

November 25, 2019

Jeffrey A. Rosen
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Emory Rounds
Director
U.S. Office of Government Ethics, Suite 500
1201 New York Ave., N.W.
Washington, D.C. 20005

Re: Disclosure of Pro Bono Legal Services as a Gift and a Loan as an Asset on President Donald J. Trump's Public Financial Disclosure Reports

Dear Deputy Attorney General Rosen and Director Rounds,

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Department of Justice (“DOJ”) and the Office of Government Ethics (“OGE”) investigate and determine whether pro bono legal services received by President Donald J. Trump from his personal attorney, Rudy Giuliani, constituted a gift that he should have reported on his 2019 public financial disclosure report (“OGE 278”). CREW further requests DOJ and OGE determine whether a £40.6 million loan President Trump made to Trump International Golf Club Scotland Limited (“Trump Aberdeen”) should have been reported as an asset on his 2017, 2018, and 2019 OGE 278s.

These are not the first serious questions to be raised about President Trump’s OGE 278s. As CREW explained in previous letters, President Trump failed to report a loan he received from his then-personal attorney, Michael Cohen, on an earlier OGE 278.¹ That loan arose from a surreptitious payment Mr. Cohen made on behalf of President Trump to Stephanie Clifford shortly before the 2016 election. After reviewing the matter, OGE determined that President

¹ Letter from CREW to Deputy Attorney General Rod J. Rosenstein and Deputy United States Attorney Robert Khuzami, Apr. 9, 2019, *available at* <https://bit.ly/2MWcSJo>; Letter from CREW to Deputy Attorney General Rod J. Rosenstein and Deputy United States Attorney Robert Khuzami, May 16, 2018, *available at* <https://bit.ly/2Txp5He>; Letter from CREW to Deputy Attorney General Rod J. Rosenstein, Deputy United States Attorney Robert Khuzami and Acting Office of Government Ethics Director David J. Apol, May 3, 2018, *available at* <https://bit.ly/2DwvV65>; Letter from CREW to Deputy Attorney General Rod J. Rosenstein and Acting OGE Director David J. Apol, Mar. 8, 2018, *available at* <https://bit.ly/2Th2nPC>. *See also* Letter from CREW to Acting OGE Director David J. Apol, Mar. 2, 2018, *available at* <https://bit.ly/2CV3nOe>.

Trump was required to report the \$130,000 payment made by Mr. Cohen as a liability on his 2017 OGE 278 and referred the matter to DOJ for consideration.²

If the pro bono legal services constitute a reportable gift received from Mr. Giuliani and the loan to Trump Aberdeen constitutes a reportable asset, President Trump seemingly violated federal law by failing to report these items on his OGE 278s. Failure by President Trump to report required information on his OGE 278 undermines the integrity of the public financial disclosure reporting process. An investigation is necessary to preserve the integrity of that system and maintain public confidence in the government's ability and willingness to enforce financial disclosure requirements mandated by the Ethics in Government Act of 1978 ("EIGA") against our nation's highest office holder.³

Background

Gift of Pro Bono Legal Services Received from Rudy Giuliani

Based on public statements by Mr. Giuliani and his attorney, it appears President Trump received a gift of pro bono legal services from Mr. Giuliani during the time period covered by his 2019 OGE 278.

Mr. Giuliani has repeatedly acknowledged providing pro bono legal services to President Trump to the news media.⁴ In addition, in a November 2018 proceeding in his divorce from Judith Giuliani, his lawyer similarly represented in New York state court that Mr. Giuliani provided those legal services for free.⁵ The exact date on which Mr. Giuliani began to provide free legal services to President Trump has not been definitively established, but the arrangement appears to have started around April or May 2018. The *New York Times* first reported that Mr. Giuliani had joined President Trump's legal team on April 19, 2018, noting that Mr. Giuliani was being hired to "'quickly' resolve the special counsel investigation into Russian election

² Letter from Acting OGE Director David J. Apol to Deputy Attorney General Rod J. Rosenstein, May 16, 2018, available at <https://bit.ly/2JnW1Ke>.

³ 5 U.S.C. app. §§ 101-11.

⁴ See, e.g., Luppe B. Luppen and Hunter Walker, 'The Wild West': Questions surround Trump legal team payments, *Yahoo News*, Oct. 29, 2019 ("In an interview earlier this month with Yahoo News, Giuliani responded with an unequivocal 'Yes, sir' when asked if he is representing Trump pro bono, including covering expenses."), available at <https://yhoo.it/36qiwJm>; Lachlan Markay, Dems Want to Know: Who Paid Rudy, *Daily Beast*, Oct. 10, 2019 ("In an interview with The Daily Beast this week, Giuliani steadfastly denied that he was paid for any work he did in Ukraine, saying that he helped Trump on a 'pro bono' basis."), available at <https://bit.ly/2r6CVTL>; Priscilla DeGregory, Rudy Giuliani allegedly losing money while working for Trump, *New York Post*, July 25, 2019 (Quoting Giuliani asserting: "I had decided to advise President Trump for free because I was outraged at how he was being very unfairly treated."), available at <https://bit.ly/325GXzf>.

⁵ John Chandler and Dareh Gregorian, Trump lawyer Rudy Giuliani, in divorce court, is accused of spending \$12K on cigars, *NBC News*, Nov. 7, 2018 ("[Justice] Katz asked Giuliani why he would represent Trump for nothing, given that the president's other lawyers in the Russia probe are getting paid. Giuliani's lawyer, Faith Miller, said he was doing so because of 'a 30-year relationship with Mr. Trump.'"), available at <https://nbcnews.to/2oOGMUN>.

interference and possible ties to Trump associates.”⁶ Subsequently, Mr. Giuliani asserted that he had started working for President Trump for free before his divorce papers were filed,⁷ which occurred on April 4, 2018.⁸ Mrs. Giuliani believes that Mr. Giuliani started working for President Trump pro bono around the same time he left his law firm in May 2018.⁹

While in private practice, Mr. Giuliani was highly paid for his legal services. According to Mrs. Giuliani’s attorneys, Mr. Giuliani reportedly earned \$7.9 million in 2016 and \$9.5 million in 2017.¹⁰ In 2018, the year in which he began to work for President Trump, Mr. Giuliani’s “earnings dipped to \$6.8 million.”¹¹

All these reports indicate President Trump first received pro bono legal services from Mr. Giuliani beginning around April or May 2018. However, even though he certified that his report was “complete and correct,” President Trump reported receiving no gifts during calendar year 2018 on his OGE 278 filed May 15, 2019.¹²

£40.6 Million Loan to Trump Aberdeen from President Trump

President Trump also appears to have personally made a large loan to Trump Aberdeen, which he held as an asset during the periods covered by his 2017, 2018, and 2019 OGE 278s.

President Trump retains a beneficial ownership interest in Trump Aberdeen through DJT Holdings Managing Member LLC,¹³ which, in turn, is held in the Donald J. Trump Revocable Trust (“DJT Revocable Trust”).¹⁴ As a private limited company registered in Scotland, Trump Aberdeen files financial statements with United Kingdom authorities through Companies House.¹⁵ Those financial statements show that President Trump is also Trump Aberdeen’s largest long-term creditor. In 2006,¹⁶ President Trump appears to have made an initial loan of £6.1 million to Trump Aberdeen, which, as disclosed in the company’s United Kingdom financial

⁶ Maggie Haberman and Michael S. Schmidt, Giuliani to Join Trump’s Legal Team, *New York Times*, Apr. 19, 2018, available at <https://www.nytimes.com/2018/04/19/us/politics/giuliani-trump.html>.

⁷ DeGregory, *New York Post*, July 25, 2019.

⁸ Emily Heil, Judith Giuliani files for divorce from Rudy Giuliani, *Washington Post*, Apr. 4, 2018, available at <https://wapo.st/2qX90gq>; Emily Smith and Julia Marsh, Rudy and Judith Giuliani to divorce, *Page Six*, Apr. 4, 2018, available at <https://pge.sx/2CpeeUF>.

⁹ Sarah Maslin Nir, Giuliani Divorce: It’s Ugly, It’s Operatic. What Did You Expect?, *New York Times*, Sept. 13, 2019, available at <https://nyti.ms/36oVv9I> (reporting that Mrs. Giuliani believes Mr. Giuliani starting working pro bono for President Trump a month after the divorce papers were filed so as to reduce future alimony support).

¹⁰ *Id.*

¹¹ *Id.*

¹² Donald J. Trump, Public Financial Disclosure Report, May 15, 2019, part 9, (“2019 Donald J. Trump Public Financial Disclosure Report”) available at <https://bit.ly/2WhTs0Q>.

¹³ *Id.*, part 2, item 069, Exhibit A, items 297, 437.

¹⁴ *Id.*, Exhibit A, item 43.

¹⁵ Companies House Website, About us, available at <https://www.gov.uk/government/organisations/companies-house/about>.

¹⁶ Trump International Golf Club Scotland Limited, Financial Statement for the period ending 31 December 2006 (“2006 Financial Statement”), available at [2006 Financial Statement PDF](#).

statements, he added to over a 10-year period. The outstanding loan amount as of the end of 2018 was £40.6 million,¹⁷ approximately \$51.8 million in U.S. dollars.¹⁸

The financial statements strongly suggest that the loan is a personal loan from President Trump. In its 2006 through 2008 financial statements, Trump Aberdeen reported the loan as a related party transaction with “Mr DJ Trump, director,” personally identifying him by name and position.¹⁹ For years 2009 through 2012, Trump Aberdeen made no specific reference in its financial statements to President Trump’s loan as a related party transaction.²⁰ For 2013 and 2014, however, Trump Aberdeen once again reported the loan as a related party transaction and once again identified “Mr DJ Trump, director” by name and position.²¹ For 2015, Trump Aberdeen reported the loan as a related party transaction with a “director,” but did not identify President Trump by name.²²

After President Trump was elected, Trump Aberdeen reported the loan as a related party transaction and again identified the loan holder personally by name. In its 2016 and 2017 financial statements, Trump Aberdeen reported the £40,616,321 loan as a related party transaction with “Mr DJ Trump.”²³ In addition, for 2017, Trump Aberdeen reported a new loan and related party transaction with DJT Holdings LLC, one of the holding companies that comprise the Trump Organization.²⁴

In its 2018 financial statement, Trump Aberdeen again reported the £40,616,321 loan as a related party transaction with “Mr DJ Trump” as a former director and also reported an increase in the DJT Holdings LLC loan amount from £1,306,470 to £2,492,120.²⁵

¹⁷ Trump International Golf Club Scotland Limited, Financial Statements for the period ending 31 December 2018 (“2018 Financial Statement”), at 25, *available at* [2018 Financial Statement PDF](#).

¹⁸ On December 31, 2018, the conversation rate was approximately 1 GBP to 1.2760208916 USD. *See* <https://www.xe.com/currencytables/?from=GBP&date=2018-12-31>.

¹⁹ 2006 Financial Statement, at 4; Trump International Golf Club Scotland Limited, Financial Statement for the period ending 31 December 2007, at 4, *available at* [2007 Financial Statement PDF](#); Trump International Golf Club Scotland Limited, Financial Statement for the period ending 31 December 2008, *available at* [2008 Financial Statement PDF](#).

²⁰ Trump International Golf Club Scotland Limited, Financial Statement for the period ending 31 December 2009, *available at* [2009 Financial Statement PDF](#); Trump International Golf Club Scotland Limited, Financial Statement for the period ending 31 December 2010, *available at* [2010 Financial Statement PDF](#); Trump International Golf Club Scotland Limited, Financial Statement for the period ending 31 December 2011, *available at* [2011 Financial Statement PDF](#); Trump International Golf Club Scotland Limited, Financial Statement for the period ending 31 December 2012, *available at* [2012 Financial Statement PDF](#).

²¹ Trump International Golf Club Scotland Limited, Financial Statement for the period ending 31 December 2013, at 18, *available at* [2013 Financial Statement PDF](#); Trump International Golf Club Scotland Limited, Financial Statement for the period ending 31 December 2014, at 17, *available at* [2014 Financial Statement PDF](#).

²² Trump International Golf Club Scotland Limited, Financial Statement for the period ending 31 December 2015, at 22, *available at* [2015 Financial Statement PDF](#).

²³ Trump International Golf Club Scotland Limited, Financial Statement for the period ending 31 December 2016, at 22, *available at* [2016 Financial Statement PDF](#); Trump International Golf Club Scotland Limited, Financial Statement for the period ending 31 December 2017, at 25, *available at* [2017 Financial Statement PDF](#).

²⁴ *Id.*

²⁵ 2018 Financial Statement, at 25.

President Trump is named personally as a related party in most of Trump Aberdeen's financial statements, including in its three most recent statements. This treatment contrasts with Trump Aberdeen's reporting of the loan it received from DJT Holdings LLC, which identifies the lender by its company's name. The differing treatment indicates that the £40,616,321 business loan is owed to President Trump personally rather than to a company within the Trump Organization.

Even though the £40,616,321 loan is attributed to President Trump by name, no loan to Trump Aberdeen was reported by President Trump as an asset on his 2017,²⁶ 2018,²⁷ or 2019 OGE 278s.²⁸

Potential Violations

To maintain public confidence in the integrity of the federal government, EIGA requires public filers such as President Trump to report the "source, a brief description, and the value of all gifts aggregating more than minimal value . . . received from any source other than a relative . . . during the preceding calendar year."²⁹ The implementing regulations require public filers to report the "identity of the source, a brief description, and the value of all gifts aggregating more than \$390 in value which are received by the filer during the reporting period from any one source."³⁰

EIGA and the implementing regulations similarly require reporting of any "interest in property" held by the public filer "in a trade or business, or for investment or the production of income, which has a fair market value which exceeds \$1,000 as of the close of the preceding calendar year."³¹

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 not to exceed \$50,000, and imprisonment of up to one year for knowingly and willfully failing to report required information.³² 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.³³

OGE regulations define a "gift" as a "payment, advance, forbearance, rendering, free attendance at an event, deposit of money, or anything of value, unless consideration of equal or

²⁶ 2017 Donald J. Trump Public Financial Disclosure Report, June 14, 2017, available at <https://bit.ly/2sBHq7b>.

²⁷ 2018 Donald J. Trump, Public Financial Disclosure Report, May 15, 2018, available at <https://bit.ly/2JnvkHW>.

²⁸ 2019 Donald J. Trump Public Financial Disclosure Report.

²⁹ 5 U.S.C. app. § 102(a)(2)(A).

³⁰ 5 C.F.R. § 2634.304(a).

³¹ 5 U.S.C. app. § 102(a)(3); 5 C.F.R. § 2634.301(a)-(b).

³² 5 U.S.C. app. § 104(a)(1)-(2).

³³ 18 U.S.C. § 1001(a)(2).

greater value is received by the donor.”³⁴ The regulations make clear that the term “gift” includes “services.”³⁵ As such, pro bono legal services are to be reported as a gift when the aggregated value of the services received by the filer exceeds \$390 during the calendar year covered by the reporting period.³⁶ For President Trump’s 2019 OGE 278, the reporting period for gifts received was calendar year 2018.³⁷

Based on the hourly billable rate charged by major law firms, in some cases more than \$1,000 per hour,³⁸ the value of Mr. Giuliani’s legal services to President Trump clearly would exceed \$390. Soon after he began representing President Trump, Mr. Giuliani admitted that his work for President Trump in connection with Special Counsel Robert S. Mueller’s investigation amounted to a “full-time job.”³⁹ Indeed, the actual value of Mr. Giuliani’s legal services with regard to the Mueller Investigation is almost certainly significantly higher than \$390, based on Mr. Giuliani’s participation in meetings and negotiations with the Special Counsel’s office,⁴⁰ his media appearances and research and preparation work provided in advance of those appearances,⁴¹ as well as the extensive behind-the-scenes work necessary to keep up with the progress of that investigation and to then review and analyze the substance of the Mueller Report itself. In addition to providing legal services for the Mueller Investigation, Mr. Giuliani acknowledged that he began to provide “unpaid Ukrainian work for Trump” in November 2018.⁴²

Based on Mr. Giuliani’s own admission, President Trump received free legal services from him. Beginning around April 2018, these services were provided throughout the year and were almost certainly worth more than \$390 in aggregate value. As a result, President Trump was required to report the source, value, and a brief description of the pro bono legal services he

³⁴ 5 C.F.R. § 2634.105(h).

³⁵ 5 C.F.R. § 2635.203(b).

³⁶ 5 C.F.R. § 2634.304(a); 5 C.F.R. § 2634.304(d) (“Any gift or reimbursement with a fair market value of \$156 or less need not be aggregated for purposes of the reporting rules of this section.”).

³⁷ 5 C.F.R. § 2634.310(a).

³⁸ See Vanessa O’Connell, Big Law’s \$1,000-Plus an Hour Club, *Wall Street Journal*, Feb. 23, 2011, available at <https://on.wsj.com/32o9GZz>.

³⁹ Robert Costa and John Wagner, Giuliani parts ways with law firm, citing ‘pressing demands’ of client Trump, *Washington Post*, May 10, 2018, available at <https://wapo.st/2Cb9VfB> (“‘This is a full-time job working for the president, and we’ve got to figure this out and get this over with,’ Giuliani said. ‘That’s why the timing is right.’”); Michael S. Schmidt and Maggie Haberman, Giuliani’s Law Firm Undercuts His Statements as They Part Ways, *New York Times*, May 10, 2018, available at <https://nyti.ms/33c75Tz> (“‘After recognizing that this work is all consuming and is lasting longer than initially anticipated, Rudy has determined it is best for him to resign,’ said the firm’s chairman, Richard A. Rosenbaum.”).

⁴⁰ Robert Costa and Carol D. Leonnig, Giuliani reopens negotiations about presidential interview with Mueller, but cautions special counsel that Trump remains resistant, *Washington Post*, Apr. 25, 2018, available at <https://wapo.st/2WHSJYv>; Maggie Haberman, Giuliani, in Meeting With Mueller’s Office, Is Said to Be Negotiating Trump Interview, *New York Times*, Apr. 25, 2018, available at <https://nyti.ms/2WIKBHF>.

⁴¹ See, e.g., Rudy Giuliani on Michael Cohen tape fallout, Mueller probe, Sean Hannity Interview with Rudy Giuliani, *Fox News*, July 25, 2018, available at <https://video.foxnews.com/v/5813881217001/#sp=show-clips>.

⁴² Rosalind S. Helderman, Tom Hamburger, Paul Sonne, and Josh Dawsey, Impeachment inquiry puts new focus on Giuliani’s work for prominent figures in Ukraine, *Washington Post*, Oct. 2, 2019, available at <https://wapo.st/32aQDSc>.

received from Mr. Giuliani on his 2019 OGE 278.⁴³ President Trump's failure to do so appears to violate federal law.

President Trump likewise was required to report the £40.6 million loan he made to Trump Aberdeen as an asset on his 2017, 2018, and 2019 OGE 278s.⁴⁴ OGE guidance makes clear that an OGE 278 filer must:

Report a loan made to another party if the value of the loan was more than \$1,000 at the end of the reporting period or if more than \$200 in income was received during the reporting period. The other party may be either a person or an entity.⁴⁵

As noted above, the loan owed by Trump Aberdeen has a value of approximately \$51.8 million, and therefore clearly exceeds the \$1,000 reporting threshold.

Trump Aberdeen's financial statements name "Mr DJ Trump" personally as the related party creditor for purposes of the £40,616,321 loan, strongly suggesting that President Trump made the loan to Trump Aberdeen personally, rather than through DJT Holdings LLC or another company within the Trump Organization.⁴⁶ As a result, President Trump's failure to report the loan as an asset on his 2017, 2018, and 2019 OGE 278s appears to violate federal law.

Conclusion

President Trump's apparent failure to report the gift of pro bono legal services from his personal attorney, Mr. Giuliani, on his 2019 OGE 278, and the £40,616,321 loan to Trump Aberdeen as an asset on his 2017, 2018 and 2019 OGE 278s, seemingly violates federal law and undermines the integrity of the public financial disclosure reporting process. The EIGA requires high-level federal officials to disclose publicly their personal financial interests, to "ensure confidence in the integrity of the Federal Government by demonstrating that they are able to carry out their duties without compromising the public trust."⁴⁷

An investigation by DOJ and OGE is necessary to protect the integrity of the public financial disclosure system and uphold public confidence in the government's ability and willingness to enforce EIGA-mandated disclosure requirements against President Trump. To further ensure public confidence in the integrity of government ethics programs and enforcement processes, any investigation into these matters should ascertain if President Trump's OGE 278s are "complete and correct" by also determining if similar gifts of pro bono legal services were

⁴³ 5 U.S.C. app. § 102(a)(2)(A); 5 C.F.R. § 2634.304(a).

⁴⁴ 5 U.S.C. app. § 102(a)(3); 5 C.F.R. § 2634.301(a)-(b).

⁴⁵ Public Financial Disclosure Guide, Dec. 2018, at 176, available at <https://bit.ly/2Mnn3nT>.

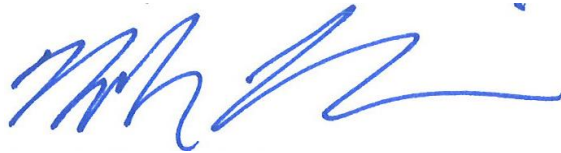
⁴⁶ If the loan was made by one of the companies that comprise the Trump Organization, President Trump would not be required to report it as an underlying asset, provided that a description of the business is provided and the asset is not unrelated to the business. See Public Financial Disclosure Guide, at 63, 139-140.

⁴⁷ 5 C.F.R. § 2634.3104(a)-(b).

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received by President Trump from other attorneys and if President Trump made similar personal loans to other companies, which likewise should have been reported on his OGE 278s.

Sincerely,



Noah Bookbinder
Executive Director



Virginia Canter
Chief Ethics Counsel

cc: Geoffrey S. Berman, U.S. Attorney for the Southern District of New York