

February 13, 2017

Walter M. Shaub, Jr.
Director
U.S. Office of Government Ethics
1201 New York Ave., N.W.
Suite 500
Washington, D.C. 20005

Dear Director Shaub:

Last week, we wrote to you and to White House Counsel Donald F. McGahn in connection with Counselor to the President Kellyanne Conway's improper public endorsement of the products of President Trump's daughter, Ivanka Trump. We urged both of you to investigate this apparent violation of federal law, ethics regulations, and other standards of conduct, and take any necessary disciplinary action. In the intervening days, it has become apparent that the White House will not investigate or take meaningful action to address these apparent violations, and likely will not concede that Ms. Conway's conduct constituted a violation at all. Accordingly, we urge the U.S. Office of Government Ethics ("OGE") to take the steps authorized under OGE regulations to recommend an appropriate disciplinary response.

As we spelled out in detail in our last letter, during a February 9, 2017 television interview on Fox & Friends, Ms. Conway explicitly endorsed Ms. Trump's products at a time when she was unquestionably acting in her official capacity. This conduct appeared to constitute a clear violation of federal regulations prohibiting the use of public office for private gain at 5 C.F.R. § 2635.702(c). It also appeared to violate the policies put into place by most prior administrations for all White House employees, and to violate the federal law prohibiting the use of public funds for non-official purposes at 31 U.S.C. § 1301(a). We expressed concern about a pattern that appeared to be developing of the use of official offices, particularly the White House and the Executive Office of the President, to benefit business interests of relatives and supporters of President Trump.

Soon after we sent our letter, White House Press Secretary Sean Spicer said that Ms. Conway had been "counseled."¹ That response, which typically involves explaining rules to someone who is not familiar with them and counseling the rule breaker not to do so again, seemed inadequate in this case. After all, an ethics concept as basic as the prohibition on using public office to benefit a private interest should have been clearly set out in ethics training when employees started their jobs, which in this case would have been only a few weeks before. For

¹ Drew Harwell, Tom Hamburger and Rosalind S. Helderman, White House says Conway has been 'counseled' after touting Ivanka Trump's products, *The Washington Post*, Feb. 9, 2017, available at https://www.washingtonpost.com/politics/conway-may-have-broken-key-ethics-rule-by-touting-ivanka-trumps-products-experts-say/2017/02/09/fd1cc64a-eeda-11e6-b4ff-ac2cf509efe5_story.html?utm_term=.9f69c4708230.

Mr. Walter M. Shaub, Jr.
February 13, 2017
Page 2

an employee who violates a clear and recently explained principle, some response greater than mere counseling is appropriate.

It soon became apparent, however, that even such a weak response was in fact too strong for the agency head, in this case President Trump himself. According to press reports, the president was critical of Mr. Spicer's characterization that Ms. Conway had been counseled. The White House put out a statement to press saying that President Trump "absolutely" supports Ms. Conway and "understands she was merely sticking up for a wonderful woman who she has great respect for and felt was treated unfairly."² So the official position of President Trump and the White House appears to be that Ms. Conway did nothing wrong and need not even be counseled about the rule and her obligations going forward.

Given this response from the White House, which is not only inadequate but counter-productive, it is essential that an agency outside the White House take further steps and determine an appropriate response. OGE is authorized to do just that. In appropriate circumstances, it may initiate further proceedings, issue a decision supported by written findings and conclusions, and recommend disciplinary action be taken against an employee such as Ms. Conway.³

The import of this matter now extends far beyond Ms. Conway's actions last week. President Trump and the White House appear to have now set out that a disregard for ethics rules, particularly when the interests of the president's family are at stake, will be the official position of the White House. Given this extraordinary position, on top of what appears to be a pattern of using the office to benefit businesses belonging to the president's family and supporters, it is crucial that OGE take every step it can to intervene as decisively as possible. It is important to quickly establish that an ethics-free and conflict-ridden White House will not be tolerated, and OGE is best positioned to begin the process of instilling a regard for ethics into a resistant White House.

Sincerely,



Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics in Washington

cc: The Honorable Donald F. McGahn, White House Counsel

² Ryan Lizza, Kellyanne Conway's Battle for Trump's Favor, *The New Yorker*, Feb. 10, 2017, available at <http://www.newyorker.com/news/news-desk/kellyanne-conways-battle-for-trumps-favor>.

³ 5 C.F.R. § 2638.504; see also 5 U.S.C. App. § 402(f)(2).