

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051  
MINORITY (202) 225-5074

<http://oversight.house.gov>

May 16, 2019

Mr. Pat Cipollone  
Counsel to the President  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Dear Mr. Cipollone:

The Committee is investigating the Trump Administration's use and disclosure of ethics waivers as part of an effort to reform and improve existing ethics laws. As part of this investigation, the Committee requests copies of documents on the implementation of ethics rules by the White House, including copies of any waivers issued by the White House that permit political appointees to participate in official action despite potential conflicts of interest.

On April 28, 2017, the Office of Government Ethics (OGE) issued a directive that required all agencies, including the White House, to provide information and documents related to certain ethics waivers and authorizations issued to Executive Branch appointees from May 1, 2016, through April 30, 2017. The OGE directive sought information related to the White House process for issuing waivers of the ethics pledge required by Executive Order 13770.<sup>1</sup>

OGE reviewed this information to evaluate procedures for issuing waivers and authorizations. Unfortunately, OGE reported that the White House "never provided OGE or made available to the public signed or dated copies of 10 waivers it issued under Executive Order 13770" and "did not fully respond to OGE's follow-up questions."<sup>2</sup>

Although the White House committed to providing information on ethics waivers on its website, the White House has failed to disclose comprehensive information about the waivers to

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<sup>1</sup> Office of Government Ethics, *PA-17-02, Data Call for Certain Waivers and Authorizations* (Apr. 28, 2017) (online at [www.oge.gov/web/OGES.nsf/Program%20Management%20Advisories/5B5DECAECCE6CB8185258110007ADC76/\\$FILE/PA-17-02.pdf?open](http://www.oge.gov/web/OGES.nsf/Program%20Management%20Advisories/5B5DECAECCE6CB8185258110007ADC76/$FILE/PA-17-02.pdf?open)). See Exec. Order No. 13770, *Ethics Commitments by Executive Branch Appointees*, 82 Fed. Reg. 9333 (Jan. 28, 2017) (online at [www.govinfo.gov/content/pkg/FR-2017-02-03/pdf/2017-02450.pdf](http://www.govinfo.gov/content/pkg/FR-2017-02-03/pdf/2017-02450.pdf)).

<sup>2</sup> Office of Government Ethics, *Special Review of Executive Branch Agency Waivers & Authorizations* (Sept. 2017) (online at [https://oge.gov/web/OGES.nsf/0/F916A3C42996EF618525819A006D12EB/\\$FILE/Final%20Report%20Package%200.pdf](https://oge.gov/web/OGES.nsf/0/F916A3C42996EF618525819A006D12EB/$FILE/Final%20Report%20Package%200.pdf)).

the public.<sup>3</sup> The lists of waiver certifications posted on the White House website do not provide sufficient information about when the waivers became effective or who approved them.<sup>4</sup>

For example, under Section 3 of Executive Order 13770, an ethics pledge waiver takes effect “when the certification is signed by the President or his designee.” However, the waiver certifications on the White House website do not provide information about when they were signed and became effective, who signed them, or the time period for which the waivers are effective. In other instances, the waiver certifications on the White House website note the issuance of a blanket waiver to a class of appointees, but do not provide details about the specific appointees covered by the waiver.<sup>5</sup>

To assist in the Committee’s review, please produce the following information and documents by May 30, 2019:

1. For each person who meets the definition of “appointee” under Executive Order 13770 who served in the Executive Office of the President on or after January 20, 2017:
  - a. signed and dated copies of the pledge (or documents evidencing the signing of the pledge) required by Executive Order 13770 or, in the alternative, a certification that the appointee has not signed the pledge required by Executive Order 13770 and any explanation of why the appointee has not signed the pledge;
  - b. signed and dated copies of any waiver issued or obtained under Executive Order 13770;
  - c. signed and dated copies of any waiver issued or approved under 18 U.S.C. § 208(b)(1);
  - d. signed and dated copies of any authorization issued or approved under 5 C.F.R. § 2635.502(d);
  - e. signed and dated copies of any waiver issued or approved under 5 C.F.R. § 2635.503(c);

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<sup>3</sup> *Id.* (Appendix 10, Letter from Stefan C. Passantino, Deputy Counsel to the President, Compliance and Ethics, Office of the White House Counsel, to David Apol, Acting Director, Office of Government Ethics (Aug. 28, 2017) (“All information originally sought by OGE pertaining to those waivers in its data call of April 28, 2017 has been made available on [www.whitehouse.gov](http://www.whitehouse.gov) and will be supplemented in the event additional waivers are issued.”)).

<sup>4</sup> See White House, *Waiver Certification for WHO/OVP Employees* (Jan. 24, 2019) (online at [www.whitehouse.gov/wp-content/uploads/2019/01/Waiver-Chart-1-24-19-1.pdf](http://www.whitehouse.gov/wp-content/uploads/2019/01/Waiver-Chart-1-24-19-1.pdf)).

<sup>5</sup> *Id.*

- f. copies of any documents evidencing an oral or written promise by an appointee to undertake specific action in order to alleviate an actual or apparent conflict of interest, including:
    - i. recusal;
    - ii. divestiture of a financial interest;
    - iii. resignation from a position with a non-Federal business or other entity;
    - iv. procurement of a waiver pursuant to 18 U.S.C. § 208(b)(1) or 18 U.S.C. § 208(b)(3); or
    - v. establishment of a qualified blind or diversified trust under the Ethics in Government Act of 1978 and Subpart D of 5 C.F.R. Part 2635; and
  - g. copies of any waiver or recusal related to or issued pursuant to 5 C.F.R. § 2635.607; and
2. For each waiver that the White House claims covers more than one employee or that is listed by the White House website on the chart entitled “Waiver Certifications for WHO/OVP Employees” that does not specify an employee name:
    - a. the name and title of each employee to whom the waiver applies;
    - b. the time period for which the waiver applies; and
    - c. copies of any documents evidencing the issuance or signing of the waiver.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. In addition, House Rule X, clause 3(i) specifically charges the Committee with conducting oversight of “the operation of Government activities at all levels, including the Executive Office of the President.”

Mr. Pat Cipollone

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An attachment to this letter provides additional instructions for responding to this request. If you have any questions regarding this request, please contact Committee staff at (202) 225-5051.

Sincerely,



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Elijah E. Cummings  
Chairman

Enclosure

cc: The Honorable Jim Jordan, Ranking Member

## Responding to Oversight Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
  - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - b. Document numbers in the load file should match document Bates numbers and TIF file names.
  - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - d. All electronic documents produced to the Committee should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,  
BEGATTACH.

7. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committee's letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### **Definitions**

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic

message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.