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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

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November 20, 2016

The Honorable Walter M. Shaub
Director
U.S. Office of Government Ethics
1201 New York Avenue, NW, Suite 500
Washington, DC 20005

Dear Director Shaub:

As the Ranking Member of the Senate Committee with jurisdiction over the Office of Government Ethics, I write today to request your assistance with understanding how your office plans to address the potential for conflicts of interest in the upcoming Administration of President-elect Donald Trump.

As you know, President-elect Trump is a businessman with considerable financial interests in the United States and around the world. The full extent of his financial interests remains unclear, in part because he was the first presidential candidate in modern history to decline to release his tax returns to the American public. These unique circumstances raise important questions about how the Administration of President-elect Trump will avoid conflicts of interest and ensure integrity of executive branch programs and operations.

As you know, the Office of Government Ethics oversees the executive branch ethics program and works with ethics practitioners in more than 130 agencies to implement this effort. The Office of Government Ethics also plays a critical role in the 2016 Presidential Transition by making sure that prospective nominees are free of conflicts of interest. This role includes providing guidance regarding the federal laws that prohibit certain officials from participating personally and substantially in an official capacity in any matter that will have a direct and predictable effect on their financial interests. Unless an official receives a waiver or an exemption applies, the official with a conflict of interest must disqualify him or herself from participating in the matter. Criminal penalties may apply to officials who violate this statute.

As the independent ethics watchdog of the federal government, the Office of Government Ethics must provide assurances to the American people that your agency will advance a strong ethics program that holds the Administration of President-elect Trump accountable for any conflicts of interest. To better understand how your office plans to address the potential for conflicts of interest in the upcoming Administration of

President-elect Donald Trump, I ask that you please provide the following information by December 5, 2016:

1. **Handling of Trump Organization** – For constitutional reasons, the President is exempt from certain conflict of interest rules, such as the prohibition on acting in matters affecting his personal financial interest or representing his own claims and business interests to the government. However, the President remains subject to many related statutes, such as prohibitions on bribery and embezzlement. President-elect Trump and the Trump Organization reportedly have business with the federal government, lease federal property, and have regulatory and enforcement matters presently being adjudicated by federal government agencies.
 - a. What guidance has Office of Government Ethics (OGE) provided to agency ethics officials regarding the protocols for handling matters directly affecting President-elect Trump and the Trump Organization?
 - b. Will OGE recommend safeguards to protect federal officials from fear of reprisal in dealings with the Trump Organization?
 - c. Will OGE take steps to ensure Trump Organization employees do not have privileged access to decision-makers or access to nonpublic government information?
 - d. President-elect Trump reportedly intends to transfer control of the Trump Organization to his three oldest children.¹ Does this transfer meet the standards of a qualified blind trust, as defined under the Ethics in Government Act?

2. **President-elect Trump's Financial Conflicts** – President-elect Trump's previous financial disclosure reports reveal potential financial conflicts of interest in several areas of the economy and foreign relations. While Presidents are exempt from conflict of interest rules for constitutional reasons, Presidents of both parties, dating back to Lyndon Johnson, have taken significant steps to avoid the appearance of a conflict.²
 - a. Please identify the information that must be included in the President's annual financial disclosure, when a President must file his first disclosure, and whether the public will receive access to these disclosures.
 - b. What steps does OGE require a President to take if any conflicts of interest are apparent on the face of a financial disclosure?
 - c. What steps will OGE require to *prevent* acquisition of new conflicts by President-elect Trump and his Trump Organization?

3. **Transition Team** – President-elect Trump's three oldest children are members of the Presidential Transition team while continuing to serve as executives and

¹ *Three Trump Children Seen Managing President-Elect's Company*, REUTERS (Nov. 11, 2016).

² CYNTHIA BROWN AND L. PAIGE WHITAKER, CONG. RESEARCH SERV., LEGAL SIDEBAR, CONFLICTS OF INTEREST AND THE PRESIDENCY (2016).

officers in the Trump Organization.³ As leaders on the Transition team, his children will be party to sensitive government information and empowered to discuss matters of government policy and operations with the leadership of several federal agencies.

- a. What guidance has OGE provided to agency ethics officials regarding the handling of non-transition business communications from Mr. Trump's children and the Trump Organization during the transition?

4. President-elect Trump's Oldest Children and Jared Kushner – President-elect Trump has reportedly expressed interest in obtaining security clearances for his three oldest children and his son-in-law, Jared Kushner.⁴

- a. What guidance has OGE provided to President-elect Trump's oldest children and Mr. Kushner concerning the management of their conflicts of interest while participating in executive branch deliberations?
- b. Does President-elect Trump have legal authority to appoint these individuals to government positions?
- c. Are President-elect Trump's children and Mr. Kushner exempt from conflict of interest laws?
- d. Has OGE provided guidance to these individuals to ensure they disqualify themselves from matters in which they have financial interests and to prevent inadvertent disclosure of confidential government information?

5. Ongoing Financial Disclosure Obligations – President-elect Trump has disclosed a large portfolio of financial interests that include securities interests in several investment companies.⁵ President-elect Trump will be under an ongoing obligation to file public reports of any securities transactions so that the public may understand his financial interests.

- a. What guidance has OGE provided to President-elect Trump to ensure he continues to file any required financial disclosures of securities transactions?
- b. How often will President-elect Trump be required to file such disclosures?
- c. Will OGE or the White House Counsel be responsible for assessing fines for any late filings?

³ Brian Naylor & Barbara Sprunt, *From Lobbyists to Loyalists, See Who's on Donald Trump's Transition Team*, NPR (Nov. 16, 2016).

⁴ Jim Acosta et al., *Trump Transition Team Asked about Security Clearance for His Children*, CNN (Nov. 15, 2016).

⁵ Gregor Aisch et al., *What's in Donald Trump's 104-Page Financial Disclosure?*, N.Y. TIMES (May 18, 2016).

6. **Outside Fiduciary Positions** – President-elect Trump has disclosed that he serves as chairman or board member of hundreds of companies.⁶ As a board member or officer, he owes those entities and their investors’ legal fiduciary duties that have the potential to interfere with his duties as president.
 - a. What guidance has OGE provided to President-elect Trump regarding his outside positions and the steps he should take to address potential conflicts of interest?
 - b. What safeguards will OGE establish to prevent conflicts of interest between his legal fiduciary obligations to these companies and his legal obligations and duties as President?

7. **Misuse of Image** – Longstanding White House policy across Administrations prohibits the use of the President’s name or image in advertising or for the endorsement of any commercial product or service.
 - a. What guidance has OGE provided to President-elect Trump regarding the use of his name and image for the endorsement of the Trump Organization or his children’s businesses?

If you or members of your staff have any questions about this request, please feel free to contact Roberto Berrios of my staff at (202) 224-2627. Thank you very much for your attention to this matter.

With best personal regards, I am

Sincerely yours,



Tom Carper
Ranking Member

cc: The Honorable Ron Johnson
Chairman

⁶ David Goldman, *Donald Trump’s 500 Businesses Would Pose ‘Unprecedented Ethical Dilemma’*, CNN (Mar. 17, 2016).