

THE WHITE HOUSE

WASHINGTON

October 10, 2017

The Honorable Trey Gowdy
Chairman
The Honorable Elijah E. Cummings
Ranking Member
United States House of Representatives
Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Gowdy and Ranking Member Cummings:

Thank you for your letter of September 26, 2017, requesting information about Administration compliance with 5 U.S.C. § 5733. Although 5 U.S.C. § 5733 does not apply to the President or the White House, the White House seeks to ensure employee travel is conducted through the most economic and expeditious means of transportation available.¹

Requests 1 and 3 seek information and documents related to the use of government-owned and private, non-commercial aircraft for travel by non-career officials in the Executive Office of the President (EOP). As I explained in my letter of April 11, 2017 (attached for your reference), not all components within the EOP are under the supervision of the President's Chief of Staff. As such, the heads of those components are in the best position to respond to requests from your Committee concerning legal compliance.

Request 2 seeks policies related to the use of government-owned or private, non-commercial aircraft by non-career officials. The Administration adheres to longstanding principles governing presidential and vice-presidential travel. *See Payment of Expenses Associated with Travel by the President and Vice President*, 6 Op. O.L.C. 214, 216 (1982); L. Elaine Halchin, Cong. Research Serv., RS21835, *Presidential Travel: Policy and Costs* 1 (2012) (citing Fred F. Fielding, Counsel to the President, *Guidelines for Travel by the President and Vice President* (Oct. 8, 1982)). The Administration adheres to the same ethical and legal principles related to the use of government-owned or private, non-commercial aircraft, as

¹ As a general matter, Title 5 of the United States Code has only limited application to the President or the White House. *See Haddon v. Walters*, 43 F.3d 1488 (D.C. Cir. 1995); *cf. Application of the Anti-Nepotism Statute to a Presidential Appointment in the White House Office*, 41 Op. O.L.C. __ (Jan. 20, 2017), available at <http://www.justice.gov/olc/opinions.htm>. Section 5733 provides that “[t]he travel of an employee shall be by the most expeditious means of transportation practicable” “Employee,” as referenced in Section 5733, is defined to be “an individual employed in or under an agency.” 5 U.S.C. § 5721(2). And an “agency,” as defined in Section 5721, does not specify the President or the White House offices. 5 U.S.C. 5721(1) (defining “agency” as, *inter alia*, “an Executive agency”); *see also* 5 U.S.C. §§ 101, 105 (neither President nor the White House defined as “an Executive agency”); *cf. Haddon*, 43 F.3d at 1490 (same). Therefore, neither the President nor the White House is required to comply with 5 U.S.C. § 5733. Even so, this Administration is committed to the responsible stewardship of taxpayer dollars.

Chairman Trey Gowdy and Ranking Member Elijah Cummings

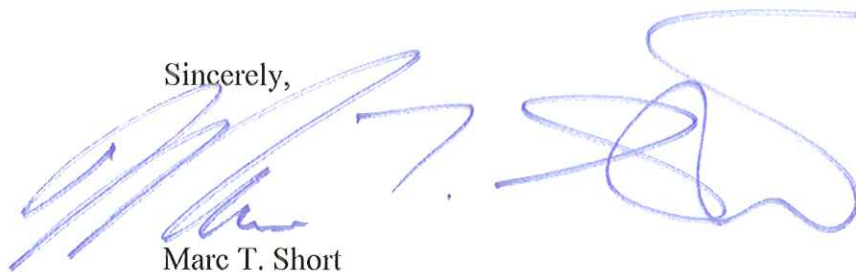
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previous administrations. These principles have been set out in law by Congress, in opinions by the Office of Legal Counsel at the Department of Justice, in memoranda, and in regulations. *See generally* 31 U.S.C. § 1301; 3 U.S.C. § 105(e); 6 Op. O.L.C. 214, *supra*.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'M. Short', is written over the word 'Sincerely,'.

Marc T. Short
Assistant to the President and
Director of Legislative Affairs

Encl.: April 11, 2017 Letter to Chairman Chaffetz and Ranking Member Cummings