

UNITED STATES OFFICE OF
GOVERNMENT ETHICS



March 9, 2017

The Honorable Jason E. Chaffetz
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
United States House of Representatives
2471 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Chaffetz and Ranking Member Cummings:

I am writing to update you regarding the conclusion of the matter you raised in your February 9, 2017, letter regarding Kellyanne E. Conway, Senior Counselor to the President. Enclosed is OGE's reply to the White House's February 28, 2017, response.

On February 13, 2017, I wrote to the White House and recommended that it consider taking disciplinary action against Ms. Conway. As you know, OGE cannot impose disciplinary action on an executive branch employee other than an OGE employee. When an agency declines to take disciplinary action against an employee in connection with an ethics violation, OGE's only recourse is to notify the President.¹ In this case, however, the White House's response makes clear that disciplinary action will not be taken.

Of greater concern, the White House's response includes assertions challenging the applicability of ethics rules and OGE's authority to oversee the ethics program for the entire executive branch. OGE disagrees with these assertions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Walter M. Shaub, Jr.", written in a cursive style.

Walter M. Shaub, Jr.
Director

Enclosure

¹ See 5 U.S.C. § 402(f)(2)(A)(iv)(II).



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March 9, 2017

Stefan C. Passantino
Deputy Counsel to the President
and Designated Agency Ethics Official
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. Passantino:

Thank you for your timely response to my February 13, 2017, letter regarding Kellyanne E. Conway, Special Counselor to the President. While I appreciate your explanation of the White House's ethics education and counseling efforts, I am concerned about the response for two reasons.

I remain concerned about Ms. Conway's misuse of position. Your letter concedes that her televised statements from the White House press briefing room implicated the prohibition on using one's official position to endorse any product or service. When an employee's conduct violates 5 C.F.R. § 2635.702, disciplinary action serves to deter future misconduct. Not taking disciplinary action against a senior official under such circumstances risks undermining the ethics program.

I am more concerned about the extraordinary assertion that "many" of OGE's regulations are inapplicable to employees of the Executive Office of the President. The assertion is incorrect, and the letter cites no legal basis for it.¹ Presidential administrations have not considered it appropriate to challenge the applicability of ethics rules to the entire executive branch. It is critical to the public's faith in the integrity of government that White House employees be held to the same standard of ethical accountability as other executive branch employees.

Sincerely,

Walter M. Shaub, Jr.
Director

¹ OGE also disagrees with the separate assertion in a footnote to your letter that White House employees are outside OGE's purview. The underlying theory that the White House Office is not an "executive agency" for certain limited purposes under 5 U.S.C. § 105 has never been applied in the context of government ethics, nor should it be.



Stefan C. Passantino
Deputy Counsel to the President
and Designated Agency Ethics Official
Page 2

cc. Mr. Donald F. McGahn II
Counsel to the President

Rep. Jason E. Chaffetz
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives

Rep. Elijah E. Cummings
Ranking Minority Member
Committee on Oversight and Government Reform
U.S. House of Representatives