

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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March 26, 2018

The Honorable Donald F. McGahn II
Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. McGahn:

We are writing to request information about the review the Office of Government Ethics (OGE) requested that you conduct to determine whether Senior White House Advisor Jared Kushner has violated ethics laws. Mr. Kushner's refusal to divest his financial interests in Kushner Companies and his work on matters that, a minimum, appear to impact those interests, may be illegal if Mr. Kushner has not taken the steps required under government ethics laws.¹

In a March 22, 2018, letter to Representative Krishnamoorthi, Acting Director of OGE David Apol, stated:

I have discussed this matter with the White House Counsel's Office in order to ensure that they have begun the process of ascertaining the facts necessary to determine whether any law or regulation has been violated and whether any additional procedures are necessary to avoid violations in the future.²

Director Apol noted in his letter that the White House informed him "they had already begun this process" and he identified several laws that could be implicated by Mr. Kushner's actions. For example, Director Apol explained that executive branch employees are prohibited by a criminal conflict of interest statute from participating personally and substantially in particular matters that will affect their own financial interests.³ Director Apol also pointed out

¹ See *Kushner's Family Received Loans After White House Meetings*, New York Times (Feb. 28, 2018) (online at www.nytimes.com/2018/02/28/business/jared-kushner-apollo-citigroup-loans.html?mtrref=www.google.com&gwh=C27993E134E8B8FC85F12DF70B49EB75&gwt=pay).

² Letter from David J. Apol, Acting Director and General Counsel, Office of Government Ethics, to Representative Raja Krishnamoorthi (Mar. 22, 2018) (online at [www.oge.gov/web/oge.nsf/Congressional%20Correspondence/2C62A672E2AF5BAC8525825C00518004/\\$FILE/Letter%20to%20Congressman%20Krishnamoorthi.pdf?open](http://www.oge.gov/web/oge.nsf/Congressional%20Correspondence/2C62A672E2AF5BAC8525825C00518004/$FILE/Letter%20to%20Congressman%20Krishnamoorthi.pdf?open)).

³ 18 U.S.C. § 208.

that if there was a connection between the loan Kushner Companies received and an official act by Mr. Kushner, it could be a violation of the criminal statute against bribery.⁴

Mr. Kushner's personal guarantee of loans to a private company with large outstanding debt obligations implicates OGE's Standards of Conduct, according to Director Apol. He wrote:

Subpart E of the Standards of Official Conduct prohibits an employee from participating in any particular matter involving specific parties in which a person with whom he or she has a covered relationship is a party or represents a party, if the employee determines that a reasonable person with knowledge of the relevant facts would question the employee's impartiality in the matter.⁵

Director Apol emphasized that while a "routine consumer transaction" would not be a violation of the Standards of Official Conduct, "personally guaranteeing a large loan to a business or receiving a large loan on non-commercially available terms typically does not constitute a 'routine consumer transaction.'"⁶

Your office has ignored repeated requests for information about steps your office or Mr. Kushner have taken to address his apparent conflicts.⁷ Your silence is disturbing given the increasing number of allegations about Mr. Kushner using his role in the White House to benefit his family's company.

We request that you produce, by April 10, 2018, the following documents and information:

1. all documents describing the results of any review by White House Counsel of Mr. Kushner's compliance with ethics laws;
2. all documents referring or relating to an agreement by Mr. Kushner to recuse himself from matters related to Kushner Companies if such an agreement exists;

⁴ 18 U.S.C. § 201.

⁵ Letter from David J. Apol, Acting Director and General Counsel, Office of Government Ethics, to Representative Raja Krishnamoorthi (Mar. 22, 2018) (online at [www.oge.gov/web/oge.nsf/Congressional%20Correspondence/2C62A672E2AF5BAC8525825C00518004/\\$FILE/Letter%20to%20Congressman%20Krishnamoorthi.pdf?open](https://www.oge.gov/web/oge.nsf/Congressional%20Correspondence/2C62A672E2AF5BAC8525825C00518004/$FILE/Letter%20to%20Congressman%20Krishnamoorthi.pdf?open)).

⁶ *Id.*

⁷ See, e.g. Letter from Senator Elizabeth Warren, Ranking Member Elijah E. Cummings, et. al. to Stefan C. Passantino, Deputy Counsel to the President and Designated Agency Ethics Official (Mar. 5, 2018) (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/2018-03-05.EEC%20Warren%20Carper%20Peters%20to%20Passantino-WH%20re%20Kushner%20Cos%20Loan....pdf>); Letter from Senator Elizabeth Warren, Ranking Member Elijah E. Cummings, et. al. to Stefan Passantino, Deputy Counsel to the President and Designated Agency Ethics Official (Mar. 24, 2017) (online at https://www.warren.senate.gov/files/documents/2017-3-24_Letter_to_White_House_on_Kushner_Companies-Anbang.pdf).

3. all documents referring or relating to a determination, if such a determination was made, to authorize Mr. Kushner to participate in matters related to the Kushner Company; and
4. all documents referring or relating to whether Kushner Companies received a loan in connection with an official act by Mr. Kushner.

If your review is ongoing as of April 10, 2018, please provide us with the estimated date of completion, and the documents relating to that review upon completion. If you have any questions about this request, please contact Krista Boyd of Ranking Member Cummings' staff at (202) 225-9493. Thank you for your prompt attention to this request.

Sincerely,



Elijah E. Cummings
Ranking Member
Committee on Oversight and
Government Reform



Raja Krishnamoorthi
Ranking Member
Subcommittee on Health Care,
Benefits, and Administrative Rules

cc: The Honorable Trey Gowdy, Chairman,
Committee on Oversight and Government Reform

The Honorable Jim Jordan, Chairman
Subcommittee on Health Care, Benefits,
and Administrative Rules