

UNITED STATES OFFICE OF GOVERNMENT ETHICS



June 18, 2018

The Honorable David Cicilline
The Honorable Karen Bass
The Honorable Donald Beyer
The Honorable Lisa Blunt Rochester
The Honorable Robert A. Brady
The Honorable Michael E. Capuano
The Honorable Tony Cárdenas
The Honorable Yvette Clarke
The Honorable Emanuel Cleaver
The Honorable Katherine Clark
The Honorable Steve Cohen
The Honorable Gerald E. Connolly
The Honorable Rosa DeLauro
The Honorable Mark DeSaulnier
The Honorable Ted Deutch
The Honorable Lloyd Doggett
The Honorable Keith Ellison
The Honorable Adriano Espaillat
The Honorable Dwight Evans
The Honorable Colleen Hanabusa
The Honorable Alcee L. Hastings
The Honorable Brian Higgins

The Honorable Jared Huffman
The Honorable Marcy Kaptur
The Honorable William R. Keating
The Honorable Robin Kelly
The Honorable Ro Khanna
The Honorable Sheila Jackson Lee
The Honorable Pramila Jayapal
The Honorable Hakeem Jeffries
The Honorable Hank Johnson
The Honorable Brenda L. Lawrence
The Honorable Barbara Lee
The Honorable Ted W. Lieu
The Honorable Zoe Lofgren
The Honorable Alan Lowenthal
The Honorable Michelle Lujan Grisham
The Honorable James P. McGovern
The Honorable Gwen Moore
The Honorable Luis V. Gutierrez
The Honorable Jerrold Nadler
The Honorable Richard M. Nolan
The Honorable Eleanor Holmes Norton
The Honorable Mark Pocan

The Honorable Jared Polis
The Honorable Cedric L. Richmond
The Honorable Jamie Raskin
The Honorable Jan Schakowsky
The Honorable Carol Shea-Porter
The Honorable Albio Sires
The Honorable Darren Soto
The Honorable Eric Swalwell
The Honorable Mark Takano
The Honorable Mike Thompson
The Honorable Dina Titus
The Honorable Norma J. Torres
The Honorable Niki Tsongas
The Honorable Bonnie Watson Coleman
The Honorable Nydia Velazquez
The Honorable Maxine Waters
The Honorable John Yarmuth
The Honorable John Garamendi
The Honorable Denny Heck
The Honorable Jose E. Serrano
The Honorable Mike Quigley
The Honorable Bill Pascrell, Jr.

Dear Members of Congress:

This responds to your letter dated May 29, 2018, which raises issues involving the Constitution's Emoluments Clause and conflict of interest concerns with respect to recent dealings between President Donald J. Trump, the Trump Organization and the Chinese government. Specifically, your letter asks OGE to investigate several matters, including whether the Emoluments Clause applies to a \$500 million loan by the Chinese government used to finance an Indonesian theme park project with several projected Trump-branded properties, whether President Trump sought and obtained the consent of Congress before the Chinese government made the \$500 million loan benefiting Trump properties, and whether any federal statute regarding conflicts of interest or ethics may apply to President Trump or a member of the Trump administration who participated in the decision to ease restrictions on ZTE.

At the outset, I agree that the information cited in your letter raises serious concerns. It is essential to the success of our republic that citizens can trust that the decisions made by government leaders are motivated by the public good and not by personal interests. Public officials, including those at the top levels of government such as the President, must be held to high standards. For this reason, OGE has consistently held that a President should conduct himself "as if" he or she was bound by the same conflict of interest laws and standards of conduct applicable to executive branch employees.¹ These restrictions include the primary financial conflict of interest statute which prohibits an executive branch employee (not the President and Vice President) from participating personally and substantially in a particular government matter directly and predictably affecting the employee's own financial interests, as well as the financial interests of certain individuals whose interests are imputed to them by the law.

¹ See OGE Advisory 83 x 16 (Oct. 20, 1983); see also Memorandum from Antonin Scalia, Assistant Attorney General, Office of Legal Counsel, *Re: Applicability of 3 C.F.R. Part 100 to the President and Vice President* (Dec. 16, 1974).



Additionally, all government officials are charged with avoiding actions which would cause reasonable persons to question their impartiality. Specifically, a government employee is prohibited from participating in particular matters where someone with whom he or she has a non routine consumer financial relationship is a party.² However, with respect to the conflict of interest issues you raise regarding President Trump, Congress has left no doubt that the primary criminal conflict of interest statute is inapplicable to the President.³ Similarly, the impartiality provisions of the Standards of Conduct are not applicable to the President or Vice President.⁴ Under the Constitution, the primary authority to oversee the President's ethics rests with Congress and ultimately, with the American people.

With regard to your request for investigations into matters related to the Emoluments Clause, OGE has no authority to opine on Emoluments Clause issues, which are under the sole purview of the Department of Justice and are presently under judicial review.⁵ Similarly, Congress or the Department of Justice is in a better position to know whether the President has sought or received the required congressional approval referred to in the Clause.

Finally, your letter requests OGE to look into whether any federal statute regarding conflicts of interest may apply to those involved in the ZTE decision. The primary financial conflict of interest statute would prohibit members of the Trump administration (not the President and Vice President) from participating personally and substantially in a particular government matter directly and predictably affecting the employee's own financial interests, or the financial interests of certain individuals whose interest are attributed to them.⁶ Similarly, the Standards of Conduct regulations applicable to executive branch employees also apply to such members of the Trump administration.⁷ However, your letter does not identify any other member of the Trump administration who may have participated in the decision to ease restrictions on ZTE who have such interests and OGE does not independently have such information.

I hope this response 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,



David J. Apol
Acting Director and General Counsel

² 5 C.F.R. part 2635. (A \$500 million loan would not be considered a "routine commercial transaction.")

³ See Ethics Reform Act of 1989, Pub. L. No. 101-194, § 401 (1989); see also 18 U.S.C. §§ 202(c), 208(a) (2012).

⁴ 5 C.F.R. § 2635.102(h).

⁵ For reference, the Department of Justice's Office of Legal Counsel maintains a repository of its opinions addressing the Emoluments Clause online at <https://www.justice.gov/olc/opinions-main>. Emoluments Clause cases presently under judicial review include *Richard Blumenthal, et al. v. Donald J. Trump*, No. 1:17-cv-01154 (D.D.C. 2017); *D.C. and Maryland v. Trump*, No. 8:17-cv-01596 (D. Md. 2017); and *Citizens for Responsibility and Ethics in Washington v. Trump*, No. 18-474 (2d Cir. 2018).

⁶ See 18 U.S.C. § 208(a).

⁷ 5 C.F.R. part 2635.