



citizens for responsibility
and ethics in washington

May 16, 2018

The Honorable Rod J. Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

Robert Khuzami
Deputy United States Attorney
United States Attorney's Office for the Southern District of New York
1 St. Andrew's Plaza
New York, N.Y. 10007

Re: Disclosure of Liabilities on President Donald J. Trump's 2017 Public Financial Disclosure Report

Dear Deputy Attorney General Rosenstein and Deputy United States Attorney Khuzami,

This letter supplements Citizens for Responsibility and Ethics in Washington's ("CREW") March 8, 2018 and May 3, 2018 letters requesting that the Department of Justice ("DOJ") and the Office of Government Ethics ("OGE") investigate and determine whether a surreptitious payment made to a third party shortly before the 2016 presidential election by President Donald J. Trump's personal attorney Michael Cohen constituted a loan to President Trump that he should have reported as a liability on his 2017 public financial disclosure ("2017 OGE 278") report,¹ and if President Trump knowingly and willfully failed to report it.²

In his 2018 public financial disclosure ("2018 OGE 278") report filed on May 15, 2018 with OGE, President Trump disclosed a liability – though only as a footnote while claiming it was "not required to be disclosed" – that he owed to Mr. Cohen in the amount of \$100,001 to \$250,000.³ This loan appears to be directly related to the \$130,000 payment Mr. Cohen made to

¹ See Donald J. Trump, Public Financial Disclosure Report, June 14, 2017, *available at* <https://oge.app.box.com/s/kz4qvbdbsbfrzq16msuo4zmth6rerh1c>.

² Letter to Deputy Attorney General Rod J. Rosenstein, Deputy United States Attorney Robert Khuzami and Acting OGE Director David J. Apol, May 3, 2018, *available at* <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2018/05/03162348/Trump-Loan-Complaint.pdf>; Letter to Deputy Attorney General Rod J. Rosenstein and Acting OGE Director David J. Apol, Mar. 8, 2018, *available at* <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2018/03/08223629/DOJ-OGE-letter-Trump-loan-3-8-18.pdf>. In an earlier letter, dated March 2, 2018, CREW requested that OGE exercise its oversight responsibilities to determine whether President Trump held a beneficial interest in Essential Consultants LLC, the entity through which the payment was made, that should have been reported as an asset on the OGE 278 report he filed in June 2017. Letter to Acting OGE Director David J. Apol, Mar. 2, 2018, *available at* <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2018/03/02181742/OGE-letter-Essential-Consultants-3-2-18.pdf>.

³ See Donald J. Trump, Public Financial Disclosure Report, May 15, 2018, at 45 *available at* <https://oge.app.box.com/v/Trump2018Annual278>.

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Stephanie Clifford (whose stage name is Stormy Daniels), and appears to demonstrate that the transaction constituted a liability that President Trump was required to report on his 2017 OGE 278 report, and that he knowingly failed to do so in violation of 18 U.S.C. § 1001 and the Ethics in Government Act of 1978 (“EIGA”).⁴ It is important to note that President Trump’s 2017 OGE 278 report covers liabilities he owed through May 2017, not just through the end of 2016.⁵

In his review of President Trump’s 2018 OGE 278 report, OGE Acting Director David J. Apol determined, contrary to the claim by President Trump that the loan did not need to be disclosed, “the information related to the payment made by Mr. Cohen is required to be reported.”⁶ OGE further noted that “the information provided meets the disclosure requirement for a reportable liability.”⁷ However, nothing in OGE’s note suggests that the information provided in this year’s OGE 278 report satisfies his obligations to provide the information in his 2017 OGE 278 report or absolves him of knowingly failing to report the liability in that report. Since Director Apol has rejected President Trump’s argument that it is not a “reportable liability,” his failure to disclose it on his 2017 OGE 278 report should be viewed as a violation of his reporting obligations.

The \$130,000 payment to Ms. Clifford was made using a bank account linked to Essential Consultants LLC, which was created by Mr. Cohen in October 2016.⁸ In a recent interview given by President Trump’s personal attorney Rudolph W. Giuliani, Mr. Giuliani admitted that President Trump reimbursed Mr. Cohen for a \$130,000 payment he made to Ms. Clifford.⁹ According to Mr. Giuliani, the payment to Ms. Clifford was “funneled” through Mr. Cohen’s law firm and “reimbursed” by President Trump over a “period of several months.”¹⁰ While “he didn’t know about the specifics of it,” Mr. Giuliani acknowledged that President Trump “did know about the general arrangement.”¹¹ Later, Mr. Giuliani attempted to clarify that the “money Trump paid to Cohen was for unspecified ‘expenses,’ and that the president was unaware that money would be going to Daniels.”¹²

⁴ 5 U.S.C. app. § 102(a)(4).

⁵ 2017 OGE 278, at 50 (note for Part 8, Liabilities, reads: “Reporting date for liabilities is May 31, 2017 per 5 CFR 2634.308(b)(3)”).

⁶ 2018 OGE 278, at 1.

⁷ *Id.*

⁸ Maggie Haberman, [Michael D. Cohen, Trump’s Longtime Lawyer Says He Paid Stormy Daniels Out of his Own Pocket](https://www.nytimes.com/2018/02/13/us/politics/stormy-daniels-michael-cohen-trump.html), *New York Times*, Feb. 13, 2018, available at <https://www.nytimes.com/2018/02/13/us/politics/stormy-daniels-michael-cohen-trump.html>.

⁹ [What Giuliani Said About Cohen’s Payment to Stormy Daniels](https://www.nytimes.com/2018/05/02/us/politics/rudy-giuliani-stormy-daniels-transcript.html), *New York Times*, May 2, 2018, available at <https://www.nytimes.com/2018/05/02/us/politics/rudy-giuliani-stormy-daniels-transcript.html>; Samuel Chamberlain and Paulina Dedaj, [Giuliani says Trump paid \\$130G to Cohen for ‘expenses’ over several months](http://www.foxnews.com/politics/2018/05/03/giuliani-says-trump-repaid-130g-to-cohen-over-several-months.html), *Fox News*, May 3, 2018, available at <http://www.foxnews.com/politics/2018/05/03/giuliani-says-trump-repaid-130g-to-cohen-over-several-months.html>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

In a follow up interview with the *New York Times*, Mr. Giuliani provided additional details about the loan repayment, including that President Trump reimbursed Mr. Cohen at a rate of \$35,000 a month for a total amount of \$460,000 to \$470,000.¹³ The *Washington Post* released a transcript in which Mr. Giuliani revealed that the repayments plus expenses and a fee took place over a period of time in 2017, beginning in January of last year, in which Mr. Giuliani stated that “Michael knew when he laid out the \$135,000 he’d get it back and the president was always going to make sure he got it back — and enough money to pay the taxes,” and that Mr. Cohen “earned a fee out of it.”¹⁴

According to Mr. Giuliani, President Trump had knowledge of the loan transaction and that Mr. Cohen would need to be reimbursed for the loan. Mr. Giuliani admitted that President Trump was “aware that Michael incurred expenses to help him” and of the “arrangement so that Michael knew he’d be reimbursed for it.”¹⁵

In yet another interview, Mr. Giuliani attempted to draw a distinction between reporting obligations for “loans” versus “legal expenses” by stating “you don’t include all legal fees or all legal payments on your financial disclosure form.”¹⁶ He also tried to further limit the extent of President Trump’s knowledge about the arrangement by stating, “I don’t think anyone believes that he knew about it at the time. I think there’s a question about when did he find out.”¹⁷

To maintain public confidence in the integrity of the federal government, EIGA requires public filers such as President Trump to report the “identity and category of value of the total liabilities owed to any creditor . . . which exceed \$10,000 at any time during the preceding calendar year.”¹⁸ The implementing regulations further require that each financial disclosure report “identify and include a brief description of the filer’s liabilities over \$10,000 owed to any creditor at any time during the reporting period, and the name of the creditors to whom such liabilities are owed.”¹⁹

¹³ Michael D. Shear and Maggie Haberman, *Giuliani Says Trump Repaid Cohen for Stormy Daniels Hush Money*, *New York Times*, May 2, 2018, available at <https://www.nytimes.com/2018/05/02/us/politics/trump-michael-cohen-stormy-daniels-giuliani.html>.

¹⁴ Robert Costa, *Transcript: Giuliani interview with The Washington Post*, *Washington Post*, May 3, 2018, available at https://www.washingtonpost.com/politics/transcript-giuliani-interview-with-the-washington-post/2018/05/03/a35c4a3c-4e9b-11e8-af46-b1d6dc0d9bfe_story.html?utm_term=.c755a119d6b2.

¹⁵ *Id.*

¹⁶ George Stephanopoulos, *‘This Week’ Transcript 5-6-18: President Trump’s personal attorney Rudy Giuliani and Stormy Daniels lawyer Michael Avenatti*, *ABC News*, May 6, 2018, available at <https://abcnews.go.com/Politics/week-transcript-18-president-trumps-personal-attorney-rudy/story?id=54962143>.

¹⁷ *Id.*

¹⁸ 5 U.S.C. app. § 102(a)(4).

¹⁹ 5 C.F.R. § 2634.305.

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OGE has consistently treated legal fees “like any other liability,” and “such fees” are “required to be reported unless they fall within one of the exceptions specifically enumerated in the statute.”²⁰ OGE noted that:

Nowhere in the statute or its legislative history can we find any indication that the terms “liabilities” and “creditor” were intended to be limited to cash loans or to be defined in a manner other than their ordinary usage. Liabilities are commonly considered to encompass any debt or financial obligation. Likewise, a creditor normally includes anyone to whom a debt is owed.²¹

Indeed, OGE specifically concluded that this liability must be reported.²²

The disclosure of the Cohen liability on his 2018 OGE 278 report constitutes additional evidence that the \$130,000 payment was a loan, and that President Trump likely violated federal law by failing to disclose it as a liability on his 2017 OGE 278 report, which covers liabilities incurred and owed in 2016 and up to May 31, 2017.²³ Indeed, in a May 16, 2018 letter to Deputy Attorney General Rosenstein referencing CREW’s prior letters on this matter, OGE Director Apol noted the disclosure of the liability on the President’s 2018 OGE 278 report as well as OGE’s conclusion that the liability was required to be disclosed because “you may find the disclosure relevant to any inquiry you may be pursuing regarding the President’s prior report that was signed on June 14, 2017.”²⁴

Failure to properly disclose information required to be reported on the OGE 278 can result in civil penalties and criminal prosecution. EIGA provides for civil penalties of up to \$50,000, and imprisonment of up to one year for knowingly and willfully failing to report required information.²⁵ Federal law further prohibits anyone from knowingly and willfully making “any materially false, fictitious, or fraudulent statement or representation” in any matter within the jurisdiction of the executive, legislative, or judicial branch, with violations punishable by up to five years in prison.²⁶

There is substantial evidence that President Trump had knowledge of the loan when he filed his 2017 OGE 278 report notwithstanding his failure to report it. Mr. Giuliani admitted as much by stating that President Trump was “aware that Michael incurred expenses to help him” and of the “arrangement so that Michael knew he’d be reimbursed for it,” and by acknowledging

²⁰ Letter from OGE Director Stephen D. Potts to a Designated Agency Ethics Official, OGE 94 x 11, May 25, 1994, available at <https://oge.gov/web/oge.nsf/Legal%20Advisories/BBCD2048C369D0B985257E96005FBD8C/%24FILE/6279065e8a994d3b9e1de5c413a76bc72.pdf?open>.

²¹ *Id.*

²² 2018 Trump OGE 278, at 1.

²³ 2017 Trump OGE 278, at 50.

²⁴ Letter from OGE Director David Apol to Deputy Attorney General Rod Rosenstein, May 16, 2018, available at <https://oge.app.box.com/v/OGELettertoDOJ>.

²⁵ 5 U.S.C. app. § 104(a)(1)-(2).

²⁶ 18 U.S.C. § 1001(a)(2).

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that President Trump started making repayments on the loan in January 2017. The Cohen liability reported on President Trump's 2018 OGE 278 report constitutes additional evidence that President Trump knowingly and willfully failed to disclose it on his 2017 OGE 278 report.

In light of President Trump's failure to report the \$130,000 payment as a loan on his 2017 OGE 278 in accordance with applicable law, we request that you immediately and thoroughly investigate these allegations.

Sincerely,



Noah Bookbinder
Executive Director



Ambassador (Ret.) Norman L. Eisen
Chair

cc: David J. Apol, Acting Director, U.S. Office of Government Ethics