

March 27, 2020

The Honorable Pat Cipollone
White House Counsel
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. Cipollone:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that you take all necessary steps to ensure that a “shadow task force” reportedly being used by Senior White House Advisor Jared Kushner to deal with the economic and health consequences of the coronavirus pandemic complies fully with all laws, including the Presidential Records Act (“PRA”) and the Federal Advisory Committee Act (“FACA”). Mr. Kushner’s shadow task force appears to be violating key aspects of the PRA, and his use of it implicates the FACA’s public transparency provisions. The extraordinary measures needed to combat the coronavirus pandemic make these transparency and accountability requirements even more important.

According to recent press reports, Mr. Kushner has assembled a team of allies within the government and with representatives from private industries to work with the administration’s official coronavirus task force.¹ Other officials involved in the administration’s response to the coronavirus have called this team a “shadow task force” that issues requests “they interpret as orders they must balance with regular response efforts.”² Of particular concern, these outside advisers do not appear to be following proper governmental protocols. For example, they are using private email addresses to email large groups of government employees, creating security concerns and sowing further confusion.³

The PRA imposes on the President and his staff, including Mr. Kushner, the mandatory obligation to document, preserve, and maintain as presidential records “the activities, deliberations, decisions, and policies that reflect the performance of the President’s constitutional, statutory, or other official or ceremonial duties[.]”⁴ 44 U.S.C. § 2203. The

¹ Yasmeen Abutaleb, Ashley Parker, and Josh Dawsey, Kushner coronavirus team sparks confusion, plaudits inside White House response efforts, *Washington Post*, Mar. 18, 2020, <https://wapo.st/2xpfsQQ>; see also Jonathan Karl, Jordyn Phelps, Katherine Faulders, and John Santucci, Trump considering loosening coronavirus guidelines amid economic fallout, *ABC News*, Mar. 23, 2020 (“While Vice President Mike Pence’s team is leading the coronavirus task force, there is also a pseudo-operation being led by the president’s son-in-law and senior adviser Jared Kushner.”), <https://abcn.ws/3bhZINY>; Carol E. Lee, Kristen Welker, and Monica Alba, Trump’s tone veers wildly under pressure from coronavirus, *NBC News*, Mar. 20, 2020 (“There is some frustration within the administration that Kushner’s involvement has created a parallel task force that’s confusing the process at a time when the president can’t afford confusion.”), <https://nbcnews.to/2WMVkJCu>.

² Abutaleb, Parker, and Dawsey, *Washington Post*, Mar. 18, 2020.

³ *Id.*

activities of the shadow task force fall squarely within these requirements, as the group reportedly is working in tandem with the White House to develop and implement federal strategies to address the coronavirus pandemic. Yet, despite the critical work they are performing, task force members are communicating through private email accounts with no assurance their communications are being preserved as presidential records. The confusion over the shadow task force's role, and even who its members are,⁴ reinforces the conclusion that the White House is not creating and maintaining accurate and complete records of the shadow task force's activities in contravention of the PRA.

The reported activities of this shadow task force also appear to implicate the disclosure provisions of the FACA, which are triggered whenever a committee within the Executive Office of the President is advising the President and is not "composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government." 5 U.S.C. App. § 3(2). The FACA's disclosure provisions require such committees to make publicly available their "records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by" them. *Id.* § 10(b). Such committees also must: file a charter, provide notice of their meetings in the Federal Register, hold public meetings, and document each meeting with detailed minutes. *Id.* §§ 9(c); 10(a)(1), (2), (b), and (c); and 11. Further, the FACA requires advisory committees to be "fairly balanced in terms of the points of view represented," and prohibits them from being "inappropriately influenced by the appointing authority or by any special interest." *Id.* §§ 5(b)(2), (3), and (c).

As reported, the shadow task force includes both industry representatives and government officials deemed by Mr. Kushner to be his allies.⁵ If this reporting is accurate, Mr. Kushner's use of a committee composed of federal employees and non-governmental members to solicit advice on how the White House should address the coronavirus pandemic implicates the FACA. The failure of the White House to comply with any of the FACA's requirements leaves the public in the dark about the advice the shadow task force has rendered and whether the committee is "fairly balanced" as the statute requires.

We recognize the extraordinary emergency our nation faces and the need for the federal government to act quickly and decisively. At the same time, however, the need for transparency could not be greater. Americans need to know that our government is acting in our best interests; they need the kind of reassurance that full transparency in how and what the White House is doing brings. Of equal importance, we must have access in the future to a full record of how the President and his staff handled this crisis to learn from any mistakes made and improve on how we address future pandemics. Now, more than ever, we must be vigilant in complying with laws like the PRA and the FACA that were enacted to protect our nation's interest in transparency and a full historic record. We therefore respectfully request that you

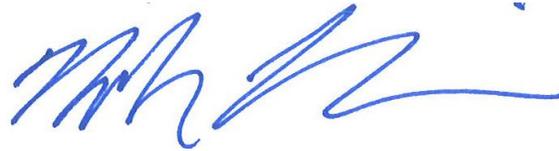
⁴ See, e.g., *id.* ("We don't know who these people are," one senior official said. "Who is this? We're all getting these emails.").

⁵ *Id.*

Hon. Pat Cipollone
March 27, 2020
Page 3

ensure that the shadow task force complies immediately and fully with its statutory requirements under the PRA and FACA.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Noah Bookbinder', with a stylized flourish at the end.

Noah Bookbinder
Executive Director