



June 20, 2017

The Honorable Walter B. Jones
Member
U.S. House of Representatives
2333 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Jones:

I write in response to your May 18, 2017, letter requesting that the U.S. Office of Government Ethics (OGE) evaluate whether the reported activities of family members of a senior Presidential appointee place the appointee in violation of the primary criminal conflict of interest statute, 18 U.S.C. § 208.

As an initial matter, Congress has not granted OGE the authority to provide such an evaluation. The Ethics in Government Act explicitly states that OGE is 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.”¹ Instead, the Department of Justice has the power to address violations of criminal law.

Consistent with this limitation, however, I am able to offer the following analysis of the statutory and regulatory prohibitions relevant to the subject of your letter. To begin the analysis, it is important to understand the nature of the prohibition established under the criminal conflict of interest statute, 18 U.S.C. § 208. This statute prohibits an executive branch employee from participating personally and substantially in particular matters in an official capacity as a government official.² It does not prohibit the family members of an executive branch employee from participating in non-governmental activities in their individual capacities as private citizens. The prohibition applies only to the government employee.

With respect to these official activities, the financial interests of an executive branch employee’s family are not generally within the scope of the criminal conflict of interest statute.³ The statute imputes the financial interests of a spouse or minor child to an executive branch employee, but it does not impute the financial interests of other relatives.⁴ Your letter does not

¹ 5 U.S.C. app. § 402(f)(5).

² See 18 U.S.C. § 208(a).

³ *Id.*

⁴ Among other persons, the statute also imputes to an executive branch employee the financial interests of a general partner of any partnership in which the employee is a general or limited partner. If a sibling, parent or other relative were a general partner of the executive branch employee, the statute would prohibit the employee from participating personally and substantially in any particular matter that directly and predictably affects the financial interests of that relative.



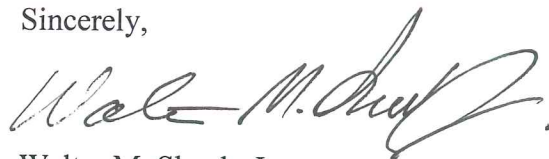
appear to suggest that the individual appointee identified in your letter participated personally and substantially in a particular matter directly and predictably affecting the financial interests of his spouse or minor child.

In addition to the criminal conflict of interest statute, the regulations comprising the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct) establish relevant restrictions. Specifically, the Standards of Conduct restrict an employee from taking certain actions with respect to other family members beyond only a spouse or a minor child. One restriction prohibits an employee from participating in certain matters involving a relative with whom the employee has a close personal relationship, if the employee (or the employee's agency) determines that a reasonable person with knowledge of the relevant facts would question the employee's impartiality in the matter.⁵ Another restriction prohibits an employee from misusing his or her official position to benefit a relative.⁶ Like the criminal conflict of interest statute, however, these restrictions address the activities of the executive branch employee, not the activities of the employee's relatives.

OGE does not have direct knowledge of the circumstances your letter describes and has not independently verified the media reports you cite. As a general principle, however, I agree that it would be disappointing for the family members of any government official to seek to profit from their relationships with that official. Consistent with the executive branch's tradition of public service, it might be expected that high-level officials would take reasonable measures to discourage relatives from profiting from family ties to the government.⁷ Nevertheless, the applicable laws provide OGE with no mechanism for compelling such measures. OGE possesses only the limited statutory authorities Congress has granted it.⁸

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

⁵ See 5 C.F.R. § 2635.502(a), (b)(1)(ii).

⁶ See 5 C.F.R. § 2635.702.

⁷ See, e.g., *George Bush's Letter Cautions Family on Conflicts of Interest*, THE NEW YORK TIMES (Apr. 17, 2015), available at <https://goo.gl/AbPHUh>.

⁸ See 5 U.S.C. app. §§ 402-403; see also Eliza Newlin Carney, *Ethics Watchdog Can Only Do So Much*, THE AMERICAN PROSPECT (May 25, 2017) available at <http://prospect.org/article/ethics-watchdog-can-only-do-so-much>.