

March 27, 2019

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

Re: Request for Investigations of Seven Termination Financial Disclosure Reports

Dear Director Rounds:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Office of Government Ethics (“OGE”) investigate whether seven former White House officials violated the Ethics in Government Act (“EIGA”) and OGE regulations by failing to disclose agreements for future employment in their termination financial disclosure reports (“termination reports”). CREW further requests that OGE investigate whether one of these former officials violated EIGA’s prohibition against receiving earned income and failed to disclose that income.

EIGA and OGE’s implementing regulations require covered individuals to report detailed financial information and business relationships in their termination reports, including any agreements and arrangements for future employment. CREW’s review of news articles, press releases, and campaign finance reports has revealed that the following former White House officials appear to have failed to disclose such agreements or arrangements for future employment: John McEntee, Marc Short, Katie Walsh, William Stepien, Paul Winfree, Reed Cordish, and Stefan Passantino. Mr. McEntee also appears to have violated EIGA’s prohibition against receiving outside earned income and the requirement that he disclose all non-government income in his termination report.

In addition, Mr. Passantino was serving as the Designated Agency Ethics Official (“DAEO”) for the White House and National Security Council (“NSC”) when five of the other former employees filed their termination reports,<sup>1</sup> and he personally certified three of them. The potential disclosure and ethics issues addressed in this complaint, as well as the White House’s apparent delay in naming a replacement for Mr. Passantino as DAEO, raise serious concerns about the White House’s government ethics program.

Accordingly, if OGE finds these officials failed to comply with disclosure and ethics requirements, CREW further requests that OGE undertake a comprehensive review to evaluate whether the White House is properly administering its government ethics program.

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<sup>1</sup> Office of Government Ethics, 2017 Agency Ethics Program Questionnaire: White House Office, *available at* <https://bit.ly/2T5GJBF> (listing Mr. Passantino as White House DAEO during 2017) (last accessed Mar. 15, 2019); Office of Government Ethics, 2017 Agency Ethics Program Questionnaire: National Security Council, <https://bit.ly/2UCd6o9> (listing Mr. Passantino as NSC DAEO during 2017) (last accessed Mar. 15, 2019).

## **Legal Background**

### *Disclosure of Agreements and Arrangements for Future Employment*

EIGA requires certain government employees to file public financial disclosure reports when they are new entrants to government service, annually, and when they terminate their government service.<sup>2</sup> In those reports, the filer must provide, among other things, “[a] description of the date, parties to, and terms of any agreement or arrangement with respect to . . . future employment.”<sup>3</sup> OGE’s regulations clarify that this requirement includes any agreement or arrangement “in existence at any time during the reporting period.”<sup>4</sup> A frequently asked questions page in OGE’s Public Financial Disclosure Guide further clarifies that public filers must disclose even informal employment arrangements in their financial disclosure reports.<sup>5</sup>

### *Disclosure Requirement for All Non-Government Income*

EIGA also requires filers to disclose the “source, type, and amount or value” of income aggregating more than \$200 received during the reporting period from any source other than the government.<sup>6</sup> Filers must disclose all types of non-government income.<sup>7</sup> The reporting period for a termination report includes any income received up to the date of filing the report.<sup>8</sup>

### *Prohibition Against Outside Earned Income*

OGE’s regulations further prohibit presidential appointees to full-time non-career positions from receiving earned income from any source other than the government for services provided during the employee’s appointment.<sup>9</sup> The prohibition applies if an appointee provided any services in exchange for the income while in government.<sup>10</sup>

### *OGE’s Review of Reports*

Although OGE has certified six of the seven termination reports discussed in this complaint,<sup>11</sup> EIGA requires that OGE address an individual’s failure to comply with disclosure requirements by notifying the individual and, “after any opportunity for personal consultation (if practicable),” indicating the steps needed to bring the individual’s report into compliance.<sup>12</sup>

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<sup>2</sup> 5 U.S.C. app. § 101(a), (d), (e); 5 C.F.R. § 2634.201(a), (b), (e).

<sup>3</sup> 5 U.S.C. app. § 102(a)(7)(A); 5 C.F.R. § 2634.306.

<sup>4</sup> *Id.*

<sup>5</sup> Office of Government Ethics, FAQs: Future Employment Arrangement, available at <https://bit.ly/2F1QKHU>.

<sup>6</sup> 5 U.S.C. app. § 102(a)(1)(A); 5 C.F.R. § 2634.302.

<sup>7</sup> 5 C.F.R. § 2634.302(a).

<sup>8</sup> *See* 5 U.S.C. app. § 102(c); 5 C.F.R. § 2634.310(c); *see also* Office of Government Ethics, The OGE Form 278e – Termination Report, available at <https://bit.ly/2tFIhmP>.

<sup>9</sup> 5 C.F.R. § 2635.804. An exception not relevant here applies to appointees whose rate of basic pay is less than the rate paid at GS-9, Step 1. *Id.*

<sup>10</sup> *See* 5 C.F.R. § 2635.804(c)(1).

<sup>11</sup> Neither OGE nor the White House has certified Mr. McEntee’s termination report.

<sup>12</sup> 5 U.S.C. app. § 106(b)(3).

Accordingly, if these officials failed to comply with their disclosure obligations, OGE may take steps to rectify those violations even after the employees have left government service.

### **Potential Violations**

#### **John McEntee, Former Special Assistant to the President and Personal Aide to the President**

John McEntee began working at the White House as a Special Assistant to the President and Personal Aide to the President at the beginning of the Trump Administration.<sup>13</sup> The news media reported Mr. McEntee left the White House on March 12, 2018 due to a problem with his security clearance.<sup>14</sup> On March 13, President Trump's campaign announced its hiring of Mr. McEntee as a Senior Advisor, with the press release noting that he would begin working for the campaign "in the coming days."<sup>15</sup>

Despite these developments, Mr. McEntee asserted in his termination report that his White House appointment did not terminate until March 30, 2018.<sup>16</sup> In that report, filed on July 27, 2018, Mr. McEntee also affirmatively indicated "none" in the data field for disclosing agreements and arrangements for future employment.<sup>17</sup>

The Trump campaign subsequently filed a report with the Federal Election Commission ("FEC") disclosing that it paid Mr. McEntee \$15,000 on March 23, 2018, and another \$7,000 on March 30, 2018.<sup>18</sup> In the FEC filing, the campaign described the "Purpose of Disbursement" as "payroll."<sup>19</sup> This description suggests that the payments were for services Mr. McEntee provided to the Trump campaign before he officially left the White House on March 30, 2018. Mr. McEntee did not disclose this income in his termination report. In an endnote to part 2 of the report, he wrote, "On the advice of counsel, I am not providing further information regarding additional sources of non-investment or non-employment income."<sup>20</sup>

Based on these facts, Mr. McEntee appears to have failed to disclose his employment arrangement with, and his income from, the Trump campaign on his termination report.<sup>21</sup> In

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<sup>13</sup> John McEntee, Public Financial Disclosure Report, Jan. 9, 2017, available at <https://bit.ly/2UJN2aI>.

<sup>14</sup> See, e.g., Michael C. Bender and Rebecca Ballhaus, [Trump's Personal Assistant Fired Over Security Issue](https://on.wsj.com/2H1TdD1), *Wall Street Journal*, Mar. 13, 2018, available at <https://on.wsj.com/2H1TdD1>; Michael D. Shear and Maggie Haberman, [John McEntee, Trump Aide, Is Forced Out Over Security Issue, but Joins Re-election Campaign](https://nyti.ms/2HwjSFj), *New York Times*, Mar. 13, 2018, available at <https://nyti.ms/2HwjSFj>.

<sup>15</sup> Donald J. Trump for President, Inc., [Trump Campaign Announces Two New Appointments](https://bit.ly/2tA2oCO), Mar. 13, 2018, available at <https://bit.ly/2tA2oCO>.

<sup>16</sup> John McEntee, Public Financial Disclosure Report, July 27, 2018, available at <https://bit.ly/2UJ7oB5> ("McEntee Termination Report").

<sup>17</sup> *Id.*, part 3.

<sup>18</sup> Donald J. Trump for President, Inc., [FEC Form 3P, April 2018 Quarterly Report, Amended](https://bit.ly/2SYqYfD), at 8634, July 15, 2018, available at <https://bit.ly/2SYqYfD>.

<sup>19</sup> *Id.*

<sup>20</sup> McEntee Termination Report, part 2. This is an unusual comment in a public financial disclosure report, and it is unclear if it is related to his income from the Trump campaign.

<sup>21</sup> Although there is a reporting exception for outside positions held with political campaigns, there is no such exception for reporting arrangements for future employment with political campaigns. Compare 5 U.S.C. app. § 102(a)(6)(A) with 5 U.S.C. app. § 102(a)(7).

addition, if, as the FEC report suggests, he performed services for the campaign prior to the termination of his presidential appointment, Mr. McEntee further appears to have violated the prohibition on receiving outside earned income.

Marc Short, Former Assistant to the President and Director of Legislative Affairs

Marc Short began working at the White House as the Director of Legislative Affairs on January 20, 2017.<sup>22</sup> On July 12, 2018, the University of Virginia announced that Mr. Short was joining its Miller Center as a Senior Fellow.<sup>23</sup> That same day, Phil Cox, a partner at Guidepost Strategies, issued a statement confirming that Mr. Short was joining the firm as a partner.<sup>24</sup> Despite these announcements, Mr. Short terminated his employment at the White House on July 20, 2018 according to the termination report he filed on August 15, 2018.<sup>25</sup> The report contained no reference to future employment arrangements with either the Miller Center or Guidepost Strategies.<sup>26</sup> Based on these facts, Mr. Short appears to have failed to comply with the requirement to disclose future employment arrangements in his termination report.<sup>27</sup>

Katie Walsh, Former Deputy Chief of Staff for Implementation

Katie Walsh began working at the White House as Deputy Chief of Staff for Implementation on January 20, 2017.<sup>28</sup> On March 30, 2017, the *Washington Post* reported that Ms. Walsh was “abruptly leaving her West Wing post” to join America First Policies (“AFP”).<sup>29</sup> That same day, Mike Shields, her then fiancé and an unpaid advisor to AFP,<sup>30</sup> tweeted that she was joining the group at the request of Reince Priebus, Steve Bannon, and Jared Kushner.<sup>31</sup> Ms. Walsh terminated her employment with the White House on March 31, 2017.<sup>32</sup> Despite Mr. Shields’ tweet and the news report, Ms. Walsh filed a termination report on July 25, 2017 in which she did not report any arrangements for future employment.<sup>33</sup> Based on these facts, Ms. Walsh appears to have failed to comply with the requirement to disclose a future employment arrangement in her termination report.

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<sup>22</sup> Marc Short, Public Financial Disclosure Report, Feb. 20, 2017, available at <https://bit.ly/2TgVsEX>.

<sup>23</sup> Miller Center, Marc Short to Join Miller Center as Senior Fellow, July 12, 2018, available at <https://bit.ly/2SQwjpK>.

<sup>24</sup> Matthew Nussbaum, Trump’s top Hill aide leaving White House amid Supreme Court battle, *Politico*, July 12, 2018, available at <https://politi.co/2uetIaB>.

<sup>25</sup> Marc Short, Public Financial Disclosure Report, Aug. 15, 2018, available at <https://bit.ly/2TV5DUd> (“Short Termination Report”).

<sup>26</sup> *Id.*, part 3.

<sup>27</sup> Mr. Short is returning to the White House in March 2019 to serve as the Vice President’s Chief of Staff. See Vice President Mike Pence (@vp), Twitter, Feb. 19, 2019, available at <https://bit.ly/2H0XnuS>.

<sup>28</sup> Katie Walsh, Public Financial Disclosure Report, Jan. 16, 2017, available at <https://bit.ly/2UFLQ8d>.

<sup>29</sup> Philip Rucker, Jenna Johnson, and Matea Gold, Senior aide Katie Walsh leaves White House to run pro-Trump outside group, *Washington Post*, March 30, 2017, available at <https://wapo.st/2twSt0N>.

<sup>30</sup> Shane Goldmacher, Trump’s political group plagued by power struggle, *Politico*, March 13, 2017, available at <https://politi.co/2Vh3vTY>.

<sup>31</sup> Mike Shields (@mshields007), Twitter, March 30, 2017, available at <https://bit.ly/2XiKQZp>.

<sup>32</sup> Katie Walsh, Public Financial Disclosure Report, July 25, 2017, available at <https://bit.ly/2W9fV0j> (“Walsh Termination Report”).

<sup>33</sup> *Id.*, part 3.

William Stepien, Former Deputy Assistant to the President and Director of Political Affairs

William Stepien began working at the White House as Political Director on January 21, 2017.<sup>34</sup> On October 31, 2018, *Politico* reported that Mr. Stepien was expected to leave the White House to join the Trump campaign.<sup>35</sup> On the morning of December 7, 2018, campaign manager Brad Parscale issued a press release announcing that Mr. Stepien would be joining the campaign.<sup>36</sup> Mr. Stepien terminated his employment with the White House on December 10, 2018.<sup>37</sup> Despite Mr. Parscale's announcement and the news report, Mr. Stepien did not report any arrangements for future employment in the termination report he filed on December 7, 2018.<sup>38</sup> Based on these facts, Mr. Stepien appears to have failed to comply with the requirement to disclose a future employment arrangement in his termination report.

Paul Winfree, Former Deputy Director of the Domestic Policy Council

Paul Winfree began working at the White House as Deputy Director of the Domestic Policy Council on January 20, 2017.<sup>39</sup> On December 10, 2017, *Axios* cited a "senior administration official" as saying that Mr. Winfree was leaving his White House post and that he was "telling friends and colleagues" that he planned to return to the Heritage Foundation.<sup>40</sup> Mr. Winfree terminated his employment with the White House on December 15, 2017,<sup>41</sup> and, shortly thereafter, began working for the Heritage Foundation.<sup>42</sup> Despite the news report and Mr. Winfree's apparent comments to friends and colleagues, Mr. Winfree did not disclose any arrangements for future employment in the termination report he filed on December 15, 2017.<sup>43</sup> Based on these facts, Mr. Winfree appears to have failed to comply with the requirement to disclose a future employment arrangement in his termination report.

Reed Cordish, Assistant to the President for Intragovernmental and Technology Initiatives

Reed Cordish began working at the White House as the Assistant to the President for Intragovernmental and Technology Initiatives on January 20, 2017.<sup>44</sup> On February 16, 2018, the *Washington Post* reported that Mr. Cordish was leaving the administration with plans to return to

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<sup>34</sup> William Stepien, Public Financial Disclosure Report, Jan. 10, 2017, available at <https://bit.ly/2Fm75Xs>.

<sup>35</sup> Alex Isenstadt, 'Moving day': White House staffers set to split for 2020 campaign, *Politico*, Oct. 31, 2018, available at <https://politi.co/2EWyHEv>.

<sup>36</sup> Brad Parscale (@parscale), Twitter, Dec. 7, 2018, 9:52 a.m., available at <https://bit.ly/2GYdRnL>.

<sup>37</sup> William Stepien, Public Financial Disclosure Report, Dec. 7, 2018, available at <https://bit.ly/2JJXu0X> ("Stepien Termination Report").

<sup>38</sup> *Id.*, part 3.

<sup>39</sup> Paul Winfree, Public Financial Disclosure Report, Jan. 11, 2017, available at <https://bit.ly/2Fopnre>.

<sup>40</sup> See Jonathan Swan, Exclusive: Policy official leaving White House, *Axios*, Dec. 10, 2017, available at <https://bit.ly/2Vf0vak>; see also Jeff Shesol, A Year Into the Trump Era, White House Staff Turnover Is "Off the Charts." *New Yorker*, Dec. 15, 2017, available at <https://bit.ly/2NA4bBf>

<sup>41</sup> Paul Winfree, Public Financial Disclosure Report, Dec. 15, 2017, available at <https://bit.ly/2Jodwxg> ("Winfree Termination Report").

<sup>42</sup> Paul Winfree (@paulwinfree), Twitter, Dec. 19, 2017, available at <https://bit.ly/2XqSxgz>.

<sup>43</sup> Winfree Termination Report, part 3.

<sup>44</sup> Reed Cordish, Public Financial Disclosure Report, Jan. 20, 2017, available at <https://bit.ly/2W9IYku>.



his family's real estate company,<sup>45</sup> where he is now a principal.<sup>46</sup> Mr. Cordish terminated his employment with the White House on February 21, 2018.<sup>47</sup> In the termination report he filed on March 22, 2018, Mr. Cordish affirmatively indicated "none" in the data field for disclosing agreements and arrangements for future employment.<sup>48</sup> Based on these facts, Mr. Cordish appears to have failed to comply with the requirement to disclose a future employment arrangement in his termination report.

*Stefan Passantino, Deputy Counsel to the President and Designated Agency Ethics Official*

Stefan Passantino began working at the White House as Deputy Counsel to the President on January 20, 2017.<sup>49</sup> On August 31, 2018, Mr. Passantino terminated his employment with the White House.<sup>50</sup> In his termination report, which he filed that same day, Mr. Passantino affirmatively indicated "none" in the data field for agreements and arrangements for future employment.<sup>51</sup> On September 5, 2018, just two business days later, the law firm of Michael Best & Friedrich LLP announced that Mr. Passantino had "joined the firm's Government Relations, Public Policy & Compliance Group in Washington, D.C."<sup>52</sup>

Mr. Passantino later revised his termination report, but he did not add any reference to an employment agreement with the law firm.<sup>53</sup> While it is possible Mr. Passantino did not enter into an agreement for future employment with the law firm until after he terminated his White House employment on August 31, 2018, the very close proximity between the date of his departure and the announcement of his hiring may suggest otherwise. If Mr. Passantino entered into an agreement with Michael Best & Friedrich before he ended his White House employment, he may have failed to comply with the requirement to disclose a future employment arrangement in his termination report.

**Request for Investigations**

Each of the situations discussed above warrants a review and investigation into whether the former employee complied with their disclosure obligations under EIGA and OGE's regulations. An additional investigation of Mr. McEntee is warranted to determine if he violated the prohibition against outside earned income.

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<sup>45</sup> Jonathan O'Connell, Trump tech adviser Reed Cordish is leaving the White House, *Washington Post*, Feb. 16, 2018, available at <https://wapo.st/2V186UP>.

<sup>46</sup> The Cordish Companies, Senior Executives, available at <https://bit.ly/2jkYvvq> (last accessed Feb. 25, 2019).

<sup>47</sup> Reed Cordish, Public Financial Disclosure Report, March 22, 2018, available at <https://bit.ly/2CtjhUz> ("Cordish Termination Report").

<sup>48</sup> *Id.*, part 3.

<sup>49</sup> Stefan Passantino, Public Financial Disclosure Report, Jan. 27, 2017, available at <https://bit.ly/2YgOvaW>.

<sup>50</sup> Stefan Passantino, Public Financial Disclosure Report, Aug. 31, 2018, available at <https://bit.ly/2TZoopu> ("Passantino Termination Report").

<sup>51</sup> *Id.*, part 3.

<sup>52</sup> Michael Best & Friedrich LLP, Michael Best Expands Political Law Practice in Washington, D. C. with Addition of Former White House Deputy Counsel, Sept. 5, 2018, available at <https://bit.ly/2PDTc9u>; see also Daniel Lippman, Former White House ethics lawyer joins Priebus law firm, *Politico*, Sept. 5, 2018, available at <https://politi.co/2SAowHY>.

<sup>53</sup> Passantino Termination Report, part 3.

Moreover, the pattern of apparent failures to disclose future employment agreements or arrangements raises systematic concerns regarding the White House ethics program. CREW's review revealed seven employees who may have violated their disclosure obligations, and there may be others. The involvement of Mr. Passantino and other White House ethics officials in these lapses heightens these concerns. As DAEO, Mr. Passantino was responsible for directing the ethics and financial disclosure programs of the White House and NSC.<sup>54</sup> Nevertheless, he personally certified three of these individuals' termination reports, despite their apparent failures to disclose future employment arrangements, and may have omitted an employment arrangement from his own financial disclosure report.<sup>55</sup> Other White House ethics officials similarly certified three of the remaining four termination reports.<sup>56</sup>

Further heightening concerns about the White House ethics program, the White House appears to have only recently filled the White House DAEO position that Mr. Passantino left vacant in August 2018. On March 20, 2019, OGE updated its DAEO list to reflect that Senior Associate Counsel to the President Scott Gast is the DAEO for the White House.<sup>57</sup> Until then, there was no indication in the six months since Mr. Passantino left the post that the White House had appointed a new DAEO. The White House's apparent indifference to the need for a DAEO suggests indifference to its ethics program as a whole.

For all these reasons, a comprehensive review may be needed to determine if the White House is properly administering its government ethics program.

### **Conclusion**

As many as seven outgoing White House officials, including former White House ethics official Stefan Passantino, may have failed to comply with their obligations to disclose arrangements for future employment in their termination reports. One of them, John McEntee, also apparently failed to disclose income from the Trump campaign prior to his termination. In addition, if Mr. McEntee provided any services in connection with that income, he likely violated the prohibition against outside earned income. CREW therefore respectfully requests that OGE investigate whether these possible violations occurred and, if so, take corrective action.

This pattern, along with the involvement of Mr. Passantino and the White House's delay in naming a new DAEO, also raises serious questions about the quality of the White House's ethics program. Accordingly, CREW respectfully requests that OGE consider conducting a comprehensive review of the White House's government ethics program.

CREW was able to identify several officials who appear to have omitted agreements for future employment from their termination reports by reviewing articles, press releases, and other public information. The public and OGE should not, however, have to rely on the media and

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<sup>54</sup> 5 C.F.R. § 2638.104(a), (c)(8).

<sup>55</sup> See Walsh Termination Report; Winfree Termination Report; Cordish Termination Report.

<sup>56</sup> See Short Termination Report; Stepien Termination Report; Passantino Termination Report.

<sup>57</sup> See Office of Government Ethics, DAEO List (entry for White House DAEO), <https://bit.ly/2TgAYjJ> (last updated Mar. 20, 2019). Mr. Gast certified three of the termination reports discussed in this complaint, including that of Mr. Passantino. See Passantino Termination Report; Short Termination Report; Stepien Termination Report.

Director Emory A. Rounds

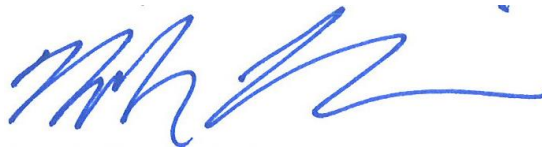
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watchdog groups to report information that the law requires to be disclosed. It is entirely possible that even more administration officials had agreements for future employment upon leaving government that were not made public. These omissions therefore may represent a larger issue within the White House ethics program. In addition to the disclosure issue, it is important for departing officials to report agreements for future employment so ethics officials may properly scrutinize the agreements for potential conflicts.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Noah Bookbinder', with a long horizontal flourish extending to the right.

Noah Bookbinder  
Executive Director

cc: White House Counsel Pat Cipollone