



February 13, 2017

The Honorable Jason Chaffetz
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
United States House of Representatives
2471 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Chaffetz and Ranking Member Cummings:

I am in receipt of your letter dated February 9, 2017, requesting that the U.S. Office of Government Ethics (OGE) review statements made by Kellyanne E. Conway regarding the business interests of the President's daughter, act promptly on any findings, and report back to the Committee with a recommendation for disciplinary action if warranted.¹ Prior to receiving your letter, OGE had begun consulting with the White House regarding this matter, pursuant to OGE's regulations for addressing potential violations by individual employees of the executive branch.² This letter is to explain the applicable legal process and to confirm that OGE will take the actions you request in your letter.

As you know, Congress has not provided OGE with any actual investigative authority or resources for hiring investigators. Unlike the Committee, OGE cannot issue subpoenas, question witnesses, compel the production of documents, or take action against individuals who refuse to cooperate.³ Unlike employing federal agencies, OGE cannot take disciplinary action against an executive branch employee other than an OGE employee.⁴ Thus, OGE is limited with respect to the actions it can take.

When OGE has reason to believe that an employee may have violated the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct), the law

¹ OGE received a similar letter from Representative Ted W. Lieu, as well as a separate letter signed by 42 Members of Congress.

² See 5 C.F.R. part 2638, subpart E.

³ See 5 U.S.C. app. § 402.

⁴ See *id.*

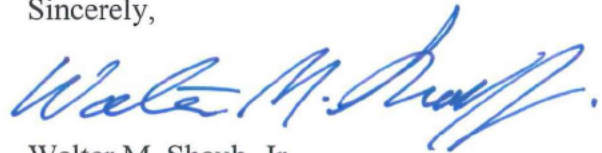


authorizes OGE to make only an informal recommendation that the employing agency investigate the matter and consider taking disciplinary action against the employee.⁵ In the enclosed letter to the Designated Agency Ethics Official for the White House, OGE exercises this authority and requests a response by February 28, 2017.

Only in the event that this informal process fails to resolve the matter does the law authorize OGE to recommend disciplinary action.⁶ Even in that case, however, Congress limited OGE's authority by requiring that, before OGE may make a recommendation, OGE must provide the employee with written notice of the alleged violation and an opportunity to respond either orally or in writing.⁷ Congress also required OGE to establish a formal procedure for the employee's response, which OGE has established through regulations that provide the employee 30 days to respond.⁸ Thereafter, OGE's General Counsel is required to provide OGE's Director with written findings and recommendations, which the Director must carefully consider before issuing a nonbinding recommendation that the employing agency take disciplinary action against the employee.⁹ OGE is also authorized to notify the President if the agency fails to take appropriate disciplinary action; however, such notice would be ineffective in this case because any decision not to take disciplinary action will have been made by the President.¹⁰

OGE will move deliberately to complete this process as expeditiously as possible. As explained above, however, completing the legal process that Congress established for OGE will likely take until late April or early May, due to the legally mandated timeframes involved. OGE will report back to you as promptly as possible thereafter.

Sincerely,



Walter M. Shaub, Jr.
Director

Enclosure

⁵ 5 U.S.C. app. § 402(f)(2)(A)(ii)(I); 5 C.F.R. § 2638.503.

⁶ 5 U.S.C. app. § 402(f)(2)(B); 5 C.F.R. § 2638.504.

⁷ 5 U.S.C. app. § 402(f)(2)(B)(ii)(I); 5 C.F.R. § 2638.504(b)(1).

⁸ 5 U.S.C. app. § 402(f)(2)(B)(ii)(II); 5 C.F.R. § 2638.504(c).

⁹ 5 U.S.C. § 402(f)(2)(A)(iv)(I); 5 C.F.R. § 2638.504(d), (e).

¹⁰ 5 U.S.C. § 402(f)(2)(A)(iv)(II); 5 C.F.R. § 2638.504(e)(2).