

July 6, 2017

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

Re: Jared Kushner's Potential Conflict of Interest From Cadre

Dear Director Shaub:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Government Ethics (“OGE”) determine whether White House Senior Advisor and Assistant to the President Jared Kushner failed to make the required disclosure of his ownership interest in an online real estate investment company called Cadre, and take appropriate action to ensure Mr. Kushner’s potential conflicts of interest in the technology and electronic commerce sectors are eliminated.

Mr. Kushner co-founded Cadre and continues to own a significant part of it. In his public financial disclosure statement, however, Mr. Kushner failed to disclose that ownership interest. Mr. Kushner further very likely failed to disclose his ownership interest in documents connected with his request for a certificate of divestiture, which allows federal employees to defer capital gains taxes on property they sell to comply with conflict of interest requirements. As a result, OGE appears to have granted the certificate of divestiture based on incomplete information. Moreover, the certificate of divestiture seems to obligate Mr. Kushner to sell his interests in Cadre, as do conflict of interest laws and rules, but he has not done so. OGE should promptly and thoroughly review whether Mr. Kushner properly disclosed his assets as required, as well as whether he has properly divested from all of his ownership interests, including in Cadre, that present a conflict of interest.

Background

Cadre – An Online Real Estate Investment Platform

Cadre is an online private investment platform that “connects qualified individuals and institutions to . . . real estate investment opportunities.”¹ It has been described as “an e-commerce site for investing in real estate” and aspires to be the “Amazon of real estate.”² The company “markets properties to prospective investors, who can put their money into specific

¹ Cadre website, “About” page, <https://cadre.com/about>.

² Zoe Henry, [This Startup Wants to be the Amazon of Real Estate, Inc.](https://www.inc.com/zoe-henry/30-under-30-2017-cadre.html), May 2, 2017, available at <https://www.inc.com/zoe-henry/30-under-30-2017-cadre.html>.

buildings or into an investment fund run by Cadre, which collects fees on each deal.”³ *Business Insider* recently described how Cadre works: “Once you’ve found an appealing Cadre property [on its web-based platform], the investing process is quick. Cadre asks how much money you’d like to invest, and the member plugs in an amount ranging from \$500,000 to tens of millions. . . . [M]ost of its 100 or so members have invested in two or three properties on Cadre, and the platform has already closed hundreds of millions of dollars in total volume.”⁴ Cadre typically requires a minimum investment of \$100,000 for each transaction.⁵

As a company that offers securities, Cadre (under its legal name, RealCadre LLC) files certain disclosures with the Securities and Exchange Commission (“SEC”).⁶ In those filings, Cadre classifies itself as an “Other Technology” industry group.⁷ Cadre also is a registered broker/dealer with the Financial Industry Regulatory Authority (“FINRA”),⁸ and files disclosures with it.⁹

Cadre raised \$68.3 million in funding in 2015 and 2016,¹⁰ and an additional \$65 million in June 2017.¹¹ As a result of the funding, Cadre was reported to be worth more than \$800 million as of June 2017.¹²

Mr. Kushner’s Financial Interests in Cadre

Mr. Kushner co-founded Cadre, served on its board, and owns a significant part of the company. The amount Mr. Kushner currently owns and the structure through which he owns it

³ Jean Eaglesham, Juliet Chung, and Lisa Schwartz, Trump Adviser Kushner’s Undisclosed Partners Include Goldman and Soros: Investments Show Ties to Major Finance and Technology Names, *Wall Street Journal*, May 3, 2017, available at <https://www.wsj.com/articles/trump-adviser-jared-kushner-didnt-disclose-startup-stake-1493717405>.

⁴ Alyson Chontell, Google and Facebook Employees are flocking to a startup that’s raised ~\$70 million to shake up the real estate world, *Business Insider*, Jun. 23, 2016, available at <http://www.businessinsider.com/what-is-cadre-and-how-to-invest-in-its-real-estate-deals-2016-6>.

⁵ Cadre website, “Investing” page, <https://cadre.com/investing> (FAQ for: “What is the minimum investment?”).

⁶ Edgar Search Results for RealCadre LLC, available at <https://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001612778>; FINRA BrokerCheck Report for RealCadre LLC (“FINRA BrokerCheck Report”), at 2, available at https://files.brokercheck.finra.org/firm/firm_172295.pdf.

⁷ Securities and Exchange Commission, Form D, RealCadre Company, Mar. 25, 2015, available at https://www.sec.gov/Archives/edgar/data/1612778/000161277815000005/xslFormDX01/primary_doc.xml.

⁸ Cadre website, “About” page, <https://cadre.com/about>.

⁹ See FINRA BrokerCheck Report.

¹⁰ Cadre, *Crunchbase*, available at <https://www.crunchbase.com/organization/cadre-2#/entity>; Real Estate Tech Startup Cadre Brings in Massive Fundraising Round, *Real Estate Tech News*, Mar. 15, 2016, available at <http://realestatetechnews.com/blog/real-estate-tech-startup-cadre-brings-in-massive-fundraising-round>.

¹¹ Connie Loizos, Cadre collects \$65 million in Series C funding, *TechCrunch*, June 6, 2017, available at <https://techcrunch.com/2017/06/06/cadre-collects-65-million-in-series-c-funding/>.

¹² Alfred Lee and Serena Saitto, Kushner’s Cadre Raising \$65M At More Than \$800M Value, *The Information*, May 31, 2017, available at <https://www.theinformation.com/kushners-cadre-raising-65m-at-more-than-800m-value?shared=3e86956e14d7ee7b>; Ellen Huet and Brad Stone, Startup’s Ties To Kushners Came With Benefits, Until It Got Complicated, *Bloomberg*, June 6, 2017, available at <https://www.bloomberg.com/news/articles/2017-06-06/startup-s-ties-to-kushners-came-with-benefits-until-it-got-complicated>.

Hon. Walter M. Shaub, Jr.

July 6, 2017

Page 3

are not fully known, and may be in flux. Nevertheless, Mr. Kushner's representatives recently reconfirmed his ownership interests in the company.

Cadre was formed in 2014 by Ryan Williams, Joshua Kushner (Mr. Williams' college classmate and Mr. Kushner's brother), and Mr. Kushner.¹³ According to Cadre's FINRA disclosures, at least 75% of the company is owned by Quadro Partners, Inc. ("Quadro").¹⁴ Little public information is available about Quadro, but the *Wall Street Journal* reported in May 2017 that "[Jared] Kushner's company JCK Cadre LLC is shown [in FINRA records] as owning 25% to 50% of Quadro."¹⁵ There is similarly little public information about JCK Cadre LLC, an entity with Jared Kushner's initials, but three entities with that name have been registered in Delaware since July 2014, with one registering on January 23, 2017 and another on May 10, 2017.¹⁶ In addition, Cadre's FINRA disclosures reported that a company named CCV LLC is an organizational affiliate of Cadre, with both entities "under common control" by being wholly owned by Quadro.¹⁷

Despite this opaque structure, one of Mr. Kushner's attorneys, Jamie Gorelick, confirmed to the *Wall Street Journal* in May 2017 that Mr. Kushner retains a significant interest in Cadre.¹⁸ Ms. Gorelick also told the newspaper that Mr. Kushner had reduced his ownership stake to less than 25%, suggesting it had been higher previously, and had stepped away from his roles with the company.¹⁹ It is unclear the extent to which these changes have happened. Mr. Kushner's attorneys, including Ms. Gorelick, further asserted in May 2017 that Mr. Kushner's interest in Cadre is housed in another company he owns, BFPS Ventures LLC ("BFPS").²⁰ It is not known

¹³ Samantha Sharf, [How a 28 Year-Old Plans to Upend the \\$81 Trillion Global Real Estate Investment Market](https://www.forbes.com/sites/samanthasharf/2016/11/07/how-a-28-year-old-plans-to-upend-the-81-trillion-global-real-estate-investment-market/#57fe329b12a7), *Forbes*, Nov. 7, 2016, available at <https://www.forbes.com/sites/samanthasharf/2016/11/07/how-a-28-year-old-plans-to-upend-the-81-trillion-global-real-estate-investment-market/#57fe329b12a7>. See also Alyson Shontell, [Google and Facebook Employees Are Flocking to a Startup That's Raised ~\\$ 70 Million to Shake Up the Real Estate World](http://www.businessinsider.com/what-is-cadre-and-how-to-invest-in-its-real-estate-deals-2016-6), *Business Insider*, June 23, 2016 (naming the Kushner brothers as Cadre's first investors), available at <http://www.businessinsider.com/what-is-cadre-and-how-to-invest-in-its-real-estate-deals-2016-6>.

¹⁴ FINRA BrokerCheck Report, at 3. According to this disclosure, Mr. Williams owns between 10% and 25% of Cadre, and two other officers own less than 5%. *Id.* Confusingly, another part of this disclosure and Cadre's SEC filings assert that it is "wholly owned" by Quadro. See *id.* at 12 and Securities and Exchange Commission, Form X-17 A-5 for RealCadre LLC, Feb. 27, 2017, available at <https://www.sec.gov/Archives/edgar/vpr/1700/17005748.pdf>.

¹⁵ Eaglesham, Chung, and Schwartz, *Wall Street Journal*, May 3, 2017. CREW has been unable to locate FINRA records reflecting this statement, but at least one website based on SEC and FINRA data makes a similar assertion. See <http://broker-dealers.credio.com/1/5704/Realcadre-LLC>.

¹⁶ Delaware Department of State, Division of Corporations, Entity Detail for JCK Cadre LLC, JCK Cadre I LLC, and JCK Cadre II, LLC (attached as Exhibit A).

¹⁷ FINRA BrokerCheck Report, at 12.

¹⁸ Eaglesham, Chung, and Schwartz, *Wall Street Journal*, May 3, 2017.

¹⁹ *Id.*

²⁰ *Id.* See also Amy Brittain and Jonathan O'Connell, [Kushner keeps most of his real estate but offers few clues about potential White House conflicts](https://www.washingtonpost.com/politics/kushner-keeps-most-of-his-real-estate-but-offers-few-clues-about-potential-white-house-conflicts/2017/05/21/35d7ceb4-3993-11e7-a058-ddbb23c75d82_story.html?utm_term=.e007037a295d), *Washington Post*, May 21, 2017, available at https://www.washingtonpost.com/politics/kushner-keeps-most-of-his-real-estate-but-offers-few-clues-about-potential-white-house-conflicts/2017/05/21/35d7ceb4-3993-11e7-a058-ddbb23c75d82_story.html?utm_term=.e007037a295d.

if Mr. Kushner's interest has always been through BFPS, or if Cadre or the holding companies and other firms that own it were previously independent of BFPS.

Cadre's value, and therefore Mr. Kushner's financial interest in Cadre, appears to have substantially increased during the time Mr. Kushner has served as a White House adviser, due in part to the new funding.²¹ Mr. Kushner further appears to have benefitted financially from Cadre in other ways. Cadre apparently has marketed Mr. Kushner's assets or assets associated with his businesses, "solicit[ing] money from investors for several Kushner Cos. real-estate projects."²² Cadre also has received millions of dollars in commissions from investments it has brokered, according to SEC filings. Those disclosures show that Cadre found investors for at least nine business entities between March 2015 and April 2017, generating approximately \$4.5 million in commissions.²³ Given Mr. Kushner's stake in Cadre, a portion of these commissions likely flowed to him. Cadre also may hold positions in some or all of these entities. As Cadre notes on its website, the company "invest[s] alongside our clients."²⁴ Furthermore, the address and phone number each of those nine entities provided to the SEC are all linked to either Cadre or the Kushner Companies, as are the representatives who signed the SEC disclosures.²⁵ If Cadre has a financial interest in these funds, Mr. Kushner would as well.

Mr. Kushner's Public Financial Disclosure Statement Omits His Cadre Ownership Interest

Mr. Kushner filed his OGE 278e public financial disclosure statement on March 9, 2017, certifying that "the statements I have made in this form are true, complete and correct to the best

²¹ Lee and Saitto, *The Information*, May 31, 2017.

²² Eaglesham, Chung, and Schwartz, *Wall Street Journal*, May 3, 2017.

²³ Securities and Exchange Commission, Form Ds for: Sugarloaf Investors LP (https://www.sec.gov/Archives/edgar/data/1704644/000170464417000001/xslFormDX01/primary_doc.xml), Schaumburg CC Investors LP (https://www.sec.gov/Archives/edgar/data/1701988/000170198817000001/xslFormDX01/primary_doc.xml), Skyridge Investors LP (https://www.sec.gov/Archives/edgar/data/1694102/000169410217000001/xslFormDX01/primary_doc.xml), Crestleigh Investors LP (https://www.sec.gov/Archives/edgar/data/1691202/000169120216000001/xslFormDX01/primary_doc.xml), UWS Broadway Investors LP (https://www.sec.gov/Archives/edgar/data/1687583/000168758316000001/xslFormDX01/primary_doc.xml), West Putnam Investors LP (https://www.sec.gov/Archives/edgar/data/1678161/000167816116000001/xslFormDX01/primary_doc.xml), Cadre Astoria LLC (https://www.sec.gov/Archives/edgar/data/1666971/000166697116000001/xslFormDX01/primary_doc.xml), Chatham Hill Holdings, LLC (https://www.sec.gov/Archives/edgar/data/1661687/000166168715000001/xslFormDX01/primary_doc.xml), and Ditmar Blvd I LLC (https://www.sec.gov/Archives/edgar/data/1630821/000163082115000003/xslFormDX01/primary_doc.xml).

²⁴ Cadre website, "About" page, <https://cadre.com/about>.

²⁵ See Securities and Exchange Commission, Form Ds for: Sugarloaf Investors LP, Schaumburg CC Investors LP, Skyridge Investors LP, Crestleigh Investors LP, UWS Broadway Investors LP, and West Putnam Investors LP (all listing their address as 295 Lafayette St., New York, NY, the same as Cadre, using Cadre's phone number, and signed by Cadre General Counsel Alexander Labowitz or Cadre registered broker Josephine Scesney); See Securities and Exchange Commission, Form Ds for: Cadre Astoria LLC, Chatham Hill Holdings, LLC, and Ditmar Blvd I LLC (all listing their address as 666 Fifth Ave., New York, NY, the same as the Kushner Companies' headquarters, and signed by Kushner Companies employees). One, Ditmar Blvd I LLC, was signed by Mr. Kushner himself.

of my knowledge.”²⁶ In it, Mr. Kushner reported ownership interests in numerous companies.²⁷ He did not, however, disclose his ownership interest in Cadre or related entities. Specifically, in the sections of the OGE 278e used for disclosing assets and income, Mr. Kushner did not mention Cadre, RealCadre LLC, Quadro Partners, Inc., any of the JCK Cadre LLC entities, or CCV LLC.²⁸ The filing did disclose his interest in BFPS Ventures LLC as an asset, but that holding was described only as “Real Estate in New York, NY”²⁹ – a depiction that does not appear to cover an online investment platform such as Cadre. Moreover, the report did not disclose Cadre or any of the related entities as underlying assets of BFPS.³⁰ The OGE 278e also disclosed that Mr. Kushner was a board member of “Quadro Partners, Inc. (d/b/a Cadre Partners)” until January 2017,³¹ but did not indicate his ownership interest or suggest anything about the nature of the company.

Asked about Cadre by news organizations, Mr. Kushner’s attorneys seemingly confirmed these omissions, stating that Mr. Kushner intended to amend his OGE 278e and disclose at least Cadre and JCK Cadre LLC.³²

As discussed below, Mr. Kushner also submitted an earlier version of his OGE 278e to OGE in connection with his request for a certificate of divestiture.³³ Although the contents of that document are not publicly available, it is highly unlikely Mr. Kushner disclosed his ownership of Cadre or any related entities. The final public financial disclosure omitted these interests, making it improbable they were listed on an earlier version. In addition, Ms. Gorelick asserted in May 2017 that Mr. Kushner had at some point discussed his Cadre ownership with OGE, strongly suggesting it was not disclosed in the earlier OGE 278e he submitted.³⁴

OGE Issues a Certificate of Divestiture for Similar Companies to Prevent Conflicts of Interest

On January 25, 2017, the White House Counsel’s Office filed with OGE a request for a certificate of divestiture on behalf of Mr. Kushner with regard to a number of his assets.³⁵ If

²⁶ Jared Kushner, Public Financial Disclosure Report, Mar. 9, 2017 (“Kushner OGE 278e”), available at <https://assets.documentcloud.org/documents/3728206/Kushner-Jared.pdf>.

²⁷ *Id.*, parts 2 and 6.

²⁸ *Id.* Mr. Kushner’s OGE 278e also did not report any financial interest in several of the nine entities for which Cadre found investors and may have invested in itself.

²⁹ *Id.*, part 6, #20.

³⁰ The report, however, did disclose two other underlying BFPS assets – a bank account and a money market account. Kushner OGE 278e, part 6, #20.1, #20.2.

³¹ *Id.*, part 1, #265.

³² Eaglesham, Chung, and Schwartz, *Wall Street Journal*, May 3, 2017; Brittain and O’Connell, *Washington Post*, May 21, 2017.

³³ Memorandum for the Director of the Office of Government Ethics: Application for a Certificate of Divestiture for Jared C. Kushner, Jan. 25, 2017 (“Kushner certificate application”), available at [https://extapps2.oge.gov/FOIAStatus/FOIAResponse.nsf/OGE%20FOIA%20Responses/852580AC00659E1D852581470066217C/\\$FILE/Response%20Records%20Revised%20OGE%20FOIA%20FY%202017-351.pdf?open](https://extapps2.oge.gov/FOIAStatus/FOIAResponse.nsf/OGE%20FOIA%20Responses/852580AC00659E1D852581470066217C/$FILE/Response%20Records%20Revised%20OGE%20FOIA%20FY%202017-351.pdf?open). See also https://twitter.com/A_L/status/881914970866372608.

³⁴ Eaglesham, Chung, and Schwartz, *Wall Street Journal*, May 3, 2017.

³⁵ See Kushner certificate application.

granted by OGE, certificates of divestiture allow employees like Mr. Kushner to defer capital gains taxes on property they sell to comply with conflict of interest requirements.³⁶ However, OGE may not grant certificates of divestiture unless the employee agrees to divest all “property that presents a conflict of interest, as well as other similar or related property that presents a conflict of interest under a Federal conflict of interest statute, regulation, rule, or Executive Order.”³⁷

In the application, Deputy White House Counsel Stefan C. Passantino identified a “broad and diverse” set of property owned by Mr. Kushner and his family, and provided his opinion that Mr. Kushner’s “divestiture of the property at issue is reasonably necessary to comply with 18 U.S.C. § 208,” the federal conflict of interest statute.³⁸ According to Mr. Passantino, if Mr. Kushner “retained [the assets], they would significantly hamper his ability to fulfill his duties.”³⁹

Mr. Passantino specifically identified Mr. Kushner’s interests in assets in Thrive Capital (“Thrive”) and BFPS as particularly problematic. Thrive is a venture capital firm managed by Mr. Kushner’s brother Joshua Kushner which allows prospective investors to invest primarily in the technology and electronic commerce sectors, and BFPS is a private investment vehicle.⁴⁰ Mr. Passantino cited numerous Thrive assets in the technology and electronic commerce sectors, including Kickstarter, Warby-Parker, and Spotify, that would create conflicts for Mr. Kushner if he did not divest from them.⁴¹ Similarly, Mr. Passantino explained that Mr. Kushner “holds interests in electronic commerce companies through a private investment vehicle called BFPS Ventures LLC, including companies called FabFitFun and Grab.”⁴² With regard to both Thrive and BFPS, Mr. Passantino stated that “[i]f Mr. Kushner retains these interests, it would likely disqualify him from participating in particular matters that will have a direct and predictable effect on the technology and electronic commerce sectors.”⁴³ “Recusal is not a practical remedy,” Mr. Passantino concluded, and “[f]or these reasons, Mr. Kushner has appropriately agreed to divest these assets.”⁴⁴

A draft of Mr. Kushner’s OGE 278e was submitted along with the application.⁴⁵ As explained above, it is very unlikely that document disclosed Mr. Kushner’s interest in Cadre, a technology and e-commerce company similar to the assets that were specifically listed and the application indicated would create conflicts if Mr. Kushner did not divest from them. Nor does it appear that Mr. Kushner or Mr. Passantino disclosed Mr. Kushner’s ownership interest in Cadre in any other documents connected with the request. As a result, it appears OGE had incomplete information in deciding whether to grant the certificate of divestiture.

³⁶ 5 C.F.R. § 2634.1001(a).

³⁷ 5 C.F.R. § 2634.1007(b).

³⁸ Kushner certificate application, at 1.

³⁹ *Id.* at 2.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Kushner certificate application, at 3.

⁴⁵ *Id.* at 1.

On January 26, 2017, OGE issued Mr. Kushner a certificate of divestiture pertaining to his assets in several capital funds managed by Thrive, assets in BFPS, and other assets.⁴⁶ OGE concurred with Mr. Passantino's assessment, stating that Mr. Kushner's divestiture of the listed assets was "reasonably necessary to comply with 18 U.S.C. § 208 or other applicable Federal conflict of interest statutes, regulations, rules, or executive orders."⁴⁷ The certificate of divestiture covered "100% of all [of Mr. Kushner's] financial interests" in several Thrive capital funds, as well as "100% of all [of his] financial interests in BFPS Ventures LLC" held as of the date of the certificate of divestiture.⁴⁸

It is unclear the degree to which Mr. Kushner divested from BFPS. His OGE 278e filed in March disclosed BFPS as an asset but stated that "conflicting assets" within it had been divested.⁴⁹ Mr. Kushner's attorneys similarly told the *Washington Post* that he initially "planned to sell his entire stake in BFPS, but later reversed course and decided to sell off only individual assets within the company that might pose a conflict."⁵⁰ As noted, Mr. Kushner's attorneys recently confirmed he still has an ownership interest in Cadre, which they say is housed within BFPS.

Potential Violations

Failure to Disclose Ownership Interests in Cadre

Under the Ethics in Government Act, a filer must report an asset if it has a value of more than \$1,000 or produced more than \$200 in income during the reporting period.⁵¹ For an investment fund, the underlying holdings also must be reported, unless the fund qualifies as an excepted investment fund ("EIF").⁵² An excepted investment fund is a fund that is independently managed, widely held, and either publicly traded or available or widely diversified.⁵³ As a "private investment vehicle," BFPS does not appear to meet any of the EIF criteria, and Mr. Kushner appropriately classified BFPS on his OGE 278e as not being an EIF.⁵⁴

Cadre almost certainly meets the reporting thresholds. Mr. Kushner was an original investor in the company, which now has a reported value of more than \$800 million. In

⁴⁶ OGE Certificate No. OGE-2017-002.

⁴⁷ *Id.*

⁴⁸ *Id.* On February 1, 2017, Mr. Kushner was issued a new certificate of divestiture to replace the one issued January 26. OGE Certificate No. OGE-2017-007. The new certificate includes the same assets as were listed on the January 26 one, except that the names of two of the Thrive funds were changed, presumably for correction purposes.

⁴⁹ Kushner OGE 278e, part 6, #20.

⁵⁰ Brittain and O'Connell, *Washington Post*, May 21, 2017.

⁵¹ 5 U.S.C. app. § 102(a).

⁵² 5 U.S.C. app. § 102(f)(2)(C) and (f)(8).

⁵³ OGE, Public Financial Disclosure Guide, Excepted Investment Fund, *available at* <https://www.oge.gov/Web/278eGuide.nsf/Content/Definitions~Excepted+Investment+Fund>; 5 C.F.R. § 2634.310(c)(2).

⁵⁴ Kushner OGE 278e, part 6, #20.

addition, Mr. Kushner's likely share of the \$4.5 million in commissions alone should have triggered the reporting requirement.

Yet Mr. Kushner failed to report his ownership interest in Cadre, RealCadre LLC, Quadro Partners, Inc., any of the JCK Cadre LLC entities, or CCV LLC, either separately or as underlying holdings of BFPS. If Cadre or the related entities were housed in BFPS at the time Mr. Kushner submitted his OGE 278e, they should have been disclosed as underlying assets of BFPS. If Cadre or the others were moved into BFPS after he filed his OGE 278e, then Mr. Kushner should have reported them as separate items on it.⁵⁵

Reporting his ownership interest in BFPS but describing it as holding "Real Estate in New York, NY" does not absolve Mr. Kushner of his obligation to disclose Cadre. BFPS's underlying assets still would need to have been disclosed, and the description in no way suggests that BFPS housed an online investment platform such as Cadre. In fact, Mr. Kushner's OGE 278e indicates he understood his obligation to report BFPS's underlying assets – he disclosed a bank account and a money market account as underlying assets of BFPS.⁵⁶ Nevertheless, he failed to disclose other underlying assets related to Cadre.

Mr. Kushner's failure to disclose his ownership interest in Cadre is deeply troubling for several reasons. First, Cadre appears to be one of his largest investments, and his co-investors include some of the most prominent investors in the technology and financial services industries.⁵⁷

Moreover, Mr. Kushner's omissions from his public OGE 278e most likely reflect a similar failure to disclose his Cadre ownership interests from any earlier version of the financial disclosures or other documents submitted to OGE as part of his application for a certificate of divestiture application.⁵⁸ Proper disclosure of Cadre on the earlier OGE 278e would have been an important component of the certificate of divestiture application and review process. OGE will not grant certificates of divestiture "unless the employee agrees to divest all of the property that presents a conflict of interest" and any "other similar . . . property that presents a conflict of interest under a Federal conflict of interest statute, regulation, rule, or Executive Order."⁵⁹

There is strong evidence that Cadre is a technology and electronic commerce company similar to the other technology and electronic commerce assets for which Mr. Kushner received a certificate of divestiture because retaining them would have caused a conflict of interest. For this reason, in deciding whether to issue a certificate of divestiture for Mr. Kushner's assets, OGE

⁵⁵ Likewise, Cadre's underlying holdings also would need to be reported, unless Cadre itself qualifies as an EIF. Thus, if Cadre had an ownership interest in any of the nine business entities for which it found investors at the time Mr. Kushner filed the OGE 278e, those likely should have been disclosed.

⁵⁶ Kushner OGE 278e, part 6, #20.1, #20.2.

⁵⁷ Eaglesham, Chung, and Schwartz, *Wall Street Journal*, May 3, 2017.

⁵⁸ As part of the application process, OGE requires a "full and specific description of the property that will be divested" and "the employee's latest financial disclosure report." 5 C.F.R. § 2634.1005(a)(1) and (b)(1).

⁵⁹ 5 C.F.R. § 2634.1007(b).

would have been obliged to consider whether Cadre – if it had knowledge of Mr. Kushner’s ownership interest in it – was similar to the other technology and electronic commerce assets he held and whether it might create conflicts of interest. Accordingly, OGE’s knowledge of Mr. Kushner’s interest in Cadre was material to whether Mr. Kushner would be eligible to receive a certificate of divestiture and for determining which specific assets held by Mr. Kushner would be covered by the certificate and which would not. Mr. Kushner’s apparent failure to properly disclose his ownership interest on the earlier version of his OGE 278e and other written materials he submitted in connection with his application thus almost certainly impacted the outcome of OGE’s review and analysis.

Mr. Kushner’s attorneys have asserted that Mr. Kushner intends to amend his OGE 278e report to include at least Cadre and JCK Cadre LLC, and that such amendments are “very normal.”⁶⁰ In doing so, they implicitly acknowledge that Cadre was not properly disclosed on the OGE 278e as filed, or as part of the written material submitted with the certificate of disclosure application. Moreover, this apparent omission, and a possible amendment to fix it, do not appear to be routine under the circumstances here. Mr. Kushner did not disclose Cadre on his financial disclosure report, even though it is a significant asset of his. Beyond that, Cadre’s ownership structure is opaque, and it is not clear whether Cadre was held by BFPS at the time the certificate of divestiture was granted or was independent, or whether Mr. Kushner’s interest in Cadre moved between January and the present. The failure to disclose Mr. Kushner’s ownership interest, the complexity of that interest, and the possibility that it was recently moved raise questions about whether there may have been an intentional effort to hide an interest that was relevant to whether Mr. Kushner’s technology and electronic commerce assets would be eligible for a certificate of divestiture in the first instance.

If OGE has reasonable cause to believe there was a willful omission from a financial disclosure report, it may be cause for referral to the Attorney General.⁶¹

Mr. Kushner’s Cadre Ownership Interest Presents Potential Conflicts of Interest and Should be Divested

Mr. Kushner’s continuing ownership interest in Cadre, like his failure to disclose that interest, is cause for serious concern. His ownership interest may have violated the terms of the certificate of divestiture OGE issued to him, calls into question the validity of that certificate, and, most importantly, presents a serious potential conflict of interest that must be resolved by Mr. Kushner divesting his interest in the company.

Mr. Kushner may have violated the terms of the certificate of divestiture, which provided for Mr. Kushner to divest himself of 100% of his financial interests in BFPS. If Cadre was housed in BFPS at the time the certificate of divestiture was granted, Mr. Kushner should have

⁶⁰ Eaglesham, Chung, and Schwartz, *Wall Street Journal*, May 3, 2017; Brittain and O’Connell, *Washington Post*, May 21, 2017.

⁶¹ 5 U.S.C. app. § 104 (b).

divested his ownership interest in Cadre. To be sure, employees who are granted a certificate of divestiture are expected to divest the listed assets. The very purpose of the certificate of divestiture is to minimize the tax burden that may result from having to sell assets to comply with conflict of interest requirements.⁶² If employees choose not to divest, they would have to recuse themselves from participating in matters that cause a conflict of interest.⁶³ Here, however, OGE appeared to indicate that that option was not workable if Mr. Kushner wished to serve in his White House position. The certificate was based on Mr. Passantino's opinion, confirmed by OGE, that Mr. Kushner's financial interests in technology and electronic commerce companies exposed him to conflicts of interest that would disqualify him from participating in matters critical to his ability to fulfill his duties, and that recusal was not a practical remedy.⁶⁴ As a result, Mr. Kushner had a clear obligation under the certificate to divest himself of any financial interests within BFPS, such as Cadre, that presented a conflict of interest.

As discussed above, Mr. Kushner's continued ownership interest in Cadre, coupled with his failure to disclose that interest, also raises questions about the application process and validity of the certificate of divestiture that was issued in connection with his holdings in BFPS.

Moreover, Mr. Kushner should have divested his financial interest in Cadre because his interests in the company implicate the same conflict of interest concerns raised by the White House Counsel's Office and OGE about Mr. Kushner's interests in the technology and electronic commerce sectors. Again, as Mr. Passantino said, retaining his interests in the technology and electronic commerce companies "would expose Mr. Kushner to a broad range of potential conflicts during his government service," "[r]ecusal is not a practical remedy," and thus "divestment is reasonably necessary to comply with 18 U.S.C. § 208." To the extent that Cadre plans to seek future funding from active participants in the technology, electronic commerce, and financial services sectors, the possibility for additional conflicts of interest is only heightened. Mr. Kushner's understanding of the potential conflicts of interest at stake here is demonstrated by his decision to let go of his interest in a different real estate technology firm, WiredScore, creating a stark contrast with his inexplicable decision to retain his stake in Cadre.⁶⁵ Furthermore, as a non-public company, there is little if any transparency into the underlying assets of the entities in which Cadre may have retained an investment interest, giving rise to further possible conflicts of interest that could require continuous monitoring.

⁶² 5 C.F.R. § 2634.1001.

⁶³ 5 C.F.R. § 2635.402(d).

⁶⁴ Where recusal is not a practical option, an agency may prohibit or restrict an employee from holding a financial interest or a class of financial interests based upon the agency designee's determination that the holding of such interest will require the employee's disqualification from matters so central or critical to the employee's ability to perform the duties of his position would be materially impaired. 5 C.F.R. § 2635.403.

⁶⁵ Caleb Melby, Lindsey Rupp, and Bill Allison, Documents Show Jared Kushner, Ivanka Trump to Divest Some Assets, *Bloomberg*, Mar. 17, 2017, available at <https://www.bloomberg.com/news/articles/2017-03-17/documents-show-jared-kushner-ivanka-trump-to-divest-some-assets>.

Hon. Walter M. Shaub, Jr.
July 6, 2017
Page 11

While his lawyers have asserted that Mr. Kushner has reduced his Cadre ownership share and resigned from Cadre's board (and will submit an amended OGE 278e), this is not enough to mitigate the conflict of interest concerns present in this situation. Mr. Kushner should have fully disclosed and divested all of his technology and electronic commerce investments, including his investment in Cadre (whether alone or as an underlying asset of BFPS), due to both the conditions of the certificate of divestiture and his obligations to comply with 18 U.S.C. § 208 or other federal laws and rules.

OGE should examine Mr. Kushner's holdings and transactions to determine whether his conduct has been in compliance with applicable rules and laws. If the OGE reaches an opinion that an individual is not in compliance with applicable laws and regulations, it is authorized to determine the appropriate steps for assuring compliance with them and notify the individual of those steps. Such steps may include divestiture, restitution, the establishment of a blind trust, request for an exemption under 18 U.S.C. § 208(b), or voluntary request for limitation of duties or resignation.⁶⁶

Conclusion

Mr. Kushner failed to disclose his interest in Cadre on his financial disclosure forms and most likely in forms submitted with his certificate of disclosure, which may mean that OGE was asked to grant the certificate of disclosure based on incomplete information. Moreover, Mr. Kushner appears to have failed to divest these interests as was likely required under the terms of the certificate of disclosure and under applicable laws and rules. CREW therefore requests that your office determine whether Mr. Kushner's conduct violated any laws or rules and, if so, what remedy is appropriate. Specifically, CREW requests that your office determine whether any sanction or referral is appropriate for Mr. Kushner's potential disclosure violations and whether it is necessary for Mr. Kushner to fully divest of all financial interests in Cadre or take other appropriate steps pursuant to the certificate of divestiture, 18 U.S.C. § 208, and the applicable OGE regulations governing conflicts of interest and certificates of divestiture.

Sincerely,



Noah Bookbinder
Executive Director
Citizens for Responsibility and Ethics in Washington

Encl.

⁶⁶ 5 U.S.C. app. § 106(b)(3).

EXHIBIT A

Department of State: Division of Corporations

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Entity Details

THIS IS NOT A STATEMENT OF GOOD STANDING

File Number: 5568655 Incorporation Date / 7/15/2014
Formation Date: (mm/dd/yyyy)

Entity Name: JCK CADRE LLC

Entity Kind: Limited Liability Company Entity Type: General

Residency: Domestic **State:** DELAWARE

REGISTERED AGENT INFORMATION

Name: NATIONAL REGISTERED AGENTS, INC.

Address: 160 GREENTREE DR STE 101

City: DOVER **County:** Kent

State: DE **Postal Code:** 19904

Phone: 302-674-4089

Additional Information is available for a fee. You can retrieve Status for a fee of \$10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of \$20.00.

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Entity Details

THIS IS NOT A STATEMENT OF GOOD STANDING

File Number: 6293139 **Incorporation Date /** 1/23/2017
Formation Date: (mm/dd/yyyy)

Entity Name: JCK CADRE I LLC

Entity Kind: Limited Liability Company **Entity Type:** General

Residency: Domestic **State:** DELAWARE

REGISTERED AGENT INFORMATION

Name: NATIONAL REGISTERED AGENTS, INC.

Address: 160 GREENTREE DR STE 101

City: DOVER **County:** Kent

State: DE **Postal Code:** 19904

Phone: 302-674-4089

Additional Information is available for a fee. You can retrieve Status for a fee of \$10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of \$20.00.

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- Corporate Fees
- UCC Forms and Fees
- Taxes
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Entity Details

THIS IS NOT A STATEMENT OF GOOD STANDING

File Number: **6406379** Incorporation Date / **5/10/2017**
Formation Date: (mm/dd/yyyy)

Entity Name: **JCK CADRE II, LLC**

Entity Kind: **Limited Liability Company** Entity Type: **General**

Residency: **Domestic** State: **DELAWARE**

REGISTERED AGENT INFORMATION

Name: **NATIONAL REGISTERED AGENTS, INC.**

Address: **160 GREENTREE DR STE 101**

City: **DOVER** County: **Kent**

State: **DE** Postal Code: **19904**

Phone: **302-674-4089**

Additional Information is available for a fee. You can retrieve Status for a fee of \$10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of \$20.00.

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