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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

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February 8, 2017

Donald F. McGahn
White House Counsel
Eisenhower Executive Office Building
1650 Pennsylvania Avenue, NW
Washington, DC 20501

Dear Mr. McGahn:

I write to express my concern regarding the numerous potential conflicts of interest posed by President Trump's failure to divest completely from his companies and to request information regarding how the Trump Administration plans to prevent such conflicts from being realized. The American people and their representatives in Congress have a right to receive not only assurances, but actual proof that their government is working for them rather than to promote the financial interests of the President and his family.

In the months that followed President Trump's election, numerous members of Congress, the media, and the American public requested information regarding Mr. Trump's potential conflicts of interest as well as how President Trump would ensure that these conflicts would be avoided or mitigated. Despite these concerns, President Trump has refused to divest from his companies, instead, ceding day-to-day operations of the Trump Organization to his sons.¹ As Walter M. Shaub, Jr., director of the non-partisan Office of Government Ethics noted, "Stepping back from running his business is meaningless from a conflict of interest perspective."² Director Shaub explained further that President Trump's decision not to divest from his business stood in stark contrast to his predecessors. He said:

[T]he plan does not comport with the tradition of our Presidents over the past 40 years. This isn't the way the Presidency has worked since Congress passed the Ethics in Government Act in 1978 in the immediate aftermath of the Watergate scandal. Since then, Presidents Jimmy Carter, Ronald Reagan, George H.W. Bush, Bill Clinton, George W. Bush, and Barack Obama all either established blind trusts or limited their

¹ *Trump Hotels, Amid Calls to Divest, Instead Plans U.S. Expansion*, Bloomberg (Jan. 25, 2017) (online www.bloomberg.com/news/articles/2017-01-25/trump-hotels-to-triple-locations-in-u-s-expansion-ceo-says).

² U.S. Office of Government Ethics, Remarks as Prepared for Delivery of Walter M. Shaub, Jr., Director, U.S. Office of Government Ethics at the Brookings Institution (Jan. 11, 2017).

investments to non-conflicting assets like diversified mutual funds, which are exempt under the conflict of interest law.³

President Trump's expansive financial holdings raise potential conflict of interest concerns for nearly every federal agency in the government he now oversees. For example, more than ten cases challenging labor practices at Trump-owned companies are pending before the National Relations Board (NLRB).⁴ The NLRB, which is an independent federal agency created to safeguard employees' rights to organize and to prevent and remedy unfair labor practices, currently has two vacancies, both to be filled by President Trump.⁵ The Trump International Hotel in Washington, DC is located in the Old Post Office and leased from the General Services Administration, which will be led by a Trump nominee once-confirmed. President Trump's ownership in Starret City, a low-income apartment complex in Brooklyn, NY will be directly impacted by oversight and regulations promulgated by the Department of Housing and Urban Development.⁶ As Trevor Potter, a former Chair of the Federal Election Commission stated: "We face now ... a president with a huge number of active business interests who has not taken steps to prevent government decisions concerning those interests from landing on his desk. This is a big step backwards."⁷

Already, and in numerous instances going forward, government employees, including those hired pursuant to a political appointment by President Trump, will be tasked with making decisions that have a direct and demonstrable impact on the President and his family's financial interests. President Trump's continued refusal to make his tax returns public only compounds this concern. Perhaps most troubling, however, is the lack of clarity regarding what companies and countries own President Trump and his family's debt interests. In 2008, President Trump's son, Donald Trump Jr. told attendees at a real estate conference in New York City that "Russians make up a pretty disproportionate cross-section of a lot of our assets. We see a lot of money pouring in from Russia."⁸ Earlier this month, the *Wall Street Journal* reported that the debts of President Trump and his businesses are "widely held on Wall Street" by more than 150 financial

³ *Id.*

⁴ N. Eisen et al., *The Emoluments Clause: Its Text, Meaning, and Application to Donald J. Trump*, Brookings Institution (Dec. 16, 2016).

⁵ U.S. National Labor Relations Board, *What We Do* (online www.nlr.gov/what-we-do).

⁶ *Airplanes, Golf Courses, Trademarks and More: Trump's Government will Oversee his Businesses*, Washington Post (Jan. 15, 2017) (online www.washingtonpost.com/politics/trumps-administration-will-regulate-trumps-businesses-raising-prospect-of-conflicts/2017/01/15/a2f7e53c-d913-11e6-9a36-1d296534b31e_story.html?utm_term=.1a8017dbff10).

⁷ *Id.*

⁸ *How Much Money Does The Trump Organization Owe Russia and China?*, The Hill (Oct. 21, 2016) (online thehill.com/blogs/pundits-blog/presidential-campaign/302216-how-much-money-does-the-trump-organization-owe).

institutions and could create new potential conflicts of interest.⁹ An analysis conducted by the *New York Times* of President Trump's real estate holdings in the United States found that the companies he owns have at least \$650 million in debt, which is "twice the amount than can be gleaned" from his public filings during the presidential campaign.¹⁰

To date, the White House has not published any documents outlining how federal employees have been or will be instructed to ensure that decisions potentially impacting the First Family's financial interests will be made in the public interest and to avoid any undue influence by the White House. President Trump's cabinet nominees have also failed to provide any such detail. In response to my questions before the Senate Committee on Finance regarding whether President Trump's nominee for Treasury Secretary, Steve Mnuchin, should know what percentage of President Trump's debt is held by foreign interests Mnuchin said, "I think you have a valid point about foreign debt ... I will research that and get back to you."¹¹ Given the Department of the Treasury's role in regulating and negotiating with many of these institutions, I requested additional information from the nominee. Mnuchin later added, "I can assure you that we will make sure that we absolutely follow the law and the Constitution and I have every reason to believe that the president-elect absolutely wants to adhere to it and will do so."¹²

In order to fully understand how the Trump Administration intends to prevent and/or mitigate the broad range of potential conflicts of interests created across the federal government by President Trump and his family's extensive holdings, please provide the following information to my office not later than February 22, 2017:

1. Copies of any and all written requests for guidance transmitted to White House personnel from executive branch personnel regarding how to address potential conflicts of interest or how to conduct government business that may directly impact President Trump or his family's financial holdings;
2. Copies of any and all written guidance provided by the White House personnel to executive branch personnel regarding how to address potential conflicts of interest or how to conduct government business that may directly impact President Trump or his family's financial holdings;

⁹ *Trump's Debts Are Widely Held on Wall Street, Creating New Potential Conflicts*, Wall Street Journal (Jan. 5, 2017) (online www.wsj.com/articles/trump-debts-are-widely-held-on-wall-street-creating-new-potential-conflicts-1483637414).

¹⁰ *Trump's Empire: A Maze of Debts and Opaque Ties*, New York Times (Aug. 20, 2016) (online www.nytimes.com/2016/08/21/us/politics/donald-trump-debt.html?_r=1).

¹¹ *Mnuchin Commits to Looking into Trump's Foreign Debt*, Los Angeles Times (Jan. 19, 2017) (online www.latimes.com/nation/politics/trailguide/la-na-trailguide-updates-mnuchin-commits-to-looking-into-trump-s-1484852103-htlmlstory.html).

¹² *Id.*

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3. If no such guidance exists, please explain whether the White House intends to provide federal agencies with any written guidance regarding how to address potential conflicts of interest or how to conduct government business that may directly impact President Trump or his family's financial holdings;
4. If the White House intends to provide federal agencies with written guidance regarding how to address potential conflicts of interest or how to conduct government business that may directly impact President Trump or his family's financial holdings, please provide a time line for when federal agencies will receive such guidance.

Should you have any questions regarding this inquiry, please contact Donald Sherman on my staff at Donald_Sherman@hsgac.senate.gov or by phone at (202) 224-2627. Thank you in advance for your prompt attention to this request. I look forward to your response.

Sincerely,



Claire McCaskill
Ranking Member

cc: The Honorable Ron Johnson
Chairman