

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



April 25, 2017

The Honorable Elizabeth Warren  
United States Senator  
317 Hart Senate Office Building  
Washington D.C. 20510

The Honorable Thomas R. Carper  
United States Senator  
513 Hart Senate Office Building  
Washington D.C. 20510

Dear Senators Warren and Carper:

I am in receipt of your letter dated March 29, 2017, requesting information about the ethics rules that apply to Ms. Ivanka Trump in her capacity as an advisor to the President.

At the time of your letter, it was unclear whether the White House would recognize Ms. Trump as having the status of an executive branch employee. Although OGE was not consulted by the White House on this issue, I contacted both Ms. Trump's attorney and the White House's ethics official on March 24, 2017, to express OGE's view that Ms. Trump appeared to meet the legal standard to be considered an employee covered by the executive branch ethics rules.<sup>1</sup> During those conversations, both Ms. Trump's attorney and the White House's ethics official seemed open to the possibility of recognizing Ms. Trump's status as an employee through a formal appointment. Thereafter, on March 29, 2017, the White House announced Ms. Trump's decision to accept a formal appointment as an executive branch employee.<sup>2</sup> With her newly recognized status as an executive branch employee, Ms. Trump is covered by the ethics laws and regulations applicable to executive branch employees.

Executive branch employees are subject to a variety of ethics laws and rules designed to ensure the impartiality of the government's decision making. These authorities include the anti-bribery and criminal conflict of interest statutes,<sup>3</sup> the Ethics in Government Act,<sup>4</sup> the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct),<sup>5</sup> certain restrictions established in President Bush's 1989 Executive Order on ethics,<sup>6</sup> the Stop Trading on

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<sup>1</sup> Others had raised similar concerns publicly. See, e.g., Julie Bykowicz, *Ivanka Trump: A White House Force, Just Not An Employee*, BLOOMBERG (Mar. 24, 2017), <https://goo.gl/1dX33u>; Jackie Northam and Marilyn Geewax, *Ivanka Trump's Move To The White House Raises Questions About Ethics*, NATIONAL PUBLIC RADIO (Mar. 21, 2017), <https://goo.gl/9o56B3>.

<sup>2</sup> See Abby Phillip, *Ivanka Trump reverses course, will become a government employee*, THE WASHINGTON POST (Mar. 29, 2017), <https://goo.gl/Grgeyh>; see also Office of the Press Secretary, *Background Press Briefing on Financial Disclosure Forms from the White House Office of the Press Secretary*, THE WHITE HOUSE (Mar. 31, 2017), <https://goo.gl/hbWGAf>.

<sup>3</sup> 18 U.S.C. §§ 201-209.

<sup>4</sup> 5 U.S.C. app. §§ 101 *et seq.*

<sup>5</sup> 5 C.F.R. part 2635.

<sup>6</sup> Exec. Order 12674 (Apr. 12, 1989), as amended by Exec. Order 12731 (Oct. 17, 1990).



Congressional Knowledge Act;<sup>7</sup> and other legal provisions. Certain political appointees are also subject to additional restrictions established in Executive Order 13770 (Jan. 28, 2017). Presidential appointees in the White House are subject to these authorities to the same extent as other executive branch employees.<sup>8</sup>

Of particular relevance to your inquiry, Ms. Trump is now subject to financial disclosure requirements. Like other appointees, Ms. Trump must file new entrant financial disclosure reports within 30 days of appointment to the government.<sup>9</sup> These reports include information about the financial interests of the filers, their spouses, and their dependent children, as well as certain positions outside the government.<sup>10</sup> The White House is authorized to grant an extension, upon a showing of good cause, of up to 45 days and, upon a written showing of good cause, a second extension of up to 45 additional days.<sup>11</sup> The approval of a second extension must be in writing.<sup>12</sup> After appointees file their reports, the White House's ethics officials review the reports for compliance with financial disclosure requirements and substantive ethics requirements.<sup>13</sup> White House ethics officials are expected to work with an appointee to resolve any potential conflicts of interest that they identify through their review of the financial disclosure reports.<sup>14</sup>

In addition to filing a new entrant report, Ms. Trump must satisfy other financial disclosure requirements. She will have to file periodic transaction reports within 30 days of receiving notice of any covered transaction.<sup>15</sup> She will have to file an annual financial disclosure report by May 15 each year.<sup>16</sup> In addition, she will have to file a termination financial disclosure report within 30 days of terminating her federal service.<sup>17</sup> The process for resolving conflicts of interest identified during the review of these subsequently filed financial disclosure reports is the same as that associated with new entrant financial disclosure reports.

With regard to your questions about the steps Ms. Trump must take to remedy any potential or actual conflicts of interest identified through her financial disclosures, the primary criminal conflict of interest statute prohibits senior White House appointees and other executive branch employees from participating personally and substantially in particular matters directly and predictably affecting their financial interests.<sup>18</sup> Among other things, this prohibition extends to the financial interests of companies in which they have ownership interests.<sup>19</sup> It is important to note, however, that the criminal conflict of interest statute is not a prohibited holdings statute. Instead, it requires an appointee to refrain from participating in the particular matter affecting the appointee's

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<sup>7</sup> Pub. L. No. 112-105, 126 Stat. 291 (2012), as amended.

<sup>8</sup> Note, however, the Department of Justice (DOJ) recently opined that the anti-nepotism statute does not apply to the White House Office. *See Application of the Anti-Nepotism Statute to a Presidential Appointment in the White House Office*, OFFICE OF LEGAL COUNSEL, U.S. DEP'T JUSTICE, 41 Op. O.L.C. 1 (Jan. 20, 2017). DOJ's decision is applicable to Ms. Trump. *See id.*

<sup>9</sup> 5 U.S.C. app. § 101(a).

<sup>10</sup> 5 U.S.C. app. § 102.

<sup>11</sup> 5 C.F.R. § 2634.201(f).

<sup>12</sup> *Id.*

<sup>13</sup> 5 U.S.C. app. § 106(a); 5 C.F.R. § 2634.605.

<sup>14</sup> 5 U.S.C. app. § 106(a); 5 C.F.R. § 2634.605.

<sup>15</sup> 5 U.S.C. app. § 103(l).

<sup>16</sup> 5 U.S.C. app. § 101(d).

<sup>17</sup> 5 U.S.C. app. § 101(e).

<sup>18</sup> *See* 18 U.S.C. § 208(a).

<sup>19</sup> *See, e.g.*, OGE Informal Advisory Opinion 92 x 2 (1992).



financial interests or the financial interests of persons whose interests are imputed to the appointee.<sup>20</sup> Thus, the most common mechanism for resolving conflicts of interest is to recuse from particular matters that would affect the appointee's personal and imputed financial interests.

Recusal is not the only means for resolving conflicts of interest. Other remedies for resolving conflicts of interest can include reassignment, divestiture, waiver, or the establishment of a qualified blind or diversified trust.<sup>21</sup> In some cases, an employee can rely on an exemption to the criminal conflict of interest statute.<sup>22</sup> OGE and the Department of Justice have established regulatory exemptions for certain types of financial interests because the conflicts of interest they pose are too remote or inconsequential to be likely to affect the integrity of an employee's service to the government.<sup>23</sup>

The White House can direct an appointee to sell, or otherwise divest, an asset in order to avoid a conflict of interest.<sup>24</sup> If selling the asset will result in a capital gain, the appointee may be eligible for a Certificate of Divestiture to offset the tax burden of complying with the government's conflict of interest requirements.<sup>25</sup> Pending the divestiture, the appointee must recuse from particular matters in which the asset poses a conflict of interest. Recusal is achieved by not participating in a particular matter.<sup>26</sup> A White House appointee is not normally required to file a disqualification statement or other document regarding the recusal.<sup>27</sup> Thus, the important requirement is only that the appointee not participate.

Only after the White House has certified the appointee's financial disclosure report does the White House transmit the report to OGE.<sup>28</sup> OGE then conducts a second-level review.<sup>29</sup> As part of this review process, OGE advises White House ethics officials of any deficiencies in an appointee's compliance with financial disclosure requirements. In turn, the White House ethics officials work with the appointee who filed the report in order to resolve them. It is normal for an appointee to make changes to a financial disclosure report and to add information during this review process. After the report is revised, OGE seeks information about how the White House is addressing any potential conflicts of interest identified during the review process. OGE then makes a determination regarding apparent compliance with financial disclosure and conflict of interest rules and either certifies or declines to certify the financial disclosure report.<sup>30</sup>

In response to your specific inquiry, the ethics provisions and requirements discussed above are generally applicable to Ms. Trump. For example, the primary criminal conflict of interest statute

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<sup>20</sup> See 18 U.S.C. § 208(a).

<sup>21</sup> See, e.g., Memo from Amy L. Comstock, Director, U.S. Office of Gov't Ethics, to Designated Agency Ethics Officials, *Nominee Ethics Agreements*, DO-01-013 (2001) (discussing remedies for conflicts of interest in the analogous case of Presidential nominees); 5 C.F.R. pt. 2634, subpt. D.

<sup>22</sup> 18 U.S.C. § 208(b)(2).

<sup>23</sup> See 5 C.F.R. pt. 2640, subpt. B.

<sup>24</sup> See 5 C.F.R. § 2635.403(b).

<sup>25</sup> 26 U.S.C. § 1043; 5 C.F.R. pt. 2634, subpt. J.

<sup>26</sup> 5 C.F.R. § 2640.103(d).

<sup>27</sup> 5 C.F.R. § 2640.103(d)(2). *But see* Stop Trading on Congressional Knowledge Act of 2012, Pub. L. No. 112-105, § 17, 126 Stat. 291, 303-04 (requiring notice of recusal in the limited case of an appointee negotiating for post-government employment).

<sup>28</sup> 5 U.S.C. app. § 103(c).

<sup>29</sup> 5 U.S.C. app. § 106(a).

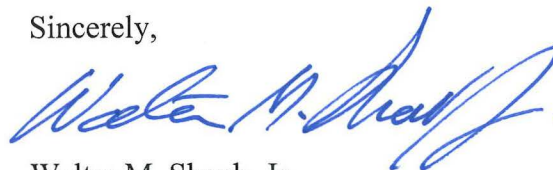
<sup>30</sup> 5 U.S.C. app. § 106(b); 5 C.F.R. § 2634.605.

prohibits Ms. Trump from participating in particular matters affecting her financial interests, including the financial interests of Trump family businesses and other companies in which she has an ownership interest.<sup>31</sup> That conflict of interest statute also covers her spouse's financial interests, which are imputed to her.<sup>32</sup> Another statute prohibits her from representing any person, including any family business organized as a legal entity, before the government.<sup>33</sup> She is also subject to the Standards of Conduct.<sup>34</sup> If, as has been reported,<sup>35</sup> she is not receiving a salary, she is not covered by a prohibition on supplementation of government salary or a prohibition on earning outside income ordinarily applicable to appointees at her level.<sup>36</sup>

The White House is responsible for providing Ms. Trump with ethics support and advice. This support includes new employee ethics training within three months of her appointment and, thereafter, ethics training on an annual basis.<sup>37</sup> The White House is also responsible for monitoring compliance with the remedies put in place to resolve actual or apparent conflicts of interest. In addition, White House officials and Ms. Trump's representatives are free to consult with OGE if they require assistance in addressing any ethics issues that arise.<sup>38</sup>

I hope this explanation addresses the issues your letter raises. If members of either of your staffs have questions, OGE's Chief of Staff, Shelley K. Finlayson, is available to assist them. She can be reached at 202-482-9292.

Sincerely,



Walter M. Shaub, Jr.  
Director

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<sup>31</sup> 18 U.S.C. § 208(a).

<sup>32</sup> *Id.*

<sup>33</sup> See 18 U.S.C. § 205.

<sup>34</sup> See 5 C.F.R. pt. 2635.

<sup>35</sup> See Gabrielle Levy, *Ivanka Trump's New Official Job: Special Assistant to the President*, U.S. NEWS AND WORLD REPORT, (Mar. 29, 2017), <http://bit.ly/2paFx00>.

<sup>36</sup> See 18 U.S.C. § 209(c); Exec. Order 12674, § 102 (Apr. 12, 1989), as amended by Exec. Order 12731 (Oct. 17, 1990).

<sup>37</sup> 5 C.F.R. pt. 2638, subpt. C.

<sup>38</sup> For example, OGE recently provided verbal advice to Ms. Trump's representatives on ways to comply with the Standards of Conduct in connection with a deal for a book that was written before she entered government.