

April 24, 2018

Arthur A. Elkins, Jr.  
Inspector General  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W. (2410T)  
Washington, DC 20460

Re: Ethics Advice to EPA Administrator Scott Pruitt and other EPA officials

Dear Mr. Elkins:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Inspector General (“OIG”) review and investigate the process by which ethics advice and determinations are provided to EPA Administrator Scott Pruitt and other EPA appointees by agency ethics officials and other legal advisors. The clearly inadequate handling of the numerous, increasingly outrageous ethical issues that have recently come to light suggests that the process is broken, and may be compromised by the fear of retaliation against officials who question Administrator Pruitt’s conduct.

The mission of the executive branch ethics program is to ensure that public servants “make impartial decisions” based on the public interest, “serve as good stewards of public resources, and loyally adhere to the Constitution and laws of the United States.”<sup>1</sup> The ethics program seeks to “ensure the integrity of government decision making and to promote public confidence by preventing conflicts of interest” and “to build and sustain an ethical culture in the executive branch.”<sup>2</sup>

Several matters involving Administrator Pruitt and other senior EPA appointees raise serious concerns both about the process by which ethics advice and determinations are sought and made at EPA, and whether ethics and other laws were violated. These matters include allegations of accepting prohibited gifts, misusing government resources, and abusing travel and special hiring authorities, as well as engaging in retaliatory actions directed at employees who voiced objections to the conduct of top officials.

The tone for an agency’s ethics program is set at the top. A robust program demands that the head of the agency and other officials make a good faith effort to seek and follow ethics advice obtained from agency ethics officials. Any good faith effort requires that the advice be sought prior to taking any action that could implicate ethics laws and regulations, that all relevant information be fully disclosed to ethics officials, and that ethics officials feel comfortable providing uninhibited guidance. In turn, ethics officials must be held to rigorous standards in the advice and determinations they provide.

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<sup>1</sup> 5 C.F.R. § 2638.101(b).

<sup>2</sup> 5 C.F.R. § 2638.101(c).

Yet EPA's ethics program appears to be broken and in disarray. In some cases, Administrator Pruitt and other officials appear to have sought ethics advice after the fact, without having disclosed all relevant facts. In others, they appeared not to have obtained ethics advice at all. Even worse, allegations of retaliation against officials who challenged the conduct of top officials undermines confidence in the decision-making process for ethics matters.

All of this contributes to an overwhelming perception that the head of EPA and his staff have engaged in a pattern of misconduct that undermines the integrity of the agency's policy-making process. A thorough investigation and review by OIG is necessary to fully understand the systemic failures facing the agency's ethics program.

### **Ethics Process Issues and Potential Violations**

The last several months have seen a series of reports of ethically questionable conduct at EPA, most involving Administrator Pruitt and his top aides. These repeated incidents raise serious concerns both about their conduct and about the process by which ethics guidance is sought and provided. Following are several examples of potential ethics violations that raise these concerns and demonstrate the need for a thorough investigation and review of EPA's ethics process.

#### **Prohibited Gift - Below-Market Lease Arrangement with Registered Lobbyist**

As has been widely reported, Administrator Pruitt entered into a lease in 2017 with the spouse of lobbyist J. Steven Hart to rent a room for \$50 per day. That arrangement raises serious ethical questions that public officials and watchdog groups have asked OIG to investigate.<sup>3</sup> In addition to those disturbing ethical issues, the process by which Administrator Pruitt sought ethics advice and determinations about the lease also is deeply troubling. Administrator Pruitt apparently failed to obtain ethics guidance before he entered the lease, and only sought a determination from EPA ethics officials after the lease arrangement became public in March 2018.<sup>4</sup> When that request was made after the fact and in an urgent manner, the ethics officials were not provided all the relevant facts relating to the lease and the use of the property, and they as a result issued initial opinions retroactively determining the lease did not constitute a prohibited gift.<sup>5</sup> The ethics officials themselves later called those opinions into question, saying

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<sup>3</sup> Letter from Reps. Ted W. Lieu and Don Beyer to EPA Inspector General Arthur A. Elkins, Jr., Apr. 3, 2018, available at [https://beyer.house.gov/uploadedfiles/2018-04-03\\_letter\\_to\\_epa\\_inspector\\_general\\_on\\_pruitt.pdf](https://beyer.house.gov/uploadedfiles/2018-04-03_letter_to_epa_inspector_general_on_pruitt.pdf); Letter from Public Citizen Government Affairs Lobbyist Craig Holman to EPA Office of Inspector General Hotline, Mar. 29, 2018, available at [https://www.citizen.org/sites/default/files/pruit\\_rental\\_arrangement\\_request.pdf](https://www.citizen.org/sites/default/files/pruit_rental_arrangement_request.pdf).

<sup>4</sup> Jennifer A. Dlouhy and Jennifer Jacobs, *EPA Chief's \$50-a-Night Rental Raises White House Angst*, *Bloomberg*, Mar. 29, 2018, available at <https://www.bloomberg.com/news/articles/2018-03-30/epa-chief-s-50-a-night-rental-said-to-raise-white-house-angst>.

<sup>5</sup> Memorandum from Kevin S. Minoli, Designated Agency Ethics Official & Principal Deputy General Counsel, to Matthew Z. Leopold, General Counsel, Review of Lease Agreement Under the Federal Ethics Regulations Regarding Gifts, Mar. 30, 2018 ("First Minoli Memorandum"), available at <https://www.documentcloud.org/documents/4427462-Evaluation-of-Lease-Agreement2018-03-30-152600.html> ("Entering into the lease was consistent with federal ethics regulations regarding gifts, and use of the property in

they lacked relevant information, and their approvals notably failed to address other relevant ethics requirements, including possible ethics pledge violations and the issue of whether Administrator Pruitt was instructed to recuse from participating in matters involving Mr. Hart's firm and its clients.<sup>6</sup>

The standards of ethical conduct bar government officials from accepting gifts directly or indirectly from prohibited sources unless an exception applies.<sup>7</sup> Employees also are advised to consider declining otherwise permissible gifts if they believe that a reasonable person with knowledge of the relevant facts would question the employee's integrity or impartiality as a result of accepting the gifts.<sup>8</sup> The ethics pledge signed by Administrator Pruitt pursuant to an executive order further bars him from accepting gifts from registered lobbyists or lobbying organizations.<sup>9</sup>

Until he resigned last Friday, Mr. Hart headed Williams & Jensen, a law firm registered to lobby EPA.<sup>10</sup> The firm is registered to lobby EPA on behalf of such clients as OGE Energy and Owens-Illinois,<sup>11</sup> and Mr. Hart "personally represent[ed] a natural gas company, an airline giant, and a major manufacturer that had business before the agency at a time he was also renting out a room to Pruitt."<sup>12</sup> Another of Mr. Hart's clients is "battling the EPA in court over an order to pay more than \$100 million in environmental cleanup costs."<sup>13</sup> Some of Williams & Jensen's clients have scored successes under Administrator Pruitt – in March 2017, for example, EPA

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accordance with the lease agreement did not constitute a gift."); Dlouhy and Jacobs, *Bloomberg*, Mar. 29, 2018 ("He paid a fair price for what amounts to just a room . . . so I don't even think that the fact that the house is owned by a person whose job is to be a lobbyist causes us concern.").

<sup>6</sup> Cristina Alesci, *EPA ethics official says he didn't have all the facts on Administrator Pruitt's lease*, *CNN*, Apr. 5, 2018, available at <https://www.cnn.com/2018/04/04/politics/pruitt-lease-epa-ethics-decision/index.html>; see 5 C.F.R. § 2635.502.

<sup>7</sup> 5 C.F.R. § 2635.202.

<sup>8</sup> 5 C.F.R. § 2635.201(b)(1)-(2). Relevant factors include whether: the gift has a "high market value"; the "timing of the gift creates the appearance that the donor is seeking to influence an official action"; the gift was provided by a person with "interests that may be substantially affected by the performance or nonperformance of the employee's official duties"; and acceptance of the gift would "provide the donor with significantly disproportionate access."

<sup>9</sup> Executive Order No. 13770, Jan. 28, 2017, § 5.

<sup>10</sup> Jennifer A. Dlouhy and Ari Natter, *Lobbyist Steps Down in Fallout From Pruitt Condo Controversy*, *Bloomberg*, Apr. 20, 2018, available at <https://finance.yahoo.com/news/lobbyist-steps-down-fallout-pruitt-215813538.html>.

<sup>11</sup> Williams and Jensen, PLLC, *Lobbying Disclosure Reports on behalf of OGE Energy Corp.*, Oct. 17, 2017 and Jan. 11, 2018 (reporting payments totaling \$180,000 in 2017 to lobby EPA and other government entities on issues including "EPA 111(d) proposal re Greenhouse gas emissions from existing utility plans. review of EPA regulations impacting utilities"); Williams and Jensen, PLLC, *Lobbying Disclosure Reports on behalf of Owen-Illinois, Inc.*, Apr. 14, 2017, Jul. 13, 2017, Oct. 16, 2017 and Jan. 16, 2018 (reporting payments totaling \$520,000 in 2017 to lobby EPA and other government entities on issues including "Environmental legislation impacting manufacturing sector, including EPA regulation, including Greenhouse Gas regulation; recycling of glass"). See also John Santucci, Matthew Mosk, and Stephanie Ebbs, *More Cabinet trouble for Trump: EPA chief lived in condo tied to lobbyist 'power couple'*, *ABC News*, Mar. 29, 2018, available at <http://abcnews.go.com/Politics/exclusive-cabinet-trouble-trump-epa-chief-lived-condo/story?id=54095310>.

<sup>12</sup> Sam Stein and Lachlan Markay, *Scott Pruitt Says His Lobbyist Landlord's Clients Didn't Have Business Before the EPA. They Did.*, *Daily Beast*, Apr. 5, 2018, available at <https://www.thedailybeast.com/scott-pruitt-says-his-lobbyist-landlords-clients-didnt-have-business-before-the-epa-they-did?ref=home>.

<sup>13</sup> *Id.*

signed off on Enbridge Inc.'s pipeline-expansion plan, telling the State Department it had "no serious environmental objections."<sup>14</sup> As a result, Mr. Hart was a prohibited source under the standards of ethical conduct, and federal employees like Administrator Pruitt are banned from accepting gifts from him.<sup>15</sup> In addition, because Mr. Hart has been a registered energy lobbyist,<sup>16</sup> and because his spouse, Vicki Hart, who owns the condo in which Administrator Pruitt rented a room, is a registered health care lobbyist,<sup>17</sup> Administrator Pruitt also is barred from accepting gifts from them under the ethics pledge.<sup>18</sup>

Administrator Pruitt publicly denied that Mr. Hart had clients with business before the agency.<sup>19</sup> However, as revealed in news reports in the last several days, Administrator Pruitt personally met with Mr. Hart at least once while he was a Williams & Jensen lobbyist.<sup>20</sup> Last week, Williams & Jensen disclosed that Mr. Hart has lobbied the EPA for Smithfield Foods, a large pork producer that was fined \$12.6 million in 1997 for dumping hog waste into Chesapeake Bay, purportedly on issues related to "support for Chesapeake Bay Programs."<sup>21</sup> According to the news reports, on July 11, 2017 – while Administrator Pruitt was renting the condo from Mr. Hart's spouse – Administrator Pruitt and his chief of staff met with Mr. Hart and a former top Smithfield Foods official who is now on the board of Smithfield's philanthropic arm and a member of the Chesapeake Bay Commission.<sup>22</sup> Smithfield Foods and Mr. Hart both denied that he was lobbying on behalf of the company, claiming his activities were done at the request of the former Smithfield official in his personal capacity.<sup>23</sup>

Despite the prohibitions on accepting gifts, Administrator Pruitt apparently did not seek guidance from EPA ethics officials before entering the lease. In fact, he apparently did not request any review of the lease by ethics officials until the day *ABC News* broke the story that he

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<sup>14</sup> Eric Lipton, [Pruitt Had a \\$50-a-Day Condo Linked to Lobbyists. Their Client's Project Got Approved.](https://www.nytimes.com/2018/04/02/climate/epa-pruitt-pipeline-apartment.html), *New York Times*, Apr. 2, 2018, available at <https://www.nytimes.com/2018/04/02/climate/epa-pruitt-pipeline-apartment.html>.

<sup>15</sup> 5 C.F.R. §§ 2635.202, 2635.203(d).

<sup>16</sup> See Williams and Jensen, PLLC, [Lobbying Disclosure Report on behalf of Owen-Illinois, Inc.](#), Jul. 13, 2017.

<sup>17</sup> See Hart Health Strategies, [Lobbying Disclosure Report on behalf of Alliance of Specialty Medicine](#), Jul. 5, 2017.

<sup>18</sup> Executive Order No. 13770, Jan. 28, 2017, § 5.

<sup>19</sup> See, e.g., Ed Henry, [Full Interview: Scott Pruitt pushes back on controversies](http://video.foxnews.com/v/5763985013001/?#sp=show-clips), *Fox News*, Apr. 4, 2018, available at <http://video.foxnews.com/v/5763985013001/?#sp=show-clips>. Mr. Hart also claimed he did not personally lobby the EPA in 2017 or 2018. See, e.g., Jennifer A. Dlouhy and Ari Natter, [EPA Chief Pruitt Met With Lobbyist Tied to Condo Rental](https://www.bloomberg.com/news/articles/2018-04-20/lobbyist-steps-down-amid-fallout-over-pruitt-condo-controversy), *Bloomberg*, Apr. 20, 2018, available at <https://www.bloomberg.com/news/articles/2018-04-20/lobbyist-steps-down-amid-fallout-over-pruitt-condo-controversy>; Jennifer A. Dlouhy and Jennifer Jacobs, [Lobbyist Tied to Condo Had Clients Facing EPA](https://www.bloomberg.com/news/articles/2018-04-06/lobbyist-tied-to-pruitt-s-condo-had-roster-of-clients-facing-epa), *Bloomberg*, Apr. 6, 2018, available at <https://www.bloomberg.com/news/articles/2018-04-06/lobbyist-tied-to-pruitt-s-condo-had-roster-of-clients-facing-epa>.

<sup>20</sup> Theodoric Meyer and Eliana Johnson, [Lobbyist whose wife rented to Pruitt lobbied EPA despite denials](https://www.politico.com/story/2018/04/20/pruitt-condo-lobbyist-leaving-firm-543508), *Politico*, Apr. 20, 2018, available at <https://www.politico.com/story/2018/04/20/pruitt-condo-lobbyist-leaving-firm-543508>; Eric Lipton, [Scott Pruitt Met With Lobbyist Whose Wife Rented Him a \\$50-a-Night Condo](https://www.nytimes.com/2018/04/21/climate/pruitt-hart-condo-epa-lobbying.html), *New York Times*, Apr. 21, 2018, available at <https://www.nytimes.com/2018/04/21/climate/pruitt-hart-condo-epa-lobbying.html>; Dlouhy and Natter, *Bloomberg*, Apr. 21, 2018.

<sup>21</sup> Williams and Jensen, PLLC, [Lobbying Disclosure Report on behalf of Smithfield Foods, Inc.](#), Apr. 20, 2018; Lipton, *New York Times*, Apr. 21, 2018; Dlouhy and Natter, *Bloomberg*, Apr. 20, 2018.

<sup>22</sup> *Id.*; Meyer and Johnson, *Politico*, Apr. 20, 2018; Lipton, *New York Times*, Apr. 21, 2018.

<sup>23</sup> *Id.*

had rented a room from a lobbyist and the story had become a “flashpoint.”<sup>24</sup> Only then – more than a year after the lease was signed by the parties – did Administrator Pruitt’s top aides contact Senior Counsel for Ethics Justina Fugh and Designated Agency Ethics Official and Principal Deputy General Counsel Kevin S. Minoli for ethics advice.

In those consultations, however, the ethics officials were not provided the information they needed to make proper determinations. Ms. Fugh, contacted for advice on a Thursday evening while in a movie theater with her family, gave her views based on the erroneous assumption that she had been provided “all relevant circumstances.”<sup>25</sup> In her initial determination, Ms. Fugh concluded that the lease agreement did not constitute an impermissible gift based on a determination that the \$50-per-night rental fee represented fair market value.<sup>26</sup> Ms. Fugh assessed that the rental fee, for what “amount[ed] to a room,” represented market value since it would cost \$1,500 if Administrator Pruitt used it for one 30-day month.<sup>27</sup> The next day, Mr. Minoli weighed in with a brief paragraph similarly approving the lease and confirming that use of the property in accordance with the lease agreement did not constitute a gift.<sup>28</sup>

A few days later, however, on April 4, Mr. Minoli submitted a more comprehensive memorandum to further explain the factual basis for his conclusion and the limited scope of his review.<sup>29</sup> Mr. Minoli reportedly was prompted to issue the second memorandum after he saw a *New York Times* article that appeared to show a “real connection” between “people [] connected to the apartment” and “specific actions the agency or the Administrator may have taken” to approve a pipeline plan for an energy client of Williams & Jensen.<sup>30</sup> To avoid the perception that his first memorandum could be used as a “cover” for other actions taken by Administrator Pruitt or the EPA,<sup>31</sup> Mr. Minoli issued a second memorandum stating that he “reviewed the living arrangement in the context of the lease he was provided, *but did not assess outside circumstances raised in news reports.*”<sup>32</sup> Ms. Fugh also later publicly stated that she was “too credulous,” and disavowed her initial advice after she learned that Administrator Pruitt (and

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<sup>24</sup> Kevin Bogardus, The story behind the ethics memos on Pruitt’s condo lease, *E&E News*, Apr. 11, 2018, available at <https://www.eenews.net/stories/1060078765>; Zahra Hirji, Scott Pruitt Has More Questions To Answer EPA Ethics Officials Say, *BuzzFeed News*, Apr. 5, 2018, available at [https://www.buzzfeed.com/zahrahirji/epa-pruitt-housing-controversy-memo?utm\\_term=.cwayZ8vWp#.wn0Jz2Y16](https://www.buzzfeed.com/zahrahirji/epa-pruitt-housing-controversy-memo?utm_term=.cwayZ8vWp#.wn0Jz2Y16).

<sup>25</sup> Bogardus, *E&E News*, Apr. 11, 2018; Hirji, *BuzzFeed News*, Apr. 5, 2018.

<sup>26</sup> *Id.*; 5 C.F.R. § 2635.203(b)(10). The definition of “gift” excludes anything for which “market value is paid by the employee.”

<sup>27</sup> Dlouhy and Jacobs, *Bloomberg*, Mar. 29, 2018; Zahra Hirji, Scott Pruitt’s Apartment Deal Is At The Center Of An Ethical Storm For Trump’s EPA, *BuzzFeed News*, Mar. 30, 2018, available at [https://www.buzzfeed.com/zahrahirji/epa-pruitt-dc-housing-ethics?utm\\_term=.wmR3KV6WI#.dhMmOpwqV](https://www.buzzfeed.com/zahrahirji/epa-pruitt-dc-housing-ethics?utm_term=.wmR3KV6WI#.dhMmOpwqV).

<sup>28</sup> See First Minoli Memorandum.

<sup>29</sup> Memorandum from Kevin S. Minoli, Designated Agency Ethics Official & Principal Deputy General Counsel, to Matthew Z. Leopold, General Counsel, Record for “Review of Lease Agreement Under the Federal Ethics Regulations Regarding Gifts,” Apr. 4, 2018 (“Second Minoli Memorandum”), available at <https://www.documentcloud.org/documents/4431672-Record-Re-Review-of-Lease2018-04-04-163433.html>; Hirji, *BuzzFeed News*, Apr. 5, 2018.

<sup>30</sup> Bogardus, *E&E News*, Apr. 11, 2018; Lipton, *New York Times*, Apr. 2, 2018.

<sup>31</sup> Bogardus, *E&E News*, Apr. 11, 2018.

<sup>32</sup> Hirji, *BuzzFeed News*, Apr. 5, 2018 (emphasis added); Second Minoli Memorandum.

possibly others) may not have been forthcoming with all the relevant information regarding the lease and his use of the lease property.<sup>33</sup>

These qualms did not stop Administrator Pruitt from asserting that the lease arrangement was legal and proper. Administrator Pruitt compared the arrangement to an Airbnb rental, because he did not have to pay a rental fee for the nights it was not in use.<sup>34</sup> The lease terms and his use of the premises, however, appear to have been considerably more generous than those offered under a typical Airbnb arrangement.<sup>35</sup> For example, the bedroom was made available for Administrator Pruitt's exclusive use over a period of several months like a monthly rental arrangement.<sup>36</sup> Administrator Pruitt also was able to store his "possessions on the premises when he [was] not occupying the bedroom assigned to him" at no additional charge.<sup>37</sup> The terms of the lease further allowed for Administrator Pruitt's "immediate family or transient relatives and friends" to "use or occupy the Premises."<sup>38</sup> In this regard, a second bedroom was used by Administrator Pruitt's daughter from May to August 2017 while she served as an intern in the White House Counsel's office.<sup>39</sup> Unlike Airbnb rentals that require payment up front, Administrator Pruitt at times fell behind on his rent, "forcing his lobbyist landlord to pester him for payment" but with no apparent consequences.<sup>40</sup>

Administrator Pruitt's claims do not stand up to scrutiny. The rental fee appears below the rate charged for monthly comparable apartment rentals on Capitol Hill. The condominium apparently consisted of two bedrooms and a common area controlled by the landlord.<sup>41</sup> Administrator Pruitt was assigned to one bedroom,<sup>42</sup> while his daughter had use of the second bedroom over a period of several months.<sup>43</sup> The *Washington Post* reported that two bedroom apartments in the area rented for \$2,550 to \$4,300 a month, including a \$4,300 two bedroom listing "just steps away from the one Pruitt rented."<sup>44</sup> A real estate agent told the *Post* that it would be "hard if not impossible to find a two-bedroom apartment in the area for \$1,500 and

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<sup>33</sup> Hirji, *BuzzFeed News*, Apr. 5, 2018.

<sup>34</sup> Henry, *Fox News*, Apr. 4, 2018.

<sup>35</sup> District of Columbia Residential Lease Agreement between 223 C Street LLC and Scott Pruitt, Feb. 15, 2017 ("Pruitt Lease"), ¶¶ 2-3, attached as Exhibit 1 to the Second Minoli Memorandum, available at <http://cdn.cnn.com/cnn/2018/images/04/04/new.record.re.view.of.lease2018-04-04-163433.pdf>.

<sup>36</sup> See Dlouhy and Jacobs, *Bloomberg*, Mar. 29, 2018.

<sup>37</sup> Pruitt Lease, ¶ 3.

<sup>38</sup> *Id.*

<sup>39</sup> John Santucci, Matthew Mosk, and Stephanie Ebbs, EXCLUSIVE: EPA chief Pruitt joined by family in condo tied to lobbyist 'power couple', *ABC News*, Mar. 31, 2018, available at <http://abcnews.go.com/Politics/exclusive-epa-chief-pruitt-joined-family-condo-tied/story?id=54125092>.

<sup>40</sup> Eliana Johnson and Andrew Restuccia, Pruitt fell behind on payments for his \$50-a-night condo rental, *Politico*, Apr. 5, 2018, available at <https://www.politico.com/amp/story/2018/04/05/scott-pruitt-condo-rental-504603>.

<sup>41</sup> Pruitt Lease, ¶¶ 3, 16.

<sup>42</sup> *Id.*

<sup>43</sup> Santucci, Mosk, and Ebbs, *ABC News*, Mar. 31, 2018.

<sup>44</sup> Eli Rosenberg, 'That's bizarre': Realtors weigh in on Scott Pruitt's \$50-a-night condo room deal in D.C., *Washington Post*, Apr. 7, 2018, available at [https://www.washingtonpost.com/news/post-politics/wp/2018/04/07/thats-bizarre-realtors-weigh-in-on-scott-pruitts-50-a-night-condo-room-deal-in-d-c/?utm\\_term=.86206c6a74b2](https://www.washingtonpost.com/news/post-politics/wp/2018/04/07/thats-bizarre-realtors-weigh-in-on-scott-pruitts-50-a-night-condo-room-deal-in-d-c/?utm_term=.86206c6a74b2).

described the occupancy provision as ‘a little bit out the ordinary,’ saying he had never heard of such an arrangement before.”<sup>45</sup> Other agents described the lease provision that limited payment requirements to days of “actual occupancy” as “bizarre” and “very strange.”<sup>46</sup> In addition, the *Post* reported that an Airbnb search of the area located some comparably-priced bedrooms, but some were “inactive” while “others typically charged as much as double that.”<sup>47</sup> Some rooms were “occasionally available” at \$50 a night, but many of them were “often tightly booked for months in advance, making it unlikely a renter could spontaneously come and go as they pleased without the room being booked by someone else when they weren’t there.”<sup>48</sup>

As a result, there appears to be no reasonable basis to conclude that Administrator Pruitt paid fair market value for use of the premises. The arrangement provided to Administrator Pruitt appears to be considerably more generous than comparably-priced Airbnb rentals; the lease payments do not represent market value and appear to constitute a prohibited gift from a person with ongoing business before the agency. As a prohibited gift, the lease arrangement appears to have given Mr. Hart’s law firm and its clients unprecedented access to and influence over the head of the EPA. Under these circumstances, the arrangements would cause a reasonable person to question the integrity of Administrator Pruitt’s decision making and, because he did not decline the gift, he must now recuse himself from participating in any particular matters involving Mr. Hart, his law firm, or its clients.<sup>49</sup>

The process by which the Administrator Pruitt sought ethics advice for his unusual lease arrangement appears to have contributed to EPA’s issuance of highly questionable ethics guidance and thwarted the ethics officials’ ability to effectively address potential conflicts of interest. Accordingly, in addition to reviewing whether Administrator Pruitt violated any ethics rules, OIG should investigate the circumstances surrounding his request for ethics advice regarding the lease.

#### Misuse of Resources - Use of EPA staff for Administrator Pruitt’s personal purposes

News reports indicating that Administrator Pruitt may have improperly used EPA staff time for an apartment search after his lease arrangement with Ms. Hart expired also raises questions both about their conduct and about EPA’s ethics process.

Millan Hupp, an EPA appointee who runs Administrator Pruitt’s scheduling and advance operation, reportedly “oversaw an extensive housing hunt for the administrator last year.”<sup>50</sup> At

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> 5 C.F.R. § 2635.502.

<sup>50</sup> Juliet Eilperin, Brady Dennis, and Josh Dawsey, *EPA’s Scott Pruitt faces intensifying scrutiny, criticism of his ethics decisions*, *Washington Post*, Apr. 3, 2018, available at [https://www.washingtonpost.com/news/energy-environment/wp/2018/04/03/epas-pruitt-gave-big-raises-to-two-close-aides-after-being-rebuffed-by-the-white-house/?utm\\_term=.9f1856a2685f](https://www.washingtonpost.com/news/energy-environment/wp/2018/04/03/epas-pruitt-gave-big-raises-to-two-close-aides-after-being-rebuffed-by-the-white-house/?utm_term=.9f1856a2685f).

least part of Ms. Hupp's search was carried out during office hours.<sup>51</sup> Under the ethics regulations, an employee is barred from using official time to perform other than official duties, and an official cannot "encourage, direct, coerce, or request a subordinate to use official time to perform activities other than those required in the performance of official duties."<sup>52</sup> To the extent that Ms. Hupp used official time (and possibly other government resources) to assist Administrator Pruitt with his apartment search, it is a clear violation of the ethics rules. Furthermore, while it is not known whether Administrator Pruitt asked Ms. Hupp for her help with the search, if he did, it would violate the standards of ethical conduct.

It is not known if Administrator Pruitt sought or obtained ethics advice to determine whether Ms. Hupp's apartment search on official time would violate the standards of ethical conduct applicable to the use of government resources. It is difficult to imagine, however, that an ethics official with full knowledge of the circumstances would have sanctioned Ms. Hupp's alleged conduct. Accordingly, in addition to determining whether Administrator Pruitt violated the prohibition on using government resources for personal purposes, OIG should investigate the circumstances surrounding whether and how the ethics process was used in this matter.

#### Misuse of Resources - Special Hiring Authority Used for Political Appointees

News reports and allegations by former aides to Administrator Pruitt indicating that he may have improperly authorized the use of an EPA special hiring authority to promote at least two political appointees further calls into question both his conduct and EPA's ethics process.

The Safe Drinking Water Act ("SDWA") gives EPA the authority to appoint "not more than thirty scientific, engineering, professional, legal, and administrative positions within the [EPA] without regard to the civil service laws."<sup>53</sup> These jobs "are typically reserved for technical experts."<sup>54</sup> According to press reports, after the White House rejected a proposed raise for Ms. Hupp and another EPA political appointee, Sarah Greenwalt, Administrator Pruitt apparently circumvented that process by authorizing Ms. Hupp and Ms. Greenwalt to be re-appointed under the SDWA authority, resulting in raises of \$28,130 and \$56,765, respectively.<sup>55</sup> If these reports are true, Administrator Pruitt's use of this authority also may have had the inappropriate effect of

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<sup>51</sup> *Id.*

<sup>52</sup> 5 C.F.R. §§ 2635.705(a), (b).

<sup>53</sup> 42 U.S.C. § 300j-10.

<sup>54</sup> Eric Lipton, *Why Has the EPA Shifted on Toxic Chemicals: An Industry Insider Helps Call the Shots*, *New York Times*, Oct. 21, 2017, available at <https://nytimes.com/2017/10/21/us/trump-epa-chemicals-regulations.html>.

<sup>55</sup> Elaina Plott and Robinson Meyer, *Scott Pruitt Bypassed the White House to Give Big Raises to Favorite Aides*, *The Atlantic*, Apr. 3, 2018, available at <https://www.theatlantic.com/politics/archive/2018/04/pruitt-epa/557123/>. Ms. Hupp reportedly received a 33 percent increase (from \$86,460 to \$114,590) and Ms. Greenwalt received a 55 percent increase (from \$107,435 to \$164,200). *See also* Letter from Sens. Thomas R. Carper, Sheldon Whitehouse and Reps. Elijah Cummings, Gerald E. Connolly, and Donald S. Beyer, Jr., to EPA Administrator Scott Pruitt, Apr. 12, 2018, ("Carper Letter") available at <https://www.documentcloud.org/documents/4436623-4-12-2018-Letter-to-Pruitt.html>; Eric Lipton and Lisa Friedman, *Lawmakers' Letter Claims Further Spending Abuses by the E.P.A. Head, Scott Pruitt*, *New York Times*, Apr. 12, 2018, available at <https://www.nytimes.com/2018/04/12/climate/pruitt-epa-ethics-letter-congress.html?smid=tw-share>.



rewarding Ms. Hupp after she improperly carried out an apartment search on official time for his personal benefit.

EPA claimed that Administrator Pruitt “was not aware that [Hupp’s and Greenwalt’s] personnel actions had not been submitted to the Presidential Personnel Office” for prior approval and subsequently ordered a review.<sup>56</sup> Another news report, however, disclosed an email seemingly showing that Administrator Pruitt personally signed off on the pay raise for one of the two aides.<sup>57</sup>

Although EPA claims the raises had been reversed,<sup>58</sup> a “management alert” issued by OIG on April 16 reported that it had not been provided any documentation to verify that the salaries had been modified.<sup>59</sup> OIG’s interim report also raises questions about excessive pay raises and the full extent of Administrator Pruitt’s participation in the approval process to hire and promote non-career employees under the SDWA and other authorities.<sup>60</sup> Between March 2017 and April 2018, two employees received multiple pay raises increasing their salaries by 67.6% and 72.3%, respectively, and three others received pay raises between March 2017 and September 2017 increasing their salaries by 23.9%, 20.9% and 26.7%, respectively.<sup>61</sup> Furthermore, the report disclosed that Administrator Pruitt personally signed authorizations for employment actions under the SDWA for at least four employees, and more than a dozen more authorizations were signed by the chief of staff “for Scott Pruitt.”<sup>62</sup>

Notably, this is not the first time that Administrator Pruitt used the SDWA hiring authority in an apparent effort to circumvent the normal political appointment process. Last year, Administrator Pruitt hired Nancy Beck, a former top official at the American Chemistry Council, to be Deputy Assistant Administrator for EPA’s Office of Chemical Safety and Pollution Prevention using the SDWA authority.<sup>63</sup> The use of the special hiring authority raised serious questions for Dr. Beck because she apparently was brought in carry out the administration’s policy agenda and her duties involve managerial responsibilities, a type of position that normally

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<sup>56</sup> Plott and Meyer, *The Atlantic*, Apr. 3, 2018.

<sup>57</sup> Elaina Plott, *An Internal Email Contradicts Scott Pruitt’s Account of Controversial Raises*, *The Atlantic*, Apr. 9, 2018, available at <https://www.theatlantic.com/politics/archive/2018/04/pruitt-epa-raises/557561/>.

<sup>58</sup> Alex Gullen and Anthony Adragna, *Watchdog report provide new ammo for Pruitt’s critics*, *Politico*, Apr. 16, 2018, available at <https://www.politico.com/story/2018/04/16/watchdog-epa-scott-priutt-phone-booth-483164>.

<sup>59</sup> Memorandum from EPA Inspector General Arthur A. Elkins, Jr. to EPA Administrator Scott Pruitt, Apr. 16, 2018, available at [https://www.epa.gov/sites/production/files/2018-04/documents/epaig\\_20180416-18-n-0154.pdf](https://www.epa.gov/sites/production/files/2018-04/documents/epaig_20180416-18-n-0154.pdf).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Dino Grandoni, *EPA chief Scott Pruitt relied on obscure law to hire ex-lobbyists, schedulers and spokesmen*, *Washington Post*, Apr. 3, 2018, available at [https://www.washingtonpost.com/news/powerpost/wp/2018/04/03/epa-chief-scott-pruitt-relied-on-obscure-law-to-hire-ex-lobbyists-schedulers-and-spokespeople/?utm\\_term=.047ac4a86cc7](https://www.washingtonpost.com/news/powerpost/wp/2018/04/03/epa-chief-scott-pruitt-relied-on-obscure-law-to-hire-ex-lobbyists-schedulers-and-spokespeople/?utm_term=.047ac4a86cc7).

would be filled by a non-career member of the Senior Executive Service.<sup>64</sup> Furthermore, by being appointed under this authority, Dr. Beck was able to circumvent additional ethics restrictions required of political appointees subject to the ethics pledge, which among other things would have barred her from taking meetings with her former employer without a waiver.<sup>65</sup>

The use of the special hiring authority for Dr. Beck, Ms. Hupp, Ms. Greenwalt, and other non-career appointees raises significant questions about whether this authority has been abused by Administrator Pruitt. It is not known whether Administrator Pruitt or his top aides sought, received, and/or followed the advice of agency ethics, legal, or personnel officials in making these personnel decisions.

Accordingly, in addition to determining whether Administrator Pruitt misused the agency's special hiring authority in these instances, OIG should investigate whether Administrator Pruitt sought and followed guidance to ensure that EPA's hiring authority was appropriately safeguarded.

#### *Misuse of Resources - Misuse of First Class and Military Aircraft Authority*

As has been widely reported, Administrator Pruitt and his staff have engaged in extensive first class and military travel in carrying out their official duties. OIG is already reviewing Administrator Pruitt's travel, whether EPA travel policies and procedures were followed in approving it, and whether those policies and procedures are sufficient to prevent fraud, waste, and abuse.<sup>66</sup> Any review should also consider these issues in the broader context of concerns about EPA's ethics process.

As you know, there are many examples of questionable use of first class flights and military jet travel, including:

- First class airfare and related travel expenses at a cost of \$17,631 for Administrator Pruitt to travel to Morocco.<sup>67</sup>

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<sup>64</sup> See The United States Government Policy and Supporting Positions (commonly known as the Plum Book), Dec. 1, 2016, at 158, available at <https://www.govinfo.gov/content/pkg/GPO-PLUMBOOK-2016/pdf/GPO-PLUMBOOK-2016.pdf>.

<sup>65</sup> Executive Order No. 13770, Jan. 28, 2017.

<sup>66</sup> Memorandum from John Trefry, Director, Forensic Directorate, EPA OIG Office of Audit and Evaluation to Deputy Chief Financial Officer David Bloom, Jan. 10, 2018, available at [https://www.epa.gov/sites/production/files/2018-01/documents/epa\\_oig\\_notificationmemo\\_01-10-18\\_travel.pdf](https://www.epa.gov/sites/production/files/2018-01/documents/epa_oig_notificationmemo_01-10-18_travel.pdf).

<sup>67</sup> Brady Dennis and Juliet Eilperin, New documents show nearly \$68,000 in recent premium flights, hotel stays for EPA's Pruitt, *Washington Post*, Mar. 20, 2018, available at [https://www.washingtonpost.com/news/energy-environment/wp/2018/03/20/new-documents-show-nearly-68000-in-recent-premium-flights-hotel-stays-for-epas-pruitt/?utm\\_term=.9edcacbbe3c](https://www.washingtonpost.com/news/energy-environment/wp/2018/03/20/new-documents-show-nearly-68000-in-recent-premium-flights-hotel-stays-for-epas-pruitt/?utm_term=.9edcacbbe3c).

- Use of a military jet at a cost of \$36,068.50 to fly to New York City from Cincinnati. The use of a military flight was apparently justified on the basis that Administrator Pruitt needed to make a scheduled flight to Rome.<sup>68</sup>
- First class airfare for Administrator Pruitt's travel to and from Rome at a cost of \$7,003.52.<sup>69</sup>
- First class travel for a short flight from Washington, DC to New York City at a cost of \$1,641.43, a ticket that cost more than six times the coach seats for his aides.<sup>70</sup> The trip was made so that Administrator Pruitt could make two brief television appearances regarding the decision to withdraw from the 2015 Paris climate agreement.<sup>71</sup>

Several aspects of the approval of first class and military travel by Administrator Pruitt and his staff are particularly worth close examination. EPA initially claimed that Administrator Pruitt had received a "blanket waiver" to authorize him to fly first-class travel.<sup>72</sup> Waivers under federal travel regulations, however, can be authorized only on a case-by-case basis, unless the traveler can document a disability or special need.<sup>73</sup> EPA subsequently retracted its claim of having obtained a "blanket waiver" after the rules were pointed out.<sup>74</sup> EPA's claim raises questions about the process by which the "blanket waiver" was sought and approved (assuming it actually was).

Relatedly, EPA also claimed that all of Administrator Pruitt's travel expenses had been approved by ethics officials, raising further concerns about the approval process.<sup>75</sup> EPA's justification for Administrator Pruitt's waiver for first class travel, for example, was that he faced "unprecedented" security threats.<sup>76</sup> These threats, however, apparently were not considered as "vital" for trips undertaken at his own expense when he travelled by coach, for example, on trips back home to his house in Oklahoma.<sup>77</sup> In addition, according to one news report, a new security

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<sup>68</sup> Juliet Eilperin and Brady Dennis, *First-class travel distinguishes Scott Pruitt's EPA tenure*, *Washington Post*, Feb. 11, 2018, available at [https://www.washingtonpost.com/national/health-science/first-class-travel-distinguishes-scott-pruitts-epa-tenure/2018/02/11/5bb89afc-0b7d-11e8-8b0d-891602206fb7\\_story.html?utm\\_term=.08f3d95e26bd](https://www.washingtonpost.com/national/health-science/first-class-travel-distinguishes-scott-pruitts-epa-tenure/2018/02/11/5bb89afc-0b7d-11e8-8b0d-891602206fb7_story.html?utm_term=.08f3d95e26bd).

<sup>69</sup>*Id.*

<sup>70</sup>*Id.*

<sup>71</sup>*Id.*

<sup>72</sup> Timothy Cama, *Pruitt has 'blanket waiver' to first-class travel rules*, *The Hill*, Feb. 13, 2018, available at <http://thehill.com/policy/energy-environment/373747-pruitt-has-blanket-waiver-to-first-class-travel-rules>.

<sup>73</sup> Eric Wolff, Emily Holden, and Alex Guillen, *EPA changes its story on Pruitt's first-class travel*, *Politico*, Feb. 14, 2018, available at <https://www.politico.com/story/2018/02/14/scott-pruitt-first-class-travel-347631>; Federal Travel Regulations, § 301-10.123, Note 2.

<sup>74</sup> Wolff, Holden, and Guillen, *Politico*, Feb. 14, 2018.

<sup>75</sup> Eilperin and Dennis, *Washington Post*, Feb. 11, 2018;

<sup>76</sup> Michael Biesecker, *Security for EPA chief comes at a steep cost to taxpayers*, *Associated Press*, Apr. 8, 2018, available at <https://apnews.com/b6e7dedc97fe4c8198f3efdc27e28cdf>.

<sup>77</sup> *Id.*

chief Administrator Pruitt hired “signed off on new procedures that let Pruitt fly first-class on commercial carriers,” but it remains unclear if ethics officials were consulted.<sup>78</sup>

Other travel-related issues similarly warrant review in the context of broader questions about the ethics process. For example, the former EPA deputy chief of staff for operations told congressional staff members that Administrator Pruitt would “often seek to schedule trips back to Oklahoma,” so he could stay at his home for long weekends, and would tell his staff to “[f]ind me something to do,” for other destinations he wanted to visit.<sup>79</sup> The former official also said that Administrator Pruitt would “direct [his] staff to book flights on Delta, even when they are not the federal government contract carrier for the route,” because Administrator Pruitt “want[ed] to accrue more frequent flyer miles.”<sup>80</sup> He further told the congressional staff that Administrator Pruitt “refused to stay at hotels recommended by the U.S. Embassy, although the recommended hotel had law enforcement and other U.S. resources on-site,” and “chose to stay instead at more expensive hotels with fewer standard security resources.”<sup>81</sup>

News reports also indicate that Administrator Pruitt sometimes used a “companion pass obtained with frequent flyer miles accumulated by a . . . senior advisor at EPA.”<sup>82</sup> If true, Administrator Pruitt’s acceptance of free travel would be prohibited by the standards of ethical conduct, which bars supervisors from accepting gifts (*i.e.*, any item of value) from any employee who receives less pay than them.<sup>83</sup>

Taken together, these incidents warrant an investigation. That review also should consider the travel-related issues in the broader context of concerns about EPA’s ethics process.<sup>84</sup>

#### Misuse of Resources - Excessive Security Detail and Expenditures

Allegations that Administrator Pruitt’s expanded security detail and expenses paid for security equipment violated prohibitions on misuse of government resources also raise concerns about the approval and ethics process. It is again unclear if or how Administrator Pruitt sought or

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<sup>78</sup> *Id.*

<sup>79</sup> Carper Letter; Lipton and Friedman, *New York Times*, Apr. 12, 2018.

<sup>80</sup> Carper Letter; Lipton and Friedman, *New York Times*, Apr. 12, 2018.

<sup>81</sup> Carper Letter; Lipton and Friedman, *New York Times*, Apr. 12, 2018.

<sup>82</sup> Biesecker, *Associated Press*, Apr. 8, 2018.

<sup>83</sup> 5 C.F.R. §§ 2635.203(b), 2635.302(b).

<sup>84</sup> To the extent that OIG may have provided any input into the security assessment that served as the basis for the travel determinations, you should consult with the Council of the Inspectors General on Integrity and Efficiency (“CIGIE”) to determine whether an inspector general from another agency should be assigned to investigate this issue to avoid any possible conflict of interest. In addition, we respectfully request that EPA Assistant Inspector General for Investigations Patrick Sullivan be recused from the investigation for the reasons stated by CREW in Noah Bookbinder’s and Norman L. Eisen’s Letter to Inspectors General Scott Dahl and Deborah Jeffrey, Council of the Inspectors General on Integrity and Efficiency, Apr. 13, 2018, (“Letter to Inspectors General Dahl and Jeffrey”) available at <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2018/04/13194957/CIGIE-IC-complaint-Sullivan-EPA-4-13-18.pdf>.

followed ethics advice on his security, but the Government Accountability Office (“GAO”) concluded on April 16, 2018 that some of the security spending violated federal law.

Under the standards of ethical conduct, employees have a duty to protect and conserve government property and are prohibited from using such property for other than authorized purposes.<sup>85</sup> Administrator Pruitt’s security spending appears to violate those obligations.

Shortly after his appointment, Administrator Pruitt hired a former Secret Service agent who operates a private security company to replace a career staff member he demoted.<sup>86</sup> Under the new security chief, Administrator Pruitt’s security detail has been expanded to guard him “day and night.”<sup>87</sup> EPA reportedly has “spent millions of dollars for a 20-member full-time security detail,” that was “more than three times the size of his predecessor’s part-time security contingent.”<sup>88</sup> Recent news reports indicate that EPA has spent \$3 million (factoring in overtime and travel) to support the expanded security detail assigned to Administrator Pruitt.<sup>89</sup> The new official also signed off on procedures to allow Administrator Pruitt to fly “first-class on commercial airliners, with the security chief typically sitting next to him with other security staff farther back in the plane,” and which “gave him and his security chief access to VIP airport lounges.”<sup>90</sup> The security detail reportedly was used for family trips to Disneyland, for the 2017 Rose Bowl game, and for basketball games in Lexington, Kentucky.<sup>91</sup>

Under Administrator Pruitt the EPA has also spent heavily on security equipment and services. The new security chief, for example, allegedly arranged for the installation of a \$43,000 soundproof phone booth.<sup>92</sup> GAO recently concluded that the expenditures violated spending restrictions on furnishing the Administrator’s office and the Antideficiency Act.<sup>93</sup> EPA also spent \$9,000 for counter-surveillance precautions, sweeping for hidden listening devices in Administrator Pruitt’s office and installing biometric locks on his door.<sup>94</sup> The payment for the bug sweep reportedly went to a vice president of the EPA security chief’s outside security business, raising possible procurement and ethics concerns.<sup>95</sup> Administrator Pruitt is also alleged to have sought a “\$100,000-a-month private jet membership, a bulletproof vehicle and \$70,000 for furniture such as a bulletproof desk for the armed security officer always stationed inside the administrator’s office suite.”<sup>96</sup>

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<sup>85</sup> 5 C.F.R. § 2635.704(a).

<sup>86</sup> Biesecker, *Associated Press*, Apr. 8, 2018.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> Letter from Thomas H., Armstrong, General Counsel, Government Accountability Office to Sens. Tom Carper and Tom Udall and Reps. Peter DeFazio and Betty McCollum, Apr. 16, 2018, *available at* <http://cdn.cnn.com/cnn/2018/images/04/16/gao.letter.pdf>.

<sup>94</sup> Biesecker, *Associated Press*, Apr. 8, 2018.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

OIG should determine whether EPA's security spending resulted in unnecessary and excessive expenditures of agency resources. In addition, OIG should investigate whether Administrator Pruitt and his aides sought and followed advice from the agency's ethics, legal, security, procurement, and management officials necessary to ensure that EPA's public resources were appropriately safeguarded.<sup>97</sup>

#### Misuse of Resources - Failure to Properly Account for Subordinate's Time and Attendance

News reports indicate that Samantha Dravis, Administrator Pruitt's policy chief who was hired using the Safe Water Drinking Act authority, also was absent from work over an extended period without her time and attendance being properly accounted for. This again calls into question both Administrator Pruitt's conduct and EPA's ethics, legal, and management process.

Failure to require a subordinate to comply with time and attendance obligations may violate ethics rules requiring employees to put forth an honest effort for days worked and may constitute fraud by the employee if the time and attendance has not been properly accounted for.<sup>98</sup> A former EPA staff member told "lawmakers that for 'a period of weeks' he did not see Samantha Dravis, Mr. Pruitt's policy chief, at work."<sup>99</sup> It is unknown if Administrator Pruitt or his aides consulted with ethics or other officials about this situation. OIG recently was asked to investigate Ms. Dravis' work attendance because "her alleged absence during much of November, December and January 'raises questions' about whether the agency is adhering to internal rules regarding employee time and attendance."<sup>100</sup> In addition to determining whether Ms. Dravis' absence violated ethics rules, OIG also should review the circumstances involving these matters in the context of other concerns about the ethics process.

#### Lack of Impartiality

As noted above, Administrator Pruitt hired Nancy Beck last year to be Deputy Assistant Administrator for EPA's Office of Chemical Safety and Pollution Prevention.<sup>101</sup> As CREW

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<sup>97</sup> To the extent that OIG may have provided any input into the security assessment that served as the basis for the size and scope of Administrator Pruitt's security detail or for other security expenditures, you should consult with CIGIE to determine whether an inspector general from another agency should be assigned to investigate this issue to avoid any possible conflict of interest. In addition, we respectfully request that EPA Assistant Inspector General for Investigations Patrick Sullivan be recused from the investigation for the reasons stated in CREW's Letter to Inspectors General Dahl and Jeffrey.

<sup>98</sup> 5 C.F.R. § 2635.101(b)(5); *see, e.g.*, Press Release for U.S. Attorney's Office for the District of Columbia, Former EPA Senior Policy Advisor Pleads Guilty to Theft in Scheme That Cost Government Nearly \$900,000 – Admits Collecting Pay for Hundreds of Days He Wasn't Working, Sept. 27, 2013, *available at* <https://www.justice.gov/usao-dc/pr/former-epa-senior-policy-advisor-pleads-guilty-theft-scheme-cost-government-nearly-900000>.

<sup>99</sup> Carper Letter; Lipton and Friedman, *New York Times*, Apr. 12, 2018.

<sup>100</sup> *Id.*; Letter from Sen. Tom Carper to EPA Inspector General Arthur A. Elkins, Jr., Mar. 28, 2018, *available at* <https://www.nytimes.com/interactive/2018/04/05/climate/document-Samantha-Dravis-Letter.html>.

<sup>101</sup> Grandoni, *Washington Post*, Apr. 3, 2018.

previously expressed to OIG, Dr. Beck's appointment and conduct raised numerous ethics issues because of the significant overlap between the work she did for the American Chemistry Council ("ACC") before joining EPA and her policy work at EPA on related issues.<sup>102</sup> One of those issues involved Mr. Minoli's determination authorizing Dr. Beck to fully participate in a rulemaking involving her former employer going forward.<sup>103</sup> That determination failed to properly take into account that Dr. Beck personally authored comments submitted by ACC in the rulemaking, her central role at EPA in the rulemaking, ACC's significant financial interests in it, and whether alternative EPA expertise was available. Mr. Minoli's approval both undermined confidence in the integrity of that rulemaking process and raises further questions about the ethics process at EPA.

### **Retaliation Against EPA Employees**

These repeated cases of potential ethics violations are more than sufficient to raise serious concerns about EPA's ethics process and warrant a thorough investigation. Recent news reports alleging retaliation against several EPA staff members who voiced objections to improper expenditures and conduct by Administrator Pruitt and his staff is a further and deeply troubling cause for alarm. These allegations may indicate that EPA's ethics process is not simply broken, but has been compromised.

According to news reports, at least five EPA officials who pushed back against Administrator Pruitt's proposed \$100,000-a-month private jet membership, a requested bulletproof vehicle, and \$70,000 for a bulletproof desk for an officer stationed inside Administrator Pruitt's office were placed on "leave, reassigned or demoted."<sup>104</sup> Similarly, the former EPA deputy chief of staff for operations reportedly was fired or placed on administrative leave because he refused to retroactively sign off on first-class travel for a senior aide to Administrator Pruitt who accompanied him on the return trip from Morocco.<sup>105</sup> Another career EPA staffer reportedly was removed after he approved an internal report that "undermined" Administrator Pruitt's "claims that he needed around-the-clock bodyguards and other expensive security protection," after concluding that an "earlier assessment failed to identify credible direct threats against the administrator that would justify his heavy security spending."<sup>106</sup>

Government whistleblowers are protected from retaliation by statute.<sup>107</sup> Those protections cover disclosures made to a supervisor or higher manager alleging a violation of law,

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<sup>102</sup> Letter from Noah Bookbinder, CREW Executive Director, to EPA Inspector General Arthur A. Elkins, Jr., Oct. 31, 2017, available at <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2017/10/30210554/EPA-IG-Complaint-Nancy-Beck-10-31-17.pdf>.

<sup>103</sup> *Id.*

<sup>104</sup> Biesecker, *Associated Press*, Apr. 8, 2018.

<sup>105</sup> Alex Guillen, *Former EPA staffer: Refusal to OK first-class flight for Pruitt aide prompted firing*, *Politico*, Apr. 12, 2018, available at <https://www.politico.com/story/2018/04/12/former-epa-staffer-pruitt-first-class-478291>; Carper Letter.

<sup>106</sup> Emily Holden, *EPA removes staffer who OK'd report on Pruitt's security*, *Politico*, Apr. 10, 2018, available at <https://www.politico.com/story/2018/04/10/documents-contradict-epa-claims-threats-984459>.

<sup>107</sup> 5 U.S.C. § 2302(b)(8).

rule or regulation, or gross mismanagement, a gross waste of funds, or an abuse of authority.<sup>108</sup> Moreover, as the head of the agency, it is incumbent upon the Administrator to take every appropriate action to ensure that whistleblowers are protected from retaliation

If these allegations of retaliation are true, EPA employees may fear adverse consequences from reporting potentially unethical conduct or spending. Even worse, EPA ethics officials may fear providing honest and uninhibited advice and determinations. OIG should investigate these allegations to determine if Administrator Pruitt or those acting on his behalf have engaged in retaliation that would constitute a systemic abuse of authority. Furthermore, any review of the ethics process at EPA should take into consideration the possibility that the alleged retaliation may have compromised that process.

### Conclusion

The EPA's current process for managing ethics issues, particularly those arising from Administrator Pruitt's conduct, appears to be dysfunctional. By any reasonable measure, Administrator Pruitt seems to have repeatedly failed to adhere to the standards of ethical conduct, and those apparent violations should be investigated. More importantly, the frequency and quantity of these ethical issues raises serious concerns that the process by which ethics guidance is sought and provided is itself broken. Those concerns are aggravated by allegations of retaliation against employees who object to questionable ethical conduct by Administrator Pruitt and others. Accordingly, OIG should both thoroughly investigate the possible violations of the standard of ethical conduct and other laws, and broadly review EPA's ethics process to ensure it is operating to fulfill the critical mission of executive branch ethics programs of safeguarding and promoting public confidence in the integrity of government decision-making.

Sincerely,



Noah Bookbinder  
Executive Director



Ambassador (Ret.) Norman L. Eisen  
Chair

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<sup>108</sup> *Id.*