



August 21, 2020

The Honorable Thomas Carper
United States Senate
513 Hart Senate Office Building
Washington, DC 20510

The Honorable Elizabeth Warren
United States Senate
309 Hart Senate Office Building
Washington, DC 20510

Dear Senator Carper and Senator Warren:

This responds to your letter dated July 20, 2020, regarding a recent tweet by a senior White House Office official¹ and requesting assistance from the U.S. Office of Government Ethics (OGE) in addressing questions related to the applicability of federal ethics rules.

Your initial questions (1-2) relate to whether this social media activity represents an endorsement violating the rule against misuse of position. OGE has advised that, in evaluating whether a reference to an employee's official title or position on social media violates ethics regulations, one must consider the totality of the circumstances to determine "whether a reasonable person with knowledge of the relevant facts would conclude that the government sanctions or endorses the communication."² As established by the Ethics in Government Act,³ employing agencies and offices, including offices within the Executive Office of the President (EOP) such as the White House Office, are responsible for monitoring their employees' compliance with ethics requirements, and are in the best position to ascertain the relevant facts. In support of these efforts, OGE regularly provides advice to employing agencies and offices upon request. OGE also contacts agency ethics officials when OGE becomes aware of potential concerns to ensure that the agency or office is analyzing and taking appropriate actions regarding the issues raised.

With respect to your additional questions (3-4), OGE does not impose disciplinary action on an executive branch employee, other than an OGE employee. Employing agencies and offices are responsible for the direct and ongoing monitoring of their employees' compliance with ethics requirements. They are also responsible for taking disciplinary or corrective action, making referrals to an Inspector General or the Department of Justice when appropriate, and employing other means available to them in their enforcement of ethics laws and regulations.⁴ When questions arise as to an employee's compliance with ethics requirements, the law authorizes OGE only to make a recommendation that the employing agency look into the matter and

¹ See @IvankaTrump, Twitter (7/14/20), <https://bit.ly/3gqI8dw>.

² See OGE LA-15-03, *The Standards of Conduct as Applied to Personal Social Media Use* (4/9/15).

³ 5 U.S.C. app. §§ 101 *et seq.*

⁴ 5 C.F.R. § 2638.104(c)(9).



consider taking appropriate action.⁵ This decentralized implementation of the ethics program is established by the Ethics in Government Act.⁶

You also ask (question 5) about ethics training for White House Office officials. As you know, day-to-day provision of ethics advice and training to the nearly three million civilian executive branch employees is necessarily carried out by the more than 5,000 ethics officials in over 130 agencies, as well as the White House Office. Employing agencies and offices know the duties of and matters before each employee and are best positioned to provide training that targets the risks associated with the agency or office's mission work. OGE regulations detail ethics official responsibilities to the employees in their agency or office, including providing training, advice, financial disclosure review and certification,⁷ resolving of conflicts of interests identified through disclosure and counseling,⁸ and assisting the agency or office's enforcement of ethics laws.⁹ OGE routinely provides guidance and training to ethics officials, including hundreds of published advisories and an entire library of on-demand video training,¹⁰ in addition to oral advice and live/virtual training sessions throughout each year. For example, in February 2019, OGE provided ethics officials throughout the EOP with training for its new ethics officials. This training class focused on the duties and responsibilities of the ethics program and its leaders, including the importance of the integrity of government and ensuring that the government is being used for public purposes.¹¹

Finally, your last question (6) asks about the status of OGE's review of the White House Office ethics program. OGE advised the White House Office that it would benefit from a review of its ethics program.¹² The White House indicated in 2017 that they were willing to discuss OGE conducting a review of the program,¹³ although the most recent review of a White House Office ethics program was completed in 2002. In furtherance of this agreement, OGE and the White House Office have held several discussions regarding the timing, scope, and methodology for this review; however, OGE has been unable to complete the substantive portion of the review.

⁵ See 5 U.S.C. app. § 402(f)(2)(A).

⁶ 5 U.S.C. app. §§ 101 *et seq.*

⁷ See 5 C.F.R. § 2638.104.

⁸ 5 C.F.R. § 2638.104(c)(6) (“Taking appropriate action to resolve conflicts of interest and the appearance of conflicts of interest, through recusals, directed divestitures, waivers, authorizations, reassignments, and other appropriate means”).

⁹ 5 C.F.R. § 2638.104(c)(9).

¹⁰ See *OGE Institute for Ethics in Government* (2020), <https://bit.ly/3gykeNg>.

¹¹ Attendees were provided with materials including: *Compilation of Federal Ethics Laws*, <https://bit.ly/3idA3JW>; all OGE regulations, <https://bit.ly/3fssFIF>; *Ethical Service Handbook*, <https://bit.ly/2DsdIcy>; *14 General Principles*, <https://bit.ly/39QSBN2>; *COI Summaries*, <https://bit.ly/3fqXttw>; *Standard of Conduct Summaries*, <https://bit.ly/31dlFum>; *OGE: Memo to Agency Heads* (10/4/18), <https://bit.ly/30u9AS8>; *Sample Ethics Program Inspection Report*, <https://bit.ly/33wejEM>; *Program Management Dates and Deadlines*, <https://bit.ly/3ioCk5d>; 81 Fed. Reg. 76271, <https://bit.ly/2XzmBbr>; and *MSPB: Merit Principles Survey* (2016), <https://bit.ly/3idqpHi>.

¹² See *OGE: Special Review of Executive Branch Agency Waivers and Authorizations* (2017), <https://bit.ly/31eJPFY> (“OGE agrees the White House would benefit from a review of its program and looks forward to contacting the White House in the near future to discuss such a review.”).

¹³ *Id.* (“The White House has also indicated they are willing to discuss OGE conducting a review of the White House ethics program.”).

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I hope these responses are helpful to you. If you require additional information or have questions, please contact OGE's Chief of Staff, Shelley K. Finlayson, at 202-482-9314.

Sincerely,

Emory A. Rounds, III
Director