when he was asked about it in his 2016 *New York Times* interview. Trump’s knowledge of the Chicago Loan’s disclosure is indisputably part of the public record.

Furthermore, showing that the defendant has willfully violated the statute “does not require the government to prove the defendant’s specific intent,”⁵⁰ only that the defendant “acted with knowledge that his conduct was unlawful.”⁵¹ In this regard, covered PFD filers, like Mr. Trump, are given written notice of the legal consequences of knowingly and willfully making false statements. As part of the general instructions for completing PFDs, each filer is expressly *warned* that it is unlawful to *knowingly and willfully* falsify information on a PFD:

Warnings Knowing and willful falsification of information, or failure to file or report information required to be reported by 5 U.S.C. § 13104 may subject you to a civil monetary penalty and to disciplinary action by your employing agency or other appropriate authority under 5 U.S.C. § 13106. Knowing and willful falsification of information required to be filed by 5 U.S.C. § 13104 may also subject you to criminal prosecution.⁵²

Mr. Trump’s knowledge of the unlawfulness of making false statements is evidenced by his engagement in what appears to be a continuing pattern of inaccurately reporting loan information on his PFDs. Mr. Trump previously failed to timely and properly disclose a \$130,000 loan he received from his former attorney, Michael Cohen, on his 2017 PFD.⁵³ That loan was received by Mr. Trump in connection

⁴⁸ 2015 PFD - August, 2023 PFD. Mr. Trump reported between 14 to 16 liabilities on each of his nine PFDs. However, Mr. Trump’s 2018 PFD included a separate and additional reference to the hush-money payments Michael Cohen paid to Stormy Daniels as “2016 expenses” that “were incurred by one of Donald J. Trump’s attorneys” but which Mr. Trump did not view it as “required to be disclosed as ‘reportable liabilities’ on part 8.”

⁴⁹ 2015 PFD - August, 2023 PFD, at cover page.

⁵⁰ See *United States v. George*, 386 F.3d 383, 393 (2d Cir.2004).

⁵¹ See *Bryan v. United States*, 524 U.S. 184, 191 (1998).

⁵² See *e.g.*, U.S. Off. of Gov’t Ethics, Executive Branch Personnel Public Financial Disclosure Report (OGE Form 278e), Updated Feb. 9, 2024,

[https://www.oge.gov/web/OGE.nsf/OGE%20Forms/FE904FADB163B45A852585B6005A23E8/\\$FILE/OGE%20Form%20278e%20Dec%202023%20Accessible.pdf?open](https://www.oge.gov/web/OGE.nsf/OGE%20Forms/FE904FADB163B45A852585B6005A23E8/$FILE/OGE%20Form%20278e%20Dec%202023%20Accessible.pdf?open); see also U.S. Off. of Gov’t Ethics, Public Financial Disclosure Guide, OGE Form 278, Jan. 2024, at 212-213, [https://www.oge.gov/web/OGE.nsf/0/CA85FBF583663FEE85258ABA00668E69/\\$FILE/Public%20Fin%20Disc%20Guide%20Jan%202024.pdf](https://www.oge.gov/web/OGE.nsf/0/CA85FBF583663FEE85258ABA00668E69/$FILE/Public%20Fin%20Disc%20Guide%20Jan%202024.pdf).

⁵³ See *Letter from Noah Bookbinder, Executive Director, CREW, to Deputy Att’y Gen. Rod J. Rosenstein and Deputy U.S. Att’y Robert Khuzami, U.S. Dep’t of Just.*, Apr. 9, 2019,

with a hush-money payment made to adult film star Stormy Daniels at Mr. Trump's behest at a critical juncture during the 2016 presidential election.⁵⁴ His attempt to conceal the hush-money payment loan is currently the focus of a criminal fraud case being brought against him by the Manhattan District Attorney in the Supreme Court of the State of New York for falsification of business records.⁵⁵ Although Mr. Trump later referenced the hush-money payment on part 8 of his 2018 PFD, he did so reluctantly – only after complaints were lodged with the Justice Department concerning his reporting deficiencies.⁵⁶ When he certified Mr. Trump's 2018 PFD, the OGE reviewing official, General Counsel David J. Apol, specifically focused on the hush-money loan payment by commenting that "OGE has concluded that the information related to the payment made by Mr. Cohen is required to be reported and the information provided meets the disclosure requirement for a reportable liability."⁵⁷ Based on these facts, Mr. Trump almost certainly was aware by the time he filed his 2018 PFD, on May 15, 2018, if not before, that it would be unlawful to make a false statement on his PFD about his loan obligations.

The actions taken by Mr. Trump to misrepresent his loan obligations go well-beyond actions by other government employees who have fallen afoul of 18 U.S.C. § 1001(a) in recent years. His reporting of a non-existent loan dwarfs portrayals by other government employees, who have been prosecuted for failing to disclose far lesser amounts of their debt obligations.⁵⁸

<https://www.citizensforethics.org/wp-content/uploads/legacy/2019/04/2019-4-9-DOJ-SDNY-Trump-loan-Cohen-plea-and-testimony.pdf> [hereinafter "Letter from Noah Bookbinder"].

⁵⁴ *Id.*

⁵⁵ See Indictment, *People v. Donald J. Trump*, Index. No. 71543-23,

<https://manhattanda.org/wp-content/uploads/2023/04/Donald-J.-Trump-Indictment.pdf>.

⁵⁶ 2018 PFD; Letter from Noah Bookbinder, *supra* note 53 (supplementing prior complaints filed by CREW with DOJ and OGE by Letter to Deputy Attorney General Rod J. Rosenstein and Deputy United States Attorney Robert Khuzami, May 16, 2018; Letter to Deputy Attorney General Rod J. Rosenstein, Deputy United States Attorney Robert Khuzami and Acting OGE Director David J. Apol, May 3, 2018; Letter to Deputy Attorney General Rod J. Rosenstein and Acting OGE Director David J. Apol, Mar. 8, 2018; Letter to Acting OGE Director David J. Apol, Mar. 2, 2018).

⁵⁷ 2018 PFD, at cover page.

⁵⁸ U.S. Off. of Gov't Ethics, 2021 Conflict of Interest Prosecution Survey, LA-22-06, July 22, 2022,

[https://www.oge.gov/web/oge.nsf/0/69A64B4389390D0C85258887005CF4C0/\\$FILE/LA-22-06.pdf](https://www.oge.gov/web/oge.nsf/0/69A64B4389390D0C85258887005CF4C0/$FILE/LA-22-06.pdf); Plea Agreement at 1-5, *United States v. Jenkins*, No. 1:20-cr-78 (E.D. Tenn. Oct. 12, 2021)

[https://www.oge.gov/web/oge.nsf/0/D12CD1A2A836B65C85258828006CC526/\\$FILE/Jenkins%20Plea%20Agreement.pdf](https://www.oge.gov/web/oge.nsf/0/D12CD1A2A836B65C85258828006CC526/$FILE/Jenkins%20Plea%20Agreement.pdf) (employee of the Tennessee Valley Authority was sentenced to two years probation and fined after pleading guilty to filing false statements in financial disclosures in violation of 18 U.S.C. § 1001(a)(2) after he failed to disclose debts worth approximately \$276,000 that he and his spouse owed and income from other business interests); U.S. Off. of Gov't Ethics, 2022 Conflict of Interest Prosecution Survey, LA-23-11, July 31, 2023,

[https://www.oge.gov/web/oge.nsf/0/3E107E08B4853EB4852589FD0053F930/\\$FILE/LA-23-11-%202022%20Prosecution%20Survey.pdf?open](https://www.oge.gov/web/oge.nsf/0/3E107E08B4853EB4852589FD0053F930/$FILE/LA-23-11-%202022%20Prosecution%20Survey.pdf?open) (a jury found an employee for the Department of Housing and Urban Development Office of Inspector General guilty of concealing material facts in violation of 18 U.S.C. § 1001(a)(1) and making false statements in violation of 8 U.S.C. § 1001(a)(2), for, among other things, failing to "disclose a \$90,000 loan from his neighbor"); U.S. Off. of Gov't Ethics, 2020 Conflict of Interest Prosecution Survey, LA-21-08, August 2, 2021,

Mr. Trump's failures to accurately report loan information appear to be part of a continuing pattern to undermine public trust in the integrity of the public financial disclosure system as a whole. In this case, he appears to have misled the public in reporting loans to his own companies that he doesn't really owe, but in other cases he failed to properly report loans he did owe. Mr. Trump's actions are not just "eyebrow-raising."⁵⁹ Falsely disclosing a multi-million dollar sum as president of the United States or as a candidate for that office far outweighs the stakes and values at play by lower level government officials. It is fundamental to the integrity of the public financial disclosure process that covered information be accurately reported so that the assets, income and debt obligations of the president and candidates for that office can be meaningfully assessed for conflicts of interest, including those that could expose the country to a possible national security risk.

It is not clear why Mr. Trump would report a non-existent loan, but the law must be vigorously enforced against office holders and candidates who flout the disclosure process through repeated false statements. Failure to do so not only renders the system meaningless, but, more importantly, undermines the work of ethics officials who must ensure that financial disclosures are accurate so that potential conflicts of interest that present national security risks can be brought to light.

Conclusion

The purpose of the public financial disclosure reporting process is to ensure public confidence in the integrity of the federal government by demonstrating that high-level government officials are able to carry out their duties without conflicts of interest that could compromise the public trust.⁶⁰ Recent disclosures by a court-appointed monitor indicate Mr. Trump may have violated federal law by falsely disclosing a liability owed to one of his own companies on multiple financial disclosure statements he filed between 2015 and 2023 with OGE and the FEC. If Mr. Trump falsified his public financial disclosure statements, he will have undermined the public trust that these laws are designed to protect. An investigation into this matter is important to safeguard that public trust.

Sincerely,

[https://www.oge.gov/Web/OGE.nsf/0/1B505A4C17E7289685258726004F63B7/\\$FILE/LA-21-08.pdf?open](https://www.oge.gov/Web/OGE.nsf/0/1B505A4C17E7289685258726004F63B7/$FILE/LA-21-08.pdf?open) (unnamed Cabinet-level official in the Government failed to disclose a \$50,000 loan from a private individual on his OGE Form 278 and subsequently entered into a Non-Prosecution Agreement).

⁵⁹ Alexander, *supra* note 1.

⁶⁰ 5 C.F.R. § 2634.104.

A handwritten signature in blue ink, appearing to read 'Noah Bookbinder', with a long horizontal flourish extending to the right.

Noah Bookbinder
President

Attachment

cc:

The Hon. Merrick B. Garland
Attorney General
U.S. Department of Justice

Shelley K. Finlayson
Acting Director
U.S. Office of Government Ethics

Attachment A

Donald J. Trump Public Financial Disclosure Reports (PFDs)

[2015 PFD](#) (Candidate report filed with FEC on July 15, 2015) “Over \$50,000,000” liability owed to Chicago Unit Acquisition LLC reported on part 8, item 14 and Chicago Unit Acquisition LLC listed as an asset holding “residential real estate,” which he valued at “\$1,001 - \$15,000” on Part 2, item 9.

[2016 PFD](#) (Candidate report filed with FEC on May 16, 2016) “Over \$50,000,000” liability owed to Chicago Unit Acquisition LLC reported on part 8, item 14. No corresponding asset entry on part 2 for Chicago Unit Acquisitions LLC, but listed on attachment to PFD, entitled “Schedule (Exhibit A),” item 28, with explanatory note indicating that the “reason” for not disclosing the LLC on part 2 is that it has “no independent value or income, not inactive nor dormant, not part of an entity structure or license deal.”

[2017 PFD](#) (Annual and initial report filed as President with OGE on June 14, 2017) “Over \$50,000,000” liability owed to Chicago Unit Acquisition LLC reported on part 8, item 14. No corresponding asset entry on Part 2 for Chicago Unit Acquisitions LLC, but listed on Schedule (Exhibit A), item 28, with explanatory note indicating that the “reason” for not disclosing the LLC on part 2 is that it has “no independent value or income, not inactive nor dormant, not part of an entity structure or license deal.”

[2018 PFD](#) (Annual report filed as President with OGE on May 15, 2018) “Over \$50,000,000” liability owed to Chicago Unit Acquisition LLC reported on part 8, item 14. No corresponding asset entry on Part 2 for Chicago Unit Acquisitions LLC, but listed on Schedule (Exhibit A), item 28, with explanatory note indicating that the “reason” for not disclosing the LLC on part 2 is that it has “no independent value or income, not inactive nor dormant, not part of an entity structure or license deal.”

[2019 PFD](#) (Annual report filed as President with OGE on May 15, 2019) “Over \$50,000,000” liability owed to Chicago Unit Acquisition LLC reported on part 8, item 11. No corresponding asset entry on Part 2 for Chicago Unit Acquisitions LLC, but listed on Schedule (Exhibit A), item 28, with explanatory note indicating that the “reason” for not disclosing the LLC on part 2 is that it has “no independent value or income, not inactive nor dormant, not part of an entity structure or license deal.”

[2020 PFD](#) (Annual report filed as President with OGE on July 31, 2020) “Over \$50,000,000” liability owed to Chicago Unit Acquisition LLC reported on part 8, item 11. No corresponding asset entry on Part 2 for Chicago Unit Acquisitions LLC, but listed on Schedule (Exhibit A), item 28, with explanatory note indicating that the “reason” for not disclosing the LLC on part 2 is that it has “no independent value or income, not inactive nor dormant, not part of an entity structure or license deal.”

[2021 PFD](#) (Termination report filed with OGE on Jan 15 2021) “Over \$50,000,000” liability owed to Chicago Unit Acquisition LLC reported on part 8, item 11. No corresponding asset entry on part 2 for Chicago Unit Acquisitions LLC, but listed on Schedule (Exhibit A), item 28,

with explanatory note indicating that the “reason” for not disclosing the LLC on part 2 is that it has “no independent value or income, not inactive nor dormant, not part of an entity structure or license deal.”

[April, 2023 PFD](#) (Candidate report filed with FEC, Apr. 14, 2023) “Over \$50,000,000” liability owed to Chicago Unit Acquisition LLC reported on part 8, item 9. Chicago Unit Acquisitions LLC reported as asset on part 2, item 30, with “N/A” for “Underlying Assets and Location” with a value of “None (or less than \$1,001)” and income of “None (or less than \$201).”

August, 2023 PFD ([Part 3](#)) (Candidate report filed with FEC, Aug. 9, 2023, was made available to CREW by OGE in three separate PFD documents ([Part 1](#), [Part 2](#) and [Part 3](#).) Part 3 is entitled, “Schedule 1 for Part 2” and contains a list of Mr. Trump’s employment assets and income, including the individual assets that comprise the Trump Organization) “Over \$50,000,000” liability owed to Chicago Unit Acquisition LLC reported on part 8, item 9. Chicago Unit Acquisitions LLC reported as asset on part 2, item 29, with an underlying asset, item 29.1 (“Intercompany receivable from filer (neither entity has booked any interest income or expenses)’ with a value of “Over \$50,000,000” and income of “None (or less than \$201).”