



September 16, 2021

Hon. Emory A. Rounds, III
Director
U.S. Office of Government Ethics
1201 New York Ave., NW, Suite 500
Washington, DC 20005

Re: Request for Investigations of Termination Financial Disclosure Reports

Dear Director Rounds:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Government Ethics (“OGE”) exercise its monitoring and investigation authority to determine whether Marc Short, former Chief of Staff for Vice President Pence, violated the Ethics in Government Act (“EIGA”) and OGE regulations by failing to file a termination public financial disclosure report (“termination report”) when he left the White House in January 2021.

To “ensure confidence in the integrity of the Federal Government by demonstrating that they are able to carry out their duties without compromising the public trust,” the EIGA requires high-level federal officials like Mr. Short to publicly disclose their personal financial interests.¹ As a result of numerous, unsuccessful attempts by CREW to obtain a copy of Mr. Short’s termination report from the White House and several other federal agencies, there is a reasonable basis to believe that Mr. Short did not file his termination report when he departed the White House in January 2021, in violation of the EIGA.

CREW’s inability to obtain a copy of Mr. Short’s termination report more than 200 days after he departed the White House raises more than individual compliance issues. It also highlights a systemic risk that arises during presidential transitions with respect to missing White House termination reports. Although termination reports must be filed by covered White House officials like Mr. Short within 30 days of their departure,² even the best presidential transitions can become chaotic, with reporting requirements getting lost in the shuffle. To address this risk, CREW further requests that OGE conduct a comprehensive review to ensure there is a process in place for presidential transitions to collect any missing reports required to be filed by departing White House officials. Once collected, OGE can then make the reports publicly available pursuant to the EIGA through its official website and, if warranted, refer any individual who knowingly and willfully fails

¹ 5 C.F.R. § 2634.104(a).

² 5 U.S.C. app. 4 § 101(e); 5 C.F.R. §2634.201(e).

to file their termination report to the Department of Justice (“DOJ”), which has authority to bring civil actions in federal district court and seek civil penalties of up to \$50,000.³

Background

Marc Short served as a senior White House official on two separate occasions. First, from January 2017 to July 2018, he worked as President Donald J. Trump’s Director of Legislative Affairs.⁴ Then, from March 2019 to January 2021, he served as the Vice President’s Chief of Staff.⁵ In both capacities, Mr. Short served as an “Assistant to the President.”⁶ Mr. Short timely filed his new entrant and annual reports for his first position,⁷ and when Mr. Short’s White House employment was terminated the first time, he filed the mandated termination report within the 30-day time frame.⁸

Shortly after his return to the White House in March 2019, Mr. Short filed the EIGA public financial disclosure report required for new entrants, which revealed that he and his spouse held stocks in more than 100 businesses that could pose potential conflicts of interest.⁹ Notably, Mr. Short, who was actively engaged in the Trump administration’s coronavirus task force,¹⁰ held individual stocks totaling between \$500,000 and \$1.6 million in companies that soon became integral to the Trump administration’s response to the Covid-19 epidemic, including Johnson & Johnson, CVS, Walmart, and Thermo Fischer Scientific.¹¹ There is no record, however, that Mr. Short divested any of these holdings or obtained a waiver to engage in particular matters involving said companies’ financial interests,¹² even after he sought a certificate of divestiture from OGE to address his conflicts of interest, albeit unsuccessfully.¹³ Because his conflicts of interest appeared to violate 18 U.S.C. § 208, CREW filed a complaint with the Federal Bureau of Investigation requesting an investigation.¹⁴

³ 5 U.S.C. app. 4 § 104(a)(1).

⁴ See Marc Short, New Entrant Public Financial Disclosure Report, Feb. 20, 2017, <https://bit.ly/2TgVsEX>; Marc Short, Termination Public Financial Disclosure Report, Aug. 15, 2018, <https://bit.ly/2TV5DUd>.

⁵ Marc Short, New Entrant Public Financial Disclosure Report, Apr. 9, 2019, <https://bit.ly/3zOzP4U>. Although news reports indicate Mr. Short was continuing to serve Vice President Pence during and after the electoral college process, it isn’t fully clear when Mr. Short’s tenure as Chief of Staff ended. According to news reports, President Trump barred Mr. Short from the White House following Vice President Pence’s role in certifying the results of the 2020 election on January 7, 2021, but it is not known if Mr. Short continued to be employed until the Trump administration ended on January 20. Josh Dawsey and Ashley Parker, [Inside the remarkable rift between Donald Trump and Mike Pence](https://www.washingtonpost.com/news/insider/wp/2021/01/11/inside-the-remarkable-rift-between-donald-trump-and-mike-pence/), *Washington Post*, Jan. 11, 2021, <https://wapo.st/3sWeofS>.

⁶ See Short, New Entrant Report, Feb. 20, 2017; Short, New Entrant Report, Apr. 9, 2019.

⁷ Short, New Entrant Report, Feb. 20, 2017; Marc Short, Annual Public Financial Disclosure Report, May 15, 2018, <https://bit.ly/3DDDVzu>.

⁸ Marc Short, Termination Public Financial Disclosure Report, Aug. 15, 2018, <https://bit.ly/2TV5DUd>.

⁹ Short, New Entrant Report, Apr. 9, 2019; Walter Shaub and Meredith Lerner, [Does the Vice President’s Chief of Staff Have a Coronavirus Conflict Of Interest?](https://www.crew.org/does-the-vice-presidents-chief-of-staff-have-a-coronavirus-conflict-of-interest/), *CREW*, Apr. 23, 2020, <https://bit.ly/3sVOKI9>.

¹⁰ Ashley Parker, Yasmeen Abutaleb, and Josh Dawsey, [Trump administration has many task forces but still no plan for beating covid-19](https://www.washingtonpost.com/news/insider/wp/2020/04/11/trump-administration-has-many-task-forces-but-still-no-plan-for-beating-covid-19/), *Washington Post*, Apr. 11, 2020, <https://wapo.st/2WC5wju>.

¹¹ Short, New Entrant Report, April 9, 2019; see also Tim Mak, [Pence Chief of Staff Owns Stocks That Could Conflict With Coronavirus Response](https://www.npr.org/2020/05/28/pence-chief-of-staff-owns-stocks-that-could-conflict-with-coronavirus-response/), *NPR*, May 28, 2020, <https://n.pr/2V2kA9E>.

¹² See Marc Short, Annual Public Financial Disclosure Report, June 19, 2020, <https://bit.ly/3zQmAkB>.

¹³ Mak, *NPR*, May 28, 2020. See 5 C.F.R. § 2634.1001(a) (“Certificates of Divestiture” issued by OGE “allow an eligible person to defer paying capital gains tax on property sold to comply with conflict of interest requirements.”).

¹⁴ Letter from Noah Bookbinder to FBI Director Christopher A. Wray, June 3, 2020, <https://bit.ly/2YaLRYE>.

Following his January 2021 departure from the White House, CREW made several, unsuccessful attempts to obtain Mr. Short's final termination report from OGE:

- CREW submitted an April 12, 2021 request to OGE for Mr. Short's termination report by filing the requisite OGE Form 201, to which OGE responded that there were "no documents available." See Exhibit A.
- OGE responded to CREW's June 25 request by indicating that it had "no documents in the OGE database that match your request." See Exhibit B.
- OGE similarly responded to CREW's July 22 request by stating it had "no document available" for Mr. Short. See Exhibit C.

CREW also submitted OGE Form 201 requests to the White House and several other agencies, including the General Services Administration ("GSA") and the Office of General Counsel Ethics Division in the Office of Administration ("OA"), which were met with equally unsuccessful results:

- The White House, now operating under the Biden administration, responded on June 29 to CREW's request by stating it could not provide any information because "[t]his individual is not a [White House Office] staffer" and suggested CREW "reach out to the agency they work for." See Exhibit D.
- The GSA, which provides support to the both the incoming and outgoing administrations during presidential transitions,¹⁵ responded on June 30 by stating it did not have any reports for Mr. Short. See Exhibit E.
- The Office of General Counsel Ethics Division in OA, which is "exclusively dedicated to providing uniform administration support and services to all units of the Executive Office of the President ("EOP"),¹⁶ responded on June 30 by stating it would "neither provide nor confirm termination reports from the prior administration," and referred CREW to OGE "as they are records of the Office of Government Ethics." See Exhibit F.

Legal Analysis

Mr. Short's Failure to File a Termination Report

High-ranking executive branch officials, such as Mr. Short, are required to disclose their financial interests and resolve all conflicts before engaging in a particular matter that affects companies or industries in which they are invested.¹⁷ If Mr. Short did not file a termination report after leaving the White House for the second time, the omission raises questions about whether Mr. Short knowingly violated federal ethics rules to avoid disclosing inappropriate financial conflicts of interest.

The EIGA requires individuals who occupy covered positions to file a final public financial disclosure report on or before the thirtieth day after leaving their position, unless

¹⁵ See U.S. General Services Administration official website, [GSA's Role in Presidential Transitions](https://bit.ly/3BuoqYN), <https://bit.ly/3BuoqYN>.

¹⁶ The United States Government Manual, Executive Office of the President, Office of Administration, <https://bit.ly/38oMzDt>.

¹⁷ 5 U.S.C. app. 4 § 101; 18 U.S.C. § 208; 5 C.F.R. § 2640.103(a)(1).

they have accepted another covered position.¹⁸ Among the positions covered by the EIGA are “employee[s] in the [E]xecutive [B]ranch” whose “basic pay is equal to or greater than 120 percent of the minimum rate of basic pay payable for GS-15 of the General Schedule,”¹⁹ and “any civilian employee” in the EOP “who holds a commission of appointment from the President.”²⁰ The EIGA further authorizes the Attorney General to bring a civil action against any individual “who knowingly and willfully fails to file or report” disclosures required under the statute.²¹ Federal courts have held that a willful failure to comply with EIGA reporting requirements occurs “when [an] individual ‘intentionally disregards the statute or is indifferent to its requirements.’”²² Violators of these requirements are subject to civil penalties.²³

Mr. Short almost certainly served in a covered position and thus was required to submit a termination report within 30 days of his termination. Although his exact salary as Vice President Pence’s Chief of Staff has not been publicly reported, the fact that he filed a 2019 new entrant report and a 2020 annual report are clear evidence that he served in a covered position. Also, given that his first White House salary of \$179,700 was in the highest range offered to White House staff,²⁴ his Chief of Staff salary most likely was comparable, and likewise exceeded the applicable \$132,552 reporting threshold.²⁵ Further, because he again held the title “Assistant to the President,” he likely was appointed pursuant to 3 U.S.C. § 105(a)(2)(A) and received a commission of appointment from President Donald J. Trump.²⁶

Mr. Short’s failure to file appears to be knowing and willful. Because Mr. Short had previously worked as a senior advisor in the Trump administration and had successfully completed the new entrant, annual, and termination reports in that position, he was fully aware of the financial disclosures required of high-ranking executive officials when he returned to the White House in 2019. Furthermore, over 200 days have passed since Mr. Short and the Trump administration left the White House. Even if he unknowingly failed to file a termination report promptly after termination, Mr. Short has had ample time to rectify the omission.

After repeated requests, CREW has been unable to obtain a copy or confirm the existence of Mr. Short’s termination report. Given that Mr. Short played an integral role in the coronavirus task force and also disclosed financial interests in companies that worked

¹⁸ 5 U.S.C. app. 4 § 101(e).

¹⁹ 5 U.S.C. app. 4 § 101(f)(3).

²⁰ 5 U.S.C. app. 4 § 101(f)(8).

²¹ 5 U.S.C. app. 4 § 104(a).

²² *United States v. Gant*, 268 F. Supp. 2d 29, 33-34 (D.D.C. 2003) (quoting *United States v. Tarver*, 642 F. Supp. 1109, 1111 (D. Wyo. 1986)).

²³ 5 U.S.C. app. 4 § 104(a). For instance, DOJ is currently pursuing legal action and a civil penalty of \$61,585 against another former Trump administration employee, Omarosa Manigault Newman, alleging that she willfully failed to file her termination report when she disregarded repeated reminders from the White House Counsel’s Office that her report was due. See *United States v. Newman*, 2021 WL 1026019, *1 (D.D.C. Mar. 17, 2021).

²⁴ Executive Office of the President, Annual Report to Congress on White House Personnel, *White House Office*, June 30, 2017, <https://bit.ly/3zxEQiu>; Executive Office of the President, Annual Report to Congress on White House Personnel, *White House Office*, June 29, 2018, <https://bit.ly/3jq7oVp>.

²⁵ See OGE Legal Advisory, *Effect of Pay Adjustments on Ethics Provisions for Calendar Year 2021*, LA-21-01, Jan. 5, 2021, <https://bit.ly/3zumuyK>.

²⁶ See The White House Transition Project 1997-2017, *White House Staff and Organization: Ten Observations*, at 7, <https://bit.ly/3mKpOLN> (“There are approximately 25 people who hold the commissioned title of Assistant to the President and work at the highest salary level.”).

closely with the Trump administration's pandemic-related efforts, review of his termination report is critical to maintaining transparency and trust in the federal government.

The EIGA mandates that the Director of OGE monitor and investigate compliance with financial disclosure reporting obligations and refer cases of noncompliance to the Attorney General.²⁷ Therefore, CREW respectfully requests that OGE determine whether or not Mr. Short filed his termination report pursuant to 5 U.S.C. app 4 § 101 and, if not, take appropriate corrective action, including but not limited to referral of the matter to DOJ. In the unlikely event that OGE determines that Mr. Short did file a termination report, CREW respectfully requests that a copy be promptly released to CREW.

Compliance Issues Expose Systemic Risks During Presidential Transitions

The difficulty CREW has experienced in attempting to obtain a copy of Mr. Short's termination report also raises issues of systemic risk, which arise during a presidential transition when there is no process in place to collect missing termination reports from departing White House officials once the outgoing administration has left office. Agency ethics officials are not only required to make appropriate referrals to DOJ,²⁸ but a review of lawsuits filed by DOJ for missing termination reports reveals that the agency in which the former employee worked normally is in the best position to track missing reports and report noncompliance to the DOJ.²⁹ However, following a presidential transition, the outgoing administration has no authority to track and collect missing White House termination reports, which leaves a significant void that undermines public confidence in the integrity of the public financial disclosure process.

Because OGE is the "supervising ethics office for the executive branch, providing overall leadership and oversight of the executive branch ethics program,"³⁰ and is statutorily charged with monitoring and investigating compliance with public financial disclosure reporting obligations,³¹ OGE should conduct a comprehensive review to ensure there is a process in place during presidential transitions to track, collect, and maintain a repository of public financial disclosure reports for all qualifying White House officials, including those whose employment has been terminated as a result of an election. If no process currently exists for departing White House officials, OGE should establish a system to collect and make publicly available on its official website any missing termination reports from former White House officials,³² or refer any individual who knowingly and willfully fails to file their termination report to DOJ, which has authority to bring civil actions and seek civil penalties of up to \$50,000.³³

²⁷ 5 U.S.C. app. 4 § 402(b)(3).

²⁸ 5 C.F.R. § 2638.104(c)(8)(iv).

²⁹ See generally *Newman*, 2021 WL 1026019; *United States v. Lairy*, 2020 WL 4039176 (D.D.C. July 17, 2020); *United States v. Chaney*, 2005 WL 8178308 (D.D.C. Feb. 28, 2005); *Gant*, 268 F. Supp. 2d 29.

³⁰ 5 C.F.R. § 2638.108.

³¹ 5 U.S.C. app. 4 § 402(b)(3).

³² 5 U.S.C. app. 4 § 105(b)(1); STOCK Act, Pub. L. 112-105 § 11(b)(3).

³³ 5 U.S.C. app. 4 § 104(a)(1).

Conclusion

Periods of transition can be chaotic, when reporting requirements may go unnoticed and unfulfilled. Thus, in addition to determining whether Mr. Short filed his termination report as required by the EIGA, a comprehensive review by OGE is necessary to ensure that measures are in place during presidential transition periods to track and collect missing termination reports from departing White House officials, like Mr. Short, so that OGE can make them publicly available or refer any individual who knowingly and willfully fails to file their public financial disclosure report to DOJ for appropriate action.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Noah Bookbinder', is written in a cursive style.

Noah Bookbinder
Executive Director

Attachments: Exhibits A - F