

**From:** Roberts, Blake  
**To:** [Walter M. Shaub](mailto:Walter.M.Shaub)  
**Subject:** RE: question  
**Date:** Thursday, April 27, 2017 8:48:09 PM

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Walt,

This is very well done. Thank you. Sorry again for the delay in our response.

Thanks,  
Blake

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**From:** Walter M. Shaub [<mailto:wmshaub@oge.gov>]  
**Sent:** Thursday, April 27, 2017 7:33 PM  
**To:** Roberts, Blake <[Blake.Roberts@wilmerhale.com](mailto:Blake.Roberts@wilmerhale.com)>  
**Subject:** RE: question

Thanks, Blake. We were under a time crunch so we sent the letter. Here's a link to the Congressional correspondence section of our website (it's the 4/25/17 letter): <https://www.oge.gov/web/oge.nsf/Congressional%20Correspondence?OpenView>. Also, here's a link to the original letter from Senators Warren and Carper: [http://ct.symlicity.com/t/wrn/d6f2ada5088c891b6dc891bbc00ff7ad/4066850105/realurl=http://www.warren.senate.gov/files/documents/2017\\_03\\_29\\_Ivanka\\_Letter.pdf](http://ct.symlicity.com/t/wrn/d6f2ada5088c891b6dc891bbc00ff7ad/4066850105/realurl=http://www.warren.senate.gov/files/documents/2017_03_29_Ivanka_Letter.pdf)

I think she and Jamie are characterized in a favorable light in this letter. But if I've gotten anything wrong or if you disagree with my characterizations, you would be free, of course, to send a letter to Senators Warren and Carper either clarifying the facts or objecting to my characterizations. You'll find the reference to the book deal in footnote 38.

Walt

Walter M. Shaub, Jr  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

Telephone: 202 482 9292  
Email: [walter.shaub@oge.gov](mailto:walter.shaub@oge.gov)

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**From:** Roberts, Blake [<mailto:Blake.Roberts@wilmerhale.com>]  
**Sent:** Thursday, April 27, 2017 6:32 PM  
**To:** Walter M. Shaub  
**Subject:** RE: question

Walt,

I just sent Dave and Seth the rehearsed response that we've drafted for Ivanka. In doing so, I realized that I never got back to you on your question about the response to Senators Warren and Carper. This may be moot now, but if not, I would not have any objections to your including the sentence you drafted in your response.

On the employee issue, the only thing I would note is that everyone seems to have assumed that she would have functioned as a de facto WH staffer rather than have a strictly limited role, where in reality I think the latter was envisioned. Regardless, I agree with your assessment that everyone is on the same page and agrees that this is the best approach going forward.

When you send the letter, would you mind sharing a copy?

Thanks,  
Blake

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**From:** Walter M. Shaub [<mailto:wmshaub@oge.gov>]  
**Sent:** Monday, April 17, 2017 5:39 PM  
**To:** Roberts, Blake <[Blake.Roberts@wilmerhale.com](mailto:Blake.Roberts@wilmerhale.com)>  
**Subject:** RE: question

Yes, that captures our discussion. Again, the purpose of the rehearsed response is so that she can stay well within the bounds of the misuse of position rule in any circumstance. I think it will serve her well because she won't risk fumbling for words and potentially crossing a line she should not cross in the bright lights of an interview or other situation.

The reason I asked about the statement regarding the book deal is that we still owe Senators Warren and Carper a response to their March 29 letter asking whether she should be considered an employee. OGE's response will highlight that this issue has been overtaken by events now that she has a formal appointment. It notes that OGE shared a view shortly before the 29<sup>th</sup> that she appeared to meet the standard of an employee. It notes too that she, with the assistance of her representatives, and the White House seem to have agreed that the best approach would be to formalize the arrangement through an official appointment. It notes that everyone is on the same page. It responds to questions about the ethics rules and disclosure requirements by noting that she will be complying with them in this role.

We are thinking of adding that sentence at the end as a way of showing that she took the step of consulting on the book deal as a way of ensuring compliance with the rule. However, I'm happy to leave it out if you think it is not useful.

Walt

Walter M. Shaub, Jr

Director  
U S Office of Government Ethics  
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Washington, DC 20005-3917

Telephone: 202 482 9292  
Email: [walter\\_schaub@oge.gov](mailto:walter_schaub@oge.gov)

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**From:** Roberts, Blake [<mailto:Blake.Roberts@wilmerhale.com>]  
**Sent:** Monday, April 17, 2017 3:08 PM  
**To:** Walter M. Shaub  
**Subject:** RE: question

Walt,

Thank you for checking – have you received inquiries?

Relatedly, I owe you an email thanking you, Dave, and Seth for your time and advice last Friday. As I mentioned, my client wants to handle this issue the right way, and your guidance was very helpful. As we discussed:

- You recommended that our client have a simple, rehearsed answer that she can use when asked about her book during official appearances. The answer should make clear that she is not going to discuss the book in her official role. We will loop back to Dave and Seth if we have any questions on specific language.
- You were comfortable with our client issuing a press release on personal letterhead (or that of her publisher) announcing the charities who would receive the profits from book sales and explaining that she would not make media appearances promoting the book. You did not have concerns with that press release describing the book positively, as long as it stayed far away from suggesting that the government endorse the book or that it was interesting because of its author's current position.
- You did not have any concerns with our client using her personal social media channels to promote the book, so long as it was in compliance with OGE's 2015 advisory on social media. You specifically suggested adding a disclaimer to the account making clear that it was a personal account and that the views expressed there are not those of the federal government. As an extra precaution, you suggested not posting on those channels during ordinary business hours.
- Finally, you indicated that you would have no objection to our client sending copies of her book with personal notes to friends, journalists, and other contacts, so long as she used personal stationary and did not invoke her government role in the note.

If I have any of that wrong, please let me know. Please pass my thanks on to Dave and Seth. I hope all is well otherwise.

Thank you,  
Blake

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**From:** Walter M. Shaub [<mailto:wmschaub@oge.gov>]  
**Sent:** Monday, April 17, 2017 2:00 PM  
**To:** Roberts, Blake <[Blake.Roberts@wilmerhale.com](mailto:Blake.Roberts@wilmerhale.com)>  
**Subject:** question

Blake,

Would you consider it useful for OGE to make the following statement publicly? "OGE recently provided verbal advice to Ms. Trump through her representatives on ways to comply with the Standards of Conduct in connection with a deal for a book that was written before she entered government."

Walt

Walter M Shaub, Jr  
Director  
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**From:** Sherman, Donald (HSGAC)  
**To:** [Director of OGE](#)  
**Cc:** [Reavis, Brandon \(HSGAC\)](#); [Trosen, Amanda \(HSGAC\)](#)  
**Subject:** Re: Letter to Ranking Member McCaskill  
**Date:** Friday, April 28, 2017 8:45:36 AM

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Hi Matthew:

Can you coordinate with my colleague Brandon? Both Amanda and I are out of the office today.

Also, I know that OGE's responses to congressional requests are often published on the website. Does OGE intend to make this response public? If so please advise when that will occur.

Thanks much.

Donald

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

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**From:** Director of OGE  
**Sent:** Thursday, April 27, 2017 10:42 PM  
**To:** Sherman, Donald (HSGAC)  
**Cc:** Reavis, Brandon (HSGAC); Trosen, Amanda (HSGAC)  
**Subject:** Letter to Ranking Member McCaskill

Attachment released below

Please find attached letter from OGE Director Walter M. Shaub, Jr.

I will hand-deliver the original letter and accompanying flash drive tomorrow, 4/28/17. Can you please advise on point of contact information and any special instruction for the timely receipt of this material?

Thank You,

**Matthew Marinec, M.P.P.**  
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April 27, 2017

The Honorable Claire McCaskill  
Ranking Member  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
503 Hart Senate Office Building  
Washington, D.C. 20510

Dear Ranking Member McCaskill:

This letter responds on behalf of the U.S. Office of Government Ethics (OGE) to your letter dated March 23, 2017. Your letter poses several questions about Executive Order 13770, the Presidential transition, and ethics education in the White House. The following responses seek to address the questions posed in your March 23, 2017, letter. I have also enclosed a flash drive with copies of relevant documents.

As an initial matter, I thank you for granting an extension of time for OGE's response to your letter. OGE is heavily engaged in its most significant cyclical endeavor, the Presidential transition. Any Presidential transition presents a formidable challenge for OGE and the executive branch ethics program. Following the election, OGE manages a significantly increased workload of Presidential nominees and works expeditiously to make sure that prospective candidates are free of conflicts of interest, so that top leadership positions can be filled quickly.<sup>1</sup> In addition to performing this ongoing and vital role in supporting the Presidential transition, OGE resources have been further strained by unprecedented interest and demands by external stakeholders and Congress.<sup>2</sup> These demands diminish OGE's ability to focus on its mission-critical work. OGE continues to strive to be responsive and to take steps to make information available but may increasingly be forced to make tradeoffs while prioritizing its mission-critical work.

## QUESTION 1

### **1. Were OGE officials consulted by White House staff regarding President Trump's Executive Order entitled "Ethics Commitments by Executive Branch Appointees" and ethics pledge prior to its issuance on January 28, 2017?**

Both before and after the election, OGE offered to assist the Administration with any new ethics initiatives, including any new Executive Order establishing an ethics pledge. OGE communicated this offer verbally and in writing. In a guide that OGE prepared for the Presidential Transition Team, OGE wrote:

<sup>1</sup> See U.S. OFFICE OF GOVERNMENT ETHICS, *Nominee Status as of April 25, 2017* (Apr. 27, 2017), <https://goo.gl/O9bv0J>.

<sup>2</sup> See U.S. OFFICE OF GOVERNMENT ETHICS, *External Contacts Q1 and Q2 Comparison* (Apr. 27, 2017), <https://goo.gl/0qL558>.



## TECHNICAL ASSISTANCE WITH ETHICS INITIATIVES

If the President-elect intends to issue an executive order or other instructions regarding government ethics, OGE is available to assist in the drafting process. OGE will explain any consequences of policy decisions or specific language and can identify a variety of options to achieve the President-elect's objectives.<sup>3</sup>

However, the Administration did not take OGE up on its offer. OGE was not consulted and received no advance notice of its issuance. In fact, OGE first learned of the issuance of Executive Order 13770 from media reports on Saturday, January 28, 2017.

Subsequent to the issuance of Executive Order 13770, OGE consulted with the Office of the Counsel to the President and issued two legal advisories to assist executive branch agencies in implementing the ethics pledge. The first of these legal advisories provided agency ethics officials with a copy of the ethics pledge to be signed by covered appointees, instructed agency ethics officials to collect supplemental ethics agreements addressing ethics pledge requirements from nominees whose packages had already been transmitted to the Senate, and advised agency ethics officials that they may continue to rely on OGE's prior guidance regarding Executive Order 13490 to the extent that such guidance addresses language common to both orders.<sup>4</sup> OGE then transmitted the supplemental ethics agreements collected pursuant to this legal advisory to the relevant Senate Committees.<sup>5</sup> The second of these legal advisories provided a table cross-referencing specific sections of past OGE guidance on Executive Order 13490 that are applicable to Executive Order 13770, guidance that OGE received from the Counsel to the President's office regarding the meaning of the term "specific issue area," and guidance on new post-government employment lobbying restrictions.<sup>6</sup> OGE also conducted training on Executive Order 13770 for approximately 200 agency ethics officials on April 27, 2017.<sup>7</sup>

## QUESTION 2

- 2. In a February 28, 2017, letter to you, the White House Counsel's Office noted that the White House has "been providing specialized training to individual components within the Executive Office of the President on disclosure issues, conflicts of interest, gifts, travel, the Presidential Records Act, the STOCK Act, use of official resources and position (personal and political), the Hatch Act, outside income, and post-employment issues." For the issues falling within OGE's purview, were OGE officials consulted by the White House regarding any such specialized training?**

<sup>3</sup> U.S. OFFICE OF GOVERNMENT ETHICS, *Transition Guide*, 14 (2016), <https://goo.gl/Ddj0ui>.

<sup>4</sup> OGE Legal Advisory, LA-17-02 (2017), <https://goo.gl/49IgoF>.

<sup>5</sup> See, e.g., Ethics Agreement of Rex Tillerson, <https://goo.gl/rXIVEL> (supplemental ethics agreement dated February 9, 2017, appears at page 10).

<sup>6</sup> OGE Legal Advisory, LA-17-03 (2017).

<sup>7</sup> U.S. OFFICE OF GOVERNMENT ETHICS, *Transition Readiness Series: Executive Order 13770 – The "New Ethics Pledge"* (Apr. 27, 2017), <https://goo.gl/1NuWYx>.

Both before and after the election, OGE offered to assist the Administration by providing ethics training to White House ethics officials, White House appointees, or both. OGE's offer to train White House ethics officials was communicated verbally. OGE's offer to train White House appointees was communicated both verbally and in writing. For example, OGE's Transition Guide includes the following language:

On January 20, 2017, newly appointed White House staff will need to respond immediately to countless urgent matters of national importance. The terrain will be fraught with ethical landmines that can lead to criminal, civil, and administrative penalties for individual appointees and to embarrassment for the new administration.

OGE can help prevent problems by conducting government ethics training for new White House officials, either before or after January 20, 2017. OGE also stands ready to support the new White House Counsel's Office (WHCO) by providing guidance when issues arise. In addition, OGE can assist you in establishing an organized and effective ethics program in the Executive Office of the President and the Office of the Vice President.<sup>8</sup>

However, the Administration did not take OGE up on these offers.

The White House did not consult with OGE regarding the development of its training, and OGE does not have information regarding the substance of the training. However, White House appointees are covered by the government ethics training requirements established in 5 C.F.R. part 2638, subpart C. Under that regulation, new White House appointees must receive initial ethics training within 90 days of appointment.<sup>9</sup> In addition to other subjects Designated Agency Ethics Official deems relevant, the minimum requirement is that the training cover the following subjects: financial conflicts of interest, impartiality, misuse of position, and gifts.<sup>10</sup> Regulatory content requirements for government ethics training is discussed further in response to Questions 8 through 11, below.

### QUESTIONS 3 AND 7

- 3. In the same letter, the White House Counsel's Office noted that the office "has also issued written guidance to all employees of the Executive Office of the President on a number of issues including the Standard of Conduct's prohibition on using one's official position to endorse any product, service, or enterprise." Were OGE officials consulted by the White House regarding any such guidance?**

<sup>8</sup> U.S. OFFICE OF GOVERNMENT ETHICS, *Transition Guide*, 14-15 (2016), <https://goo.gl/Ddj0ui>.

<sup>9</sup> 5 C.F.R. § 2638.304(b) (as revised effective Jan. 1, 2017).

<sup>10</sup> 5 C.F.R. § 2638.304(e) (as revised effective Jan. 1, 2017).

**7. Please provide copies of any memoranda or other documents provided by OGE officials to the White House regarding recommended areas of recusal for applicable White House staff on or after January 20, 2017.**

The Ethics in Government Act vests OGE with responsibility for providing “overall direction of executive branch policies related to preventing conflicts of interest.”<sup>11</sup> OGE is the “supervising ethics office” for a decentralized executive branch ethics program established by the Ethics in Government Act.<sup>12</sup> The day-to-day provision of ethics advice to the nearly 2.7 million civilian executive branch employees is necessarily carried out by the more than 4,500 ethics officials in over 130 agencies and the White House.<sup>13</sup>

The Act does not give OGE’s 71 employees direct supervisory control over these agency ethics officials.<sup>14</sup> OGE issues ethics regulations and interpretive guidance that define the contours of their work. OGE oversees a financial disclosure system covering approximately 26,000 public filers and 380,000 confidential filers. OGE also provides ethics officials with ongoing training to promote consistency and uniformity in the application of these regulations to the millions of federal employees across the executive branch. In addition, OGE maintains a Desk Officer program to support agency ethics officials when they need assistance resolving novel or unusually complex ethics issues. However, agency ethics officials, including White House ethics officials, are not required to consult OGE regarding each piece of advice they provide to every appointee on an ongoing basis across a President’s four-year term. They are also not required to obtain OGE approval of all training they conduct.

Therefore, OGE was not consulted on the development of the guidance mentioned in Question 3, above. It is not clear whether the statement in the quoted letter refers to written materials provided in connection with individualized counseling of appointees regarding their personal circumstances or refers to standardized written materials provided generally in connection with ethics training.<sup>15</sup> In either case, OGE would not typically be consulted, except when an agency ethics official requests OGE’s assistance. In addition, OGE’s role does not include preparation of the type of individualized memorandum described in Question 7 for White House appointees or any other executive branch employees.

OGE is, of course, available to assist White House ethics officials. Prior to the inauguration on January 20, 2017, OGE verbally offered to assist the White House in resolving conflicts of interest for senior White House appointees. Representatives for a few individual appointees took OGE up on this offer and obtained some guidance on general approaches to

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<sup>11</sup> 5 U.S.C. app. § 402.

<sup>12</sup> 5 U.S.C. app. § 109(18)(D).

<sup>13</sup> For more on OGE and the executive branch ethics program, you may want to review OGE’s agency profile. See OFFICE OF GOVERNMENT ETHICS, *Agency Profile* (2017), <https://goo.gl/t2F11L>.

<sup>14</sup> See 5 U.S.C. app. § 402.

<sup>15</sup> See Letter from Stefan C. Passantino, Deputy Counsel to the President and Designated Agency Ethics Official, to Walter M. Shaub, Jr., Director, U.S. Office of Government Ethics (Feb. 28, 2017), <https://goo.gl/7YGFKK>.

addressing potential conflict of interest issues. Most such communications were verbal. Certain relevant written communications have been posted on OGE's website.<sup>16</sup>

OGE has provided support in other ways. Prior to the inauguration, OGE assigned an experienced attorney, who had previously served in the Administration of President George W. Bush, to support the Presidential Transition Team through both onsite and remote interactions. He provided real-time verbal advice on setting up an ethics program. After the inauguration, OGE began sending successive detailees to the White House to assist with the collection of financial disclosure reports. OGE's General Counsel, White House Desk Officer, and I have likewise remained available to assist the office of the Counsel to the President as needed.

OGE will also be supporting the White House with respect to these appointees in another way. OGE provides a second-level review of the financial disclosure reports of senior White House appointees, specifically Assistants to the President and Deputy Assistants to the President. These senior White House appointees are required to file new entrant financial disclosure reports within 30 days of being appointed.<sup>17</sup> The White House is authorized to grant an extension, upon a showing of good cause, of up to 45 days and, upon a written showing of good cause, a second extension of up to 45 additional days.<sup>18</sup> The approval of a second extension must be in writing.<sup>19</sup> After appointees file their reports, the White House's ethics officials review the reports for compliance with financial disclosure requirements and substantive ethics requirements.<sup>20</sup> White House ethics officials are expected to work with an appointee to resolve any potential conflicts of interest that they identify through their review of the financial disclosure reports.<sup>21</sup> Only after the White House has certified the appointee's financial disclosure report does the White House transmit the report to OGE.<sup>22</sup>

OGE then conducts a second-level review.<sup>23</sup> As part of this review process, OGE advises White House ethics officials of any deficiencies in an appointee's compliance with financial disclosure requirements. In turn, the White House ethics officials work with the appointee who filed the report in order to resolve them. It is normal for an appointee to make changes to a financial disclosure report and to add information during this review process. After the report is revised, OGE staff and White House ethics officials discuss how the White House is addressing any potential conflicts of interest identified during the review process. OGE then makes a determination regarding apparent compliance with financial disclosure and conflict of interest rules and either certifies or declines to certify the financial disclosure report.<sup>24</sup> This process can take an extended period of time. Until the process has been completed, OGE is not in a position to make this compliance determination.

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<sup>16</sup> U.S. OFFICE OF GOVERNMENT ETHICS, *Electronic Reading Room*, <https://goo.gl/6e35vH>.

<sup>17</sup> 5 U.S.C. app. § 101(a).

<sup>18</sup> 5 C.F.R. § 2634.201(f).

<sup>19</sup> *Id.*

<sup>20</sup> 5 U.S.C. app. § 106(a); 5 C.F.R. § 2634.605.

<sup>21</sup> 5 U.S.C. app. § 106(a); 5 C.F.R. § 2634.605.

<sup>22</sup> 5 U.S.C. app. § 103(c).

<sup>23</sup> 5 U.S.C. app. § 106(a).

<sup>24</sup> 5 U.S.C. app. § 106(b); 5 C.F.R. § 2634.605.



OGE is currently in the early stages of reviewing approximately 50 White House reports. It will be several weeks or, depending on how promptly the appointees respond to OGE's questions and instructions, several months before this process is completed. After the process is completed, OGE will make the final product of these efforts publicly available.

#### QUESTIONS 4 AND 5

- 4. Does OGE currently have legal authority to request copies of signed ethics pledge documents from applicable White House staff?**
- 5. Does OGE currently have legal authority to request copies of any waivers provided to White House staff from provisions of the ethics pledge?**

Executive Order 13770 incorporates much of the language of Executive Order 13490 but lacks a transparency provision requiring OGE to collect data regarding compliance with the ethics pledge contained in Executive Order 13490.<sup>25</sup> Nevertheless, OGE has authority to collect information with regard to agency and appointee compliance with the ethics pledge requirements of Executive Order 13770. The Ethics in Government Act provides statutory authority for "requiring such reports from executive agencies as the Director deems necessary."<sup>26</sup> In carrying out this authority, the Ethics in Government Act directs OGE to prescribe regulations under which each executive agency is required to submit an annual report containing ethics program information.<sup>27</sup> This annual report takes the form of responses to OGE's Annual Agency Ethics Program Questionnaire. The questionnaire generally requires agencies to provide summary data and not the underlying documents. OGE posts agencies responses to its website.<sup>28</sup>

OGE is currently in the process of finalizing the questions for its Annual Agency Ethics Program Questionnaire for calendar year 2017. Among other information, the questionnaire will request (1) aggregated data regarding the rate of compliance with the requirement to sign the ethics pledge, pursuant to section 1 of Executive Order 13770, by individuals appointed in 2017 and (2) the names of all appointees who received waivers of ethics pledge requirements, pursuant to section 3 of Executive Order 13770 in 2017.<sup>29</sup> Agencies, including the White House, will be required to respond by February 1, 2018.

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<sup>25</sup> Compare Exec. Order No. 13490, § 4(c)(5) (Jan. 21, 2009), with Exec. Order No. 13770, § 4(c) (Jan. 28, 2017).

<sup>26</sup> 5 U.S.C. app. § 402(b)(10).

<sup>27</sup> 5 U.S.C. app. § 402(e); 5 C.F.R. § 2638.207 (as revised effective Jan. 1, 2017).

<sup>28</sup> See, e.g., Annual Agency Ethics Program Questionnaire Responses (CY15) (Sep. 22, 2016), <https://goo.gl/zrudXW>.

<sup>29</sup> Although the White House's Designated Agency Ethics Official (DAEO) recently sent OGE a letter questioning the applicability of many of OGE's regulations to the Executive Office of the President, OGE anticipates that the White House will timely respond to this annual data call, just as every past Administration's White House has responded to it. See Letter from Stefan C. Passantino, Deputy Counsel to the President and Designated Agency Ethics Official, to Walter M. Shaub, Jr., Director, U.S. Office of Government Ethics (Feb. 28, 2017), <https://goo.gl/7YGFKK>; see, e.g., THE WHITE HOUSE, *Response to the Annual Agency Ethics Program Questionnaire for Calendar Year 2015* (Feb. 3, 2016), <https://goo.gl/2tz5Qm>. In response to the White House DAEO's letter, OGE explained that the legal theory on which his extraordinary assertion rests—that the White House is not an "executive agency" for certain limited purposes under 5 U.S.C. § 105—has never been applied to the Ethics in Government Act. See Letter from Walter M. Shaub, Jr., Director, U.S. Office of Government Ethics, to Stefan C. Passantino, Deputy Counsel to the President and Designated Agency Ethics Official (Mar. 9, 2017), <https://goo.gl/GuEHlr>. Questions regarding the White House's status as an agency have been resolved in different ways depending on the contexts in which they have arisen. For example, the White House has been found not to be an "executive agency" for purposes of a certain employment

Your letter requests copies of the ethics pledges signed by appointees in the White House. OGE has not collected copies of these signed ethics pledges in this Administration under Executive Order 13770, nor did OGE collect the signed ethics pledges from the thousands of appointees in the previous Administration under Executive Order 13490. Under Executive Order 13490, the previous Administration required agency ethics officials to collect ethics pledges from appointees at their agencies and retain them in each appointee's Official Personnel File.<sup>30</sup> The same requirements are contained in Executive Order 13770 for the current Administration's appointees.<sup>31</sup> The relevant difference, however, is that Executive Order 13490 specifically provided for OGE to issue an annual report on ethics pledge compliance, waivers, and enforcement.<sup>32</sup> Executive Order 13770 contains no such requirement.<sup>33</sup> As discussed above, however, OGE will be collecting the same information through a different mechanism. We will share the results by posting the responses of agencies, including the White House, on OGE's website.

Your letter also requests copies of any waivers of ethics pledge requirements that have been issued to appointees in the White House. OGE does not currently have copies of these waivers because the current Administration has not adopted the previous Administration's practice of automatically providing OGE with copies for contemporaneous posting on OGE's website.<sup>34</sup> In addition to posting all ethics pledge waivers under Executive Order 13490 contemporaneously, OGE included copies of the waivers in an appendix to its annual ethics pledge report. As noted above, Executive Order 13770 omits this annual reporting requirement.<sup>35</sup> However, in the immediate future OGE will be issuing a data call for all waivers issued under Executive Order 13770.<sup>36</sup> OGE will post the responses of agencies, including the White House, on its website.

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discrimination law. *Haddon v. Walters*, 43 F.3d 1488 (D.C. Cir. 1995) (per curiam). In contrast, the White House has been found to be an "executive agency" for purposes of 18 U.S.C. § 603. *Application of 18 U.S.C. § 603 to Contributions to the President's Re-Election Committee*, 27 Op. O.L.C. 118, 119 (2003) (Office of Legal Counsel opinion finding that, under the statutory scheme of the Hatch Act Reform Amendments, the White House Office should be treated as an "executive agency" under title 5, notwithstanding *Haddon*). In addition, the White House has routinely relied on a certain statutory authority available only to an "executive agency" that authorizes acceptance of outside reimbursements for official travel. See 31 U.S.C. § 1353(c)(1) (restricting authority to accept such reimbursements only to an "executive agency" as defined under 5 U.S.C. § 105); see also White House Office, *Semiannual Report of Payments Accepted From a Non-Federal Source for April 1, 2016 through September 30, 2016*, OGE Form 1353, <https://goo.gl/BTUpBw>. Thus, the White House is an "executive agency" for some purposes and arguably not for others. However, its status as an "executive agency" for purposes of the Ethics in Government Act is not in doubt.

<sup>30</sup> Exec. Order No. 13490, § 4(e) (Jan. 21, 2009).

<sup>31</sup> Exec. Order No. 13770, § 4(e) (Jan. 28, 2017).

<sup>32</sup> Exec. Order No. 13490, § 4(c)(5) (Jan. 21, 2009).

<sup>33</sup> See Exec. Order No. 13770, § 4(c) (Jan. 28, 2017).

<sup>34</sup> 5 U.S.C. app. § 402(b)(10).

<sup>35</sup> See OFFICE OF GOVERNMENT ETHICS, *Executive Branch Agency Ethics Pledge Waivers*, <https://goo.gl/Yw16wQ>.

<sup>36</sup> See Exec. Order No. 13770, § 4(c) (Jan. 28, 2017).

<sup>37</sup> See 5 U.S.C. app. §§ 402(b)(10), 403(a)(2).

## QUESTION 6

**6. Please provide copies of any forms or disclosures describing divestments and resignations from boards, partnerships, etc., that OGE has received from applicable White House staff on or after January 20, 2017.**

There is no general requirement for executive branch employees to file forms when they divest assets or resign positions, nor is there a form for them to use. In the case of Presidential nominees for Senate-confirmed positions, OGE works with agency ethics officials to establish ethics agreements, which often provide for divestitures and resignations, and then tracks compliance.<sup>37</sup> There is no comparable process for White House appointees who, unlike nominees, are not required to obtain OGE's clearance before commencing government service.

White House appointees and other employees may choose to request Certificates of Divestiture for certain divestitures.<sup>38</sup> It is important to note that an appointee is not required to seek a Certificate of Divestiture and can divest an asset without requesting one, unless the appointee wants to defer capital gains. For White House appointees, the potential need for a Certificate of Divestiture arises if the White House directs an appointee to sell, or otherwise divest, an asset in order to avoid a conflict of interest.<sup>39</sup> If selling the asset will result in a capital gain, the appointee may be eligible for a Certificate of Divestiture to offset the tax burden of complying with the government's conflict of interest requirements.<sup>40</sup> (Note, however, that a special government employee is not eligible for a Certificate of Divestiture.<sup>41</sup>) The appointee, the appointee's spouse, and the appointee's dependent or minor child are eligible to receive a Certificate of Divestiture.<sup>42</sup> A trustee is also eligible when the asset is held in a trust, except in certain cases in which ineligible persons are also beneficiaries of the trust.<sup>43</sup> The person requesting a Certificate of Divestiture must commit in writing to divesting the asset even if a Certificate of Divestiture is not issued.<sup>44</sup>

To request a Certificate of Divestiture, the appointee must contact the White House's ethics officials.<sup>45</sup> If the White House supports the appointee's request, the ethics officials will assemble the necessary documents and submit the request to OGE.<sup>46</sup> OGE will then review the submission to determine whether (1) the request meets applicable procedural requirements and (2) divestiture is reasonably necessary to avoid a conflict of interest.<sup>47</sup> OGE will either issue a Certificate of Divestiture to the appointee through the White House's ethics officials or notify the

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<sup>37</sup> See, e.g., Ethics Agreement of Betsy DeVos (Jan. 19, 2017), <https://goo.gl/tTOVjT>.

<sup>38</sup> See 26 U.S.C. § 1043; 5 C.F.R. pt. 2634, subpt. J.

<sup>39</sup> See 5 C.F.R. § 2635.403(b).

<sup>40</sup> 26 U.S.C. § 1043; 5 C.F.R. pt. 2634, subpt. J.

<sup>41</sup> 5 C.F.R. § 2634.1003.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> 5 C.F.R. § 2634.1005(a)(3).

<sup>45</sup> See Memo from Robert I. Cusick, Director, U.S. Office of Gov't Ethics, to Designated Agency Ethics Officials, *Procedures for Requesting a Certificate of Divestiture*, DO-06-030 (2006).

<sup>46</sup> See OGE Program Advisory PA-16-04 (2016).

<sup>47</sup> See *id.*

ethics officials that the request has been denied.<sup>48</sup> Over the past three years, this process has on average taken three weeks, except in cases when OGE has been asked to expedite the process.

The appointee is advised not to sell the asset until the agency ethics official provides the appointee with the Certificate of Divestiture or notifies the appointee that OGE has denied the request.<sup>49</sup> A Certificate of Divestiture is valid only if obtained before selling an asset.<sup>50</sup> Within 60 days of the sale, the appointee must reinvest the proceeds of the sale in “permitted property.”<sup>51</sup> Permitted property is limited to United States government obligations (*i.e.*, Treasuries), diversified mutual funds, and diversified exchange-traded funds.<sup>52</sup> For this purpose, “diversified” means that the fund does not have a stated policy of concentrating in any industry, business, single country other than the United States, or the bonds of a single state within the United States.<sup>53</sup> The appointee will need to pay the deferred capital gains when the appointee later sells the permitted property.<sup>54</sup>

Pending the divestiture, the appointee must recuse from particular matters in which the asset poses a conflict of interest. Recusal is achieved by not participating in a particular matter.<sup>55</sup> A White House appointee is not normally required to file a disqualification statement or other document regarding the recusal.<sup>56</sup> Thus, the important requirement is only that the appointee not participate.

Certificates of Divestiture have traditionally been available to the public upon request.<sup>57</sup> OGE recently took steps to increase transparency by listing the Certificates of Divestiture it has issued on its website and by establishing a mechanism for submitting requests of copies of Certificates of Divestiture online.<sup>58</sup>

#### QUESTIONS 8, 9, 10 AND 11

- 8. Please provide copies of all documents and communications between OGE officials and President Trump’s nominees for any politically-appointed, Senate confirmed positions, or their representatives, regarding the provision of ethics training or guidance between November 9, 2016, and the present.**
- 9. Please provide copies of all documents and communications between OGE officials and the Trump Presidential Transition Team regarding the provision of**

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<sup>48</sup> *See id.*

<sup>49</sup> *See id.*

<sup>50</sup> *See id.*

<sup>51</sup> 5 C.F.R. § 2634.1006(a).

<sup>52</sup> 5 C.F.R. § 2634.1003.

<sup>53</sup> *Id.*; 5 C.F.R. § 2640.102(a).

<sup>54</sup> 26 U.S.C. § 1043(c).

<sup>55</sup> 5 C.F.R. § 2640.103(d).

<sup>56</sup> 5 C.F.R. § 2640.103(d)(2). *But see* Stop Trading on Congressional Knowledge Act of 2012, Pub. L. No. 112–105, § 17, 126 Stat. 291, 303-04 (requiring notice of recusal in the limited case of an appointee negotiating for post-government employment).

<sup>57</sup> 5 C.F.R. § 2634.1008.

<sup>58</sup> *See* U.S. OFFICE OF GOVERNMENT ETHICS, *Certificates of Divestiture issued by OGE*, <https://goo.gl/RCld8Z>.

**ethics training or guidance to incoming Trump Administration appointees between November 9, 2016, and the present.**

- 10. Please provide copies of all documents and communications between OGE officials and the White House regarding the provision of ethics training or guidance to Trump Administration appointees between January 20, 2017, and the present.**
- 11. Please provide copies of all documents and communications between OGE officials and the White House, Ivanka Trump or her representatives regarding any ethics training or guidance provided to Ms. Trump regarding her role in the White House between January 20, 2017, and the present.**

Presidential nominees do not receive government ethics training prior to being confirmed and appointed to their new government positions. After they commence their government service, OGE's regulations require agency ethics officials to promptly provide them with an initial ethics briefing. These briefings must meet the following specified content requirements:

(f) *Content.* The ethics briefing must include the following activities.

(1) If the individual acquired new financial interests reportable under section 102 of the Act after filing the nominee financial disclosure report, the agency ethics official must appropriately address the potential for conflicts of interest arising from those financial interests.

(2) The agency ethics official must counsel the individual on the basic recusal obligation under 18 U.S.C. 208(a).

(3) The agency ethics official must explain the recusal obligations and other commitments addressed in the individual's ethics agreement and ensure that the individual understands what is specifically required in order to comply with each of them, including any deadline for compliance. The ethics official and the individual must establish a process by which the recusals will be achieved, which may consist of a screening arrangement or, when the DAEO deems appropriate, vigilance on the part of the individual with regard to recusal obligations as they arise in particular matters.

(4) The agency ethics official must provide the individual with instructions and the deadline for completing initial ethics training, unless the individual completes the initial ethics training either before or during the ethics briefing.<sup>59</sup>

In addition to the initial ethics briefing, Senate-confirmed Presidential appointees must complete initial ethics training, within the first three months of their appointments.<sup>60</sup> White House appointees, including the individuals mentioned in Question 10, are also subject to this training requirement.<sup>61</sup> Members of the Presidential Transition Team mentioned in Question 9 are not executive branch employees and, therefore, are not subject to this requirement or to government ethics laws and regulations.<sup>62</sup>

Like the initial ethics briefing, initial ethics training is conducted by agency ethics officials, rather than by OGE. The agency's training must satisfy the following regulatory requirements:

(e) *Content.* The following content requirements apply to initial ethics training.

(1) *Training presentation.* The training presentation must focus on government ethics laws and regulations that the DAEO deems appropriate for the employees participating in the training. The presentation must address concepts related to the following subjects:

- (i) Financial conflicts of interest;
- (ii) Impartiality;
- (iii) Misuse of position; and
- (iv) Gifts.

(2) *Written materials.* In addition to the training presentation, the agency must provide the employee with either the following written materials or written instructions for accessing them:

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<sup>59</sup> 5 C.F.R. § 2638.305(e) (as revised effective Jan. 1, 2017).

<sup>60</sup> 5 C.F.R. § 2638.304 (as revised effective Jan. 1, 2017).

<sup>61</sup> *Id.*

<sup>62</sup> See Presidential Transition Act of 1963, Pub. L. No. 88-277, § 3(a)(2) (1964), amended by Edward “Ted” Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015, Pub. L. No. 114-136 (2016). (members of the Presidential Transition Team are not generally executive branch employees); see also OFFICE OF LEGAL COUNSEL, U.S. DEP’T JUSTICE, *Applicability of 18 U.S.C. § 207(c) to President-Elect’s Transition Team*, 12 Op. O.L.C. 264, 265 (1988) (“The Act also makes clear that such staff members are not federal employees except for limited provisions not relevant here. Act, § 3(a)(2).”).

(i) The summary of the Standards of Conduct distributed by the Office of Government Ethics or an equivalent summary prepared by the agency;

(ii) Provisions of any supplemental agency regulations that the DAEO determines to be relevant or a summary of those provisions;

(iii) Such other written materials as the DAEO determines should be included; and

(iv) Instructions for contacting the agency's ethics office.<sup>63</sup>

Thereafter, these appointees must comply with annual government ethics training requirements. As with other types of training, the training is provided by agency ethics officials. The training must satisfy the following specified regulatory content requirements:

(f) *Content.* The following content requirements apply to annual ethics training for employees covered by this section.

(1) *Training presentation.* The training presentation must focus on government ethics laws and regulations that the DAEO deems appropriate for the employees participating in the training. The presentation must address concepts related to the following subjects:

(i) Financial conflicts of interest;

(ii) Impartiality;

(iii) Misuse of position; and

(iv) Gifts.

(2) *Written materials.* In addition to the training presentation, the agency must provide the employee with either the following written materials or written instructions for accessing them:

(i) The summary of the Standards of Conduct distributed by the Office of Government Ethics or an equivalent summary prepared by the agency;

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<sup>63</sup> 5 C.F.R. § 2638.304(e) (as revised effective Jan. 1, 2017).

(ii) Provisions of any supplemental agency regulations that the DAEO determines to be relevant or a summary of those provisions;

(iii) Such other written materials as the DAEO determines should be included; and

(iv) Instructions for contacting the agency's ethics office.<sup>64</sup>

Each of these education activities is subject to a tracking requirement. First, as to the initial ethics briefing for Senate-confirmed Presidential appointees, agencies must track each individual appointee's completion of the briefing.<sup>65</sup> Second, as to initial ethics training, agency ethics officials, including White House ethics officials, must institute reasonable procedures to ensure that initial ethics training is being delivered generally to all new employees and appointees.<sup>66</sup> Third, as to annual ethics training, agency ethics officials, including White House ethics officials, must track each individual employee's and appointee's completion of the training.<sup>67</sup>

OGE supports agency ethics officials who conduct these education activities in a variety of ways. For example, OGE has prepared a variety of training modules and tools for them to use, many of which are available for public viewing on OGE's website.<sup>68</sup> OGE also conducts training made available to agency ethics officials, including White House ethics officials, in order to ensure they have the necessary skills to conduct training for their agencies' employees. OGE instructs agency ethics officials on such topics as reviewing financial disclosure reports, analyzing potential conflicts of interest, providing advice and counseling on the Standards of Ethical Conduct for Employees of the Executive Branch, applying other ethics laws and regulations, conducting training for their own agencies' employees on applicable ethics obligations, and managing risk by promoting an ethical agency culture.

Since my appointment in January 2013, OGE has pursued an aggressive reinvention of its traditional approach to delivering training. OGE has leveraged technology to steadily increase its reach. As a result, annual training registrations grew from 1,200 in fiscal year 2012 to more than 7,200 by fiscal year 2016. OGE also posts its written, audio, and video training materials online and on an internal government platform (MAX.gov). Agency ethics officials, including White House ethics officials, can now access over 100 OGE-produced courses on demand.<sup>69</sup>

With regard to individualized advice on specific ethics issues, most communications with the Presidential Transition Team and the White House have been verbal. However, OGE's website contains a number of relevant written materials.<sup>70</sup> In addition, OGE's website contains a section on the Presidential transition that makes the most substantive materials provided to the

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<sup>64</sup> 5 C.F.R. § 2638.308(f) (as revised effective Jan. 1, 2017).

<sup>65</sup> 5 C.F.R. § 2638.305(g).

<sup>66</sup> 5 C.F.R. § 2638.304(f) (as revised effective Jan. 1, 2017).

<sup>67</sup> 5 C.F.R. § 2638.308(g) (as revised effective Jan. 1, 2017).

<sup>68</sup> Available at <https://www.oge.gov/web/oge.nsf/Education+Resources+for+Ethics%20Officials>.

<sup>69</sup> Available at <https://www.youtube.com/user/OGEInstitute> and <https://plus.google.com/+OGEInstitute>.

<sup>70</sup> See OFFICE OF GOVERNMENT ETHICS, *Electronic Reading Room*, <https://goo.gl/6e35vH>.



The Honorable Claire McCaskill  
Ranking Member  
Page 14

Presidential Transition Team and the White House available to the public.<sup>71</sup> OGE released these materials online prior to the election in order to make the transition process as transparent to the public as possible. All of the materials found on that page were also provided in hard copy during pre-election and post-election briefings. A summary of the timeline of the briefings and materials provided is included among other documents on the enclosed flash drive. A number of informal communications and presentation slides have also been included in the enclosed flash drive for your convenience.

I hope this explanation addresses the issues your letter raises. If members of your staff have questions, OGE's Chief of Staff, Shelley K. Finlayson, is available to assist them. She can be reached at 202-482-9292.

Sincerely,



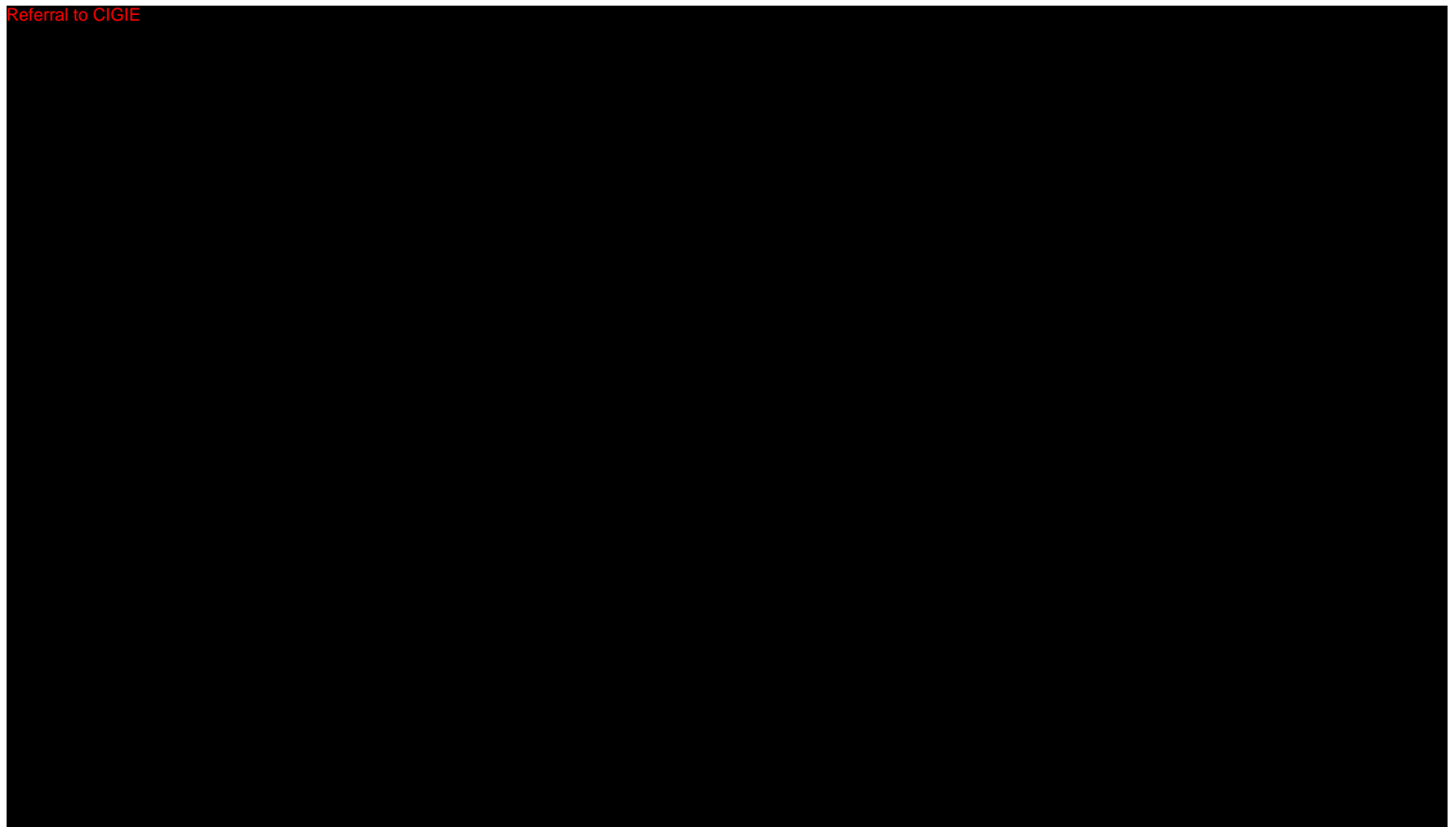
Walter M. Shaub, Jr.  
Director

Enclosure

cc. The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
328 Hart Senate Office Building  
Washington, D.C. 20510

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<sup>71</sup> Available at <https://goo.gl/jLLJfi>.



**From:** [Director of OGE](#)  
**To:** [OMB director's email address]  
**Cc:** [b(6) - Kevin Herms's email address]  
**Subject:** Request for Waiver of Presidential Executive Order on Enforcing the Regulatory Reform Agenda  
**Date:** Friday, April 28, 2017 5:35:17 PM  
**Attachments:** [Request for Waiver of Presidential Executive Order on Enforcing the Regulatory Reform Agenda.pdf](#)

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Attachment released below

Please find attached letter from OGE Director Walter M. Shaub, Jr.

The original will follow by standard mail.

Thank You,

**Matthew Marinec, M.P.P.**

Confidential Assistant to the Director

U.S. Office of Government Ethics

1201 New York Ave., NW, Suite 500

Washington, DC 20005-3917

Tel. 202.482.9286

Visit OGE's website: [www.oge.gov](http://www.oge.gov)

Follow OGE on Twitter: @OfficeGovEthics

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

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April 28, 2017

Hon. John M. Mulvaney  
Director  
Office of Management and Budget  
725 17th Street, NW  
Washington, DC 20503

Re: Request for Waiver of Presidential Executive Order on Enforcing the Regulatory Reform Agenda

Dear Director Mulvaney:

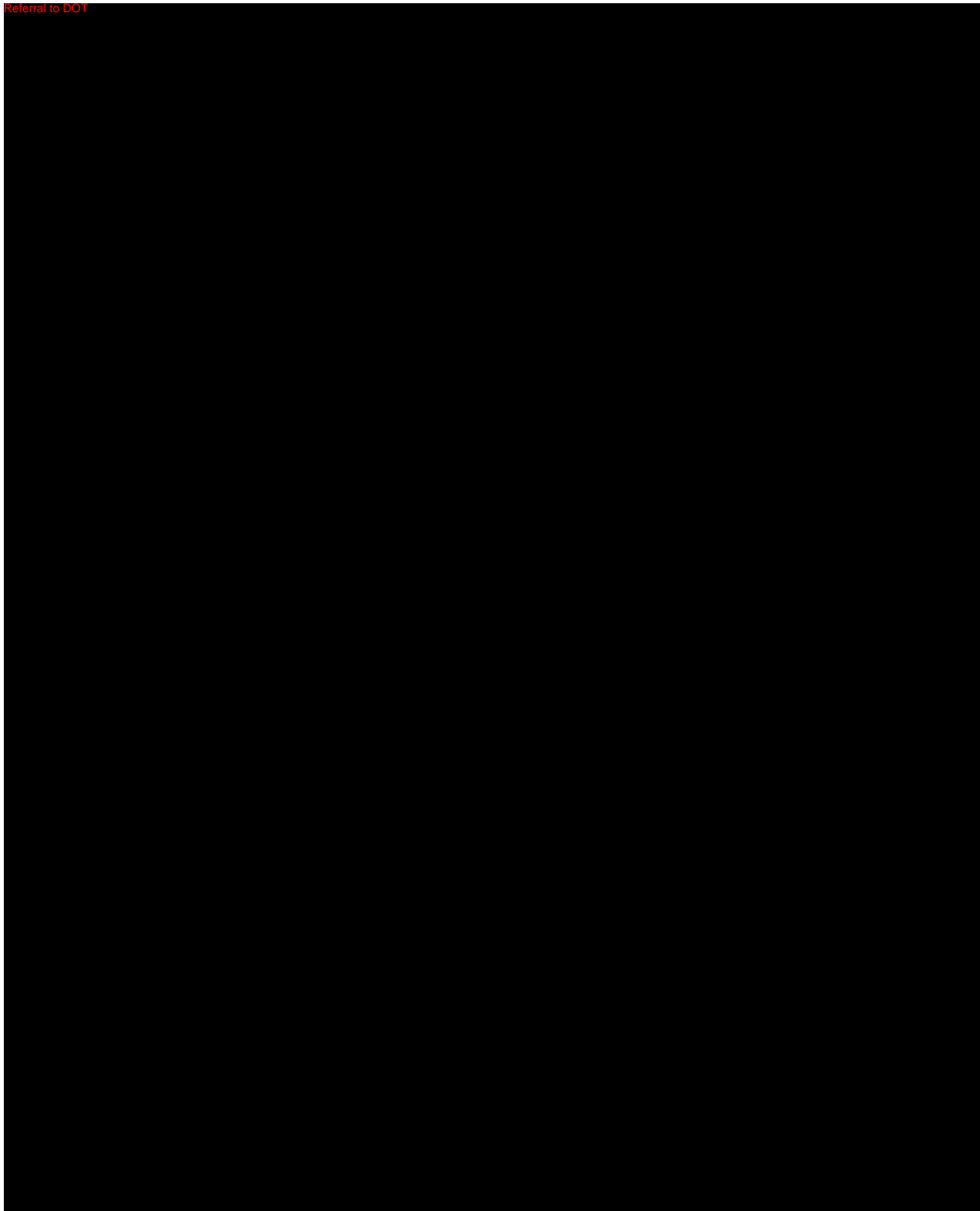
The U.S. Office of Government Ethics (OGE) respectfully requests a waiver of the requirements of Executive Order 13777, pursuant to Section 5 of the E.O. OGE has issued few regulations since its creation, all of which are found in 5 CFR chapter XVI. Although OGE has updated a number of its regulations in recent years, it has not issued a new regulation since 2003, nor does it have plans to issue any new regulations in the foreseeable future. It bears emphasizing that these are internal government regulations that apply primarily to executive branch employees, prospective executive branch employees, and former executive branch employees. Moreover, these regulations are vital to the executive branch ethics program and the integrity of the government's operations.

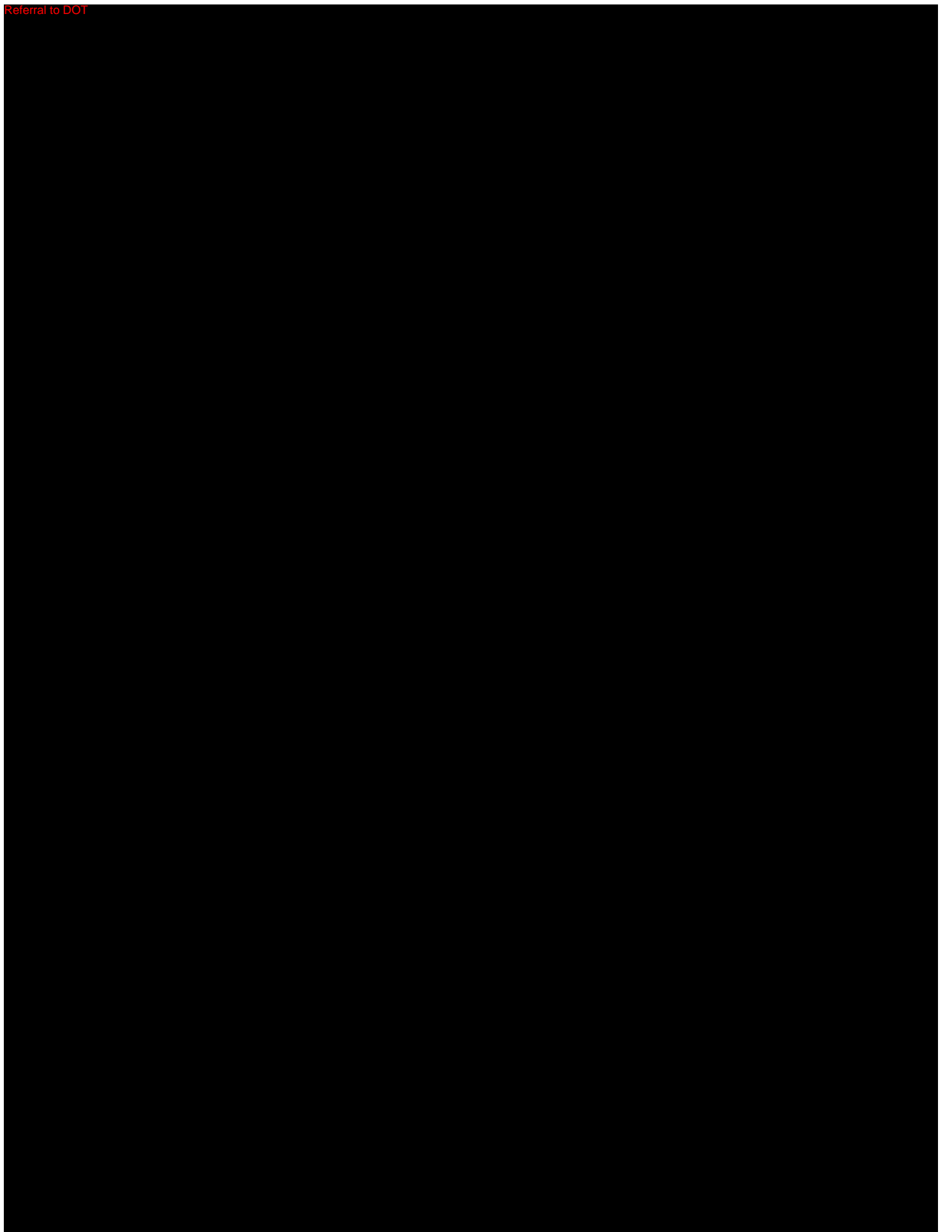
Sincerely,

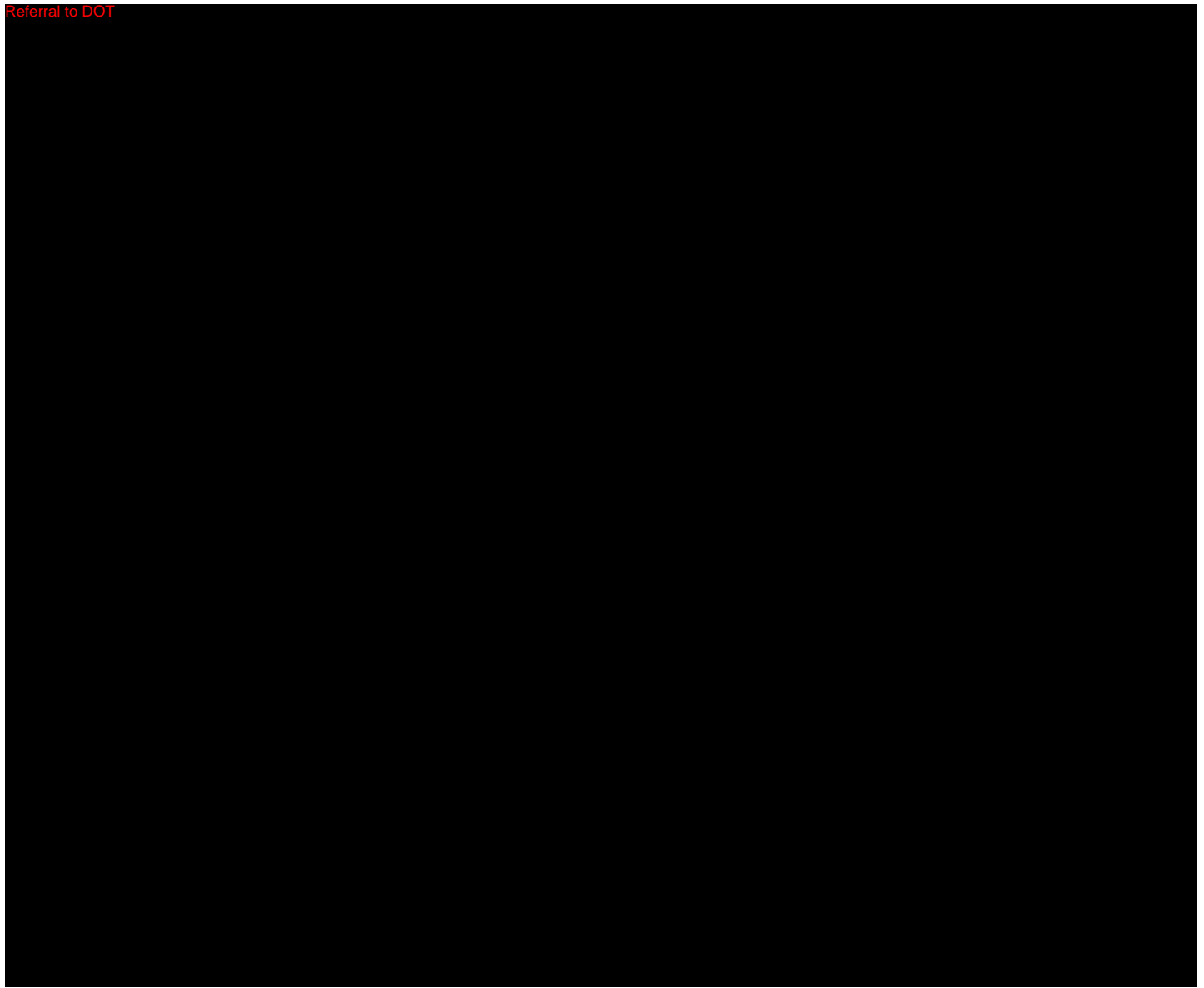


Walter M. Shaub, Jr.  
Director









**From:** [Walter M. Shaub](#)  
**To:** [Roberts, Blake](#)  
**Subject:** Re: ?  
**Date:** Tuesday, May 02, 2017 10:22:45 PM  
**Attachments:** [image001.png](#)

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Thanks, Blake. I'm relieved to learn that she had no involvement.

Walt

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

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**From:** Roberts, Blake  
**Sent:** Tuesday, May 2, 2017 10:11 PM  
**To:** Walter M. Shaub  
**Subject:** RE: ?

---

Walt,

Thank you for bringing this to my attention. I do not know how VOA operates, but it appears that someone there re-published an Associated Press article about the book and then tweeted it out. From a quick look at the VOA website, it appears to publish a broad range of stories, including ones critical of the Trump Administration. My guess is that an editor there did not consider whether re-publishing the AP story on the book might be criticized as an improper government endorsement of the book.

I have checked with Ivanka and she had no knowledge of this.

Thanks,  
Blake

---

**From:** Walter M. Shaub [mailto:[wmshaub@oge.gov](mailto:wmshaub@oge.gov)]  
**Sent:** Tuesday, May 2, 2017 5:18 PM  
**To:** Roberts, Blake <[Blake.Roberts@wilmerhale.com](mailto:Blake.Roberts@wilmerhale.com)>  
**Subject:** ?



## In New Book, Ivanka Trump Gets Serious About Women at Work [dlvr.it/P2cWM2](https://dlvr.it/P2cWM2)



RETWEETS  
19

LIKES  
42



Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

Telephone: 202.482.9292  
Email: [walter.shaub@oge.gov](mailto:walter.shaub@oge.gov)

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**From:** Austin Evers  
**To:** [Walter M. Shaub](#)  
**Subject:** Fwd: Letter regarding OGE ethics waiver data call  
**Date:** Wednesday, May 03, 2017 11:13:50 AM  
**Attachments:** [2017.05.03 - Letter to Sen. Grassley re OGE ethics data call.pdf](#)  
[ATT00001.htm](#)

Attachment released below

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Mr. Shaub:

My organization, American Oversight, sent the enclosed letter to Chairman Grassley urging him to support OGE's recent data call. The letter is carbon copied to you for your awareness. A copy will also be mailed.

Thank you for your ongoing service.

My best,

Austin Evers  
Executive Director  
American Oversight

Begin forwarded message:

**From:** Austin Evers (b) (6) >  
**Date:** May 3, 2017 at 10:42:14 AM EDT  
**To:** (b) (6) - Jason Foster's email address >  
**Cc:** Heather Sawyer (b) (6) >  
**Subject:** Letter regarding OGE ethics waiver data call

Jason -

I hope you're well. I am enclosing a letter to the Chairman encouraging him to support the Office of Government Ethics' recent data call for administration ethics waivers. If you have any questions, or would just like to catch up, please don't hesitate to reach out.

My best,

Austin

**Austin R. Evers**  
Executive Director  
**American Oversight**

(b) (6)

(b) (6) - Austin Evers's email address



May 3, 2017

**VIA EMAIL & US MAIL**

Senator Charles Grassley  
Chairman, Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, DC 20510-6050

Dear Mr. Chairman:

In the past, you have been a strong advocate for transparency surrounding executive branch employee conflicts of interest and ethics waivers. In 2009, you called on the Office of Government Ethics (OGE) to “implement policies and procedures to collect all [ethics] waivers,” provide a full accounting of them to you, and “take immediate action to make any waivers and recusals public.”<sup>1</sup> In part due to your advocacy and persistence, the last administration released ethics waiver information publicly online.<sup>2</sup> I write today to urge you to renew your leadership on this issue.

Unfortunately, the current administration reportedly does not intend to release ethics waivers publicly online, striking a blow against transparency and accountable government.<sup>3</sup> As a result, the public has no information about whether the administration is enforcing ethics rules or permitting individuals to serve in the government despite apparent conflicts of interest.

To its credit—and consistent with the request you made in 2009—on April 28, 2017, OGE issued a data call to the entire executive branch, including the White House, for any ethics waivers issued between May 1, 2016, and April 30, 2017. If the executive branch complies, the data call will provide OGE with a detailed understanding of whether public servants have potential conflicts of interest and what steps, if any, their respective agencies have taken to address them. However, significant questions remain about the data call:

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<sup>1</sup> Letter from Charles E. Grassley, U.S. Senator, to Robert I. Cusick, Director, Office of Government Ethics (June 10, 2009), <https://www.grassley.senate.gov/news/news-releases/grassley-urges-white-house-make-transparent-any-ethics-waivers-and-recusals>.

<sup>2</sup> See, e.g., *Ethics Pledges and Waivers*, THE WHITE HOUSE: PRESIDENT BARACK OBAMA, <https://obamawhitehouse.archives.gov/21stcenturygov/tools/ethics-waivers>; *Executive Branch Agency Ethics Pledge Waivers*, U.S. OFFICE OF GOV. ETHICS, <https://www.oge.gov/Web/OGE.nsf/Executive%20Branch%20Agency%20Ethics%20Pledge%20Waivers?openview>.

<sup>3</sup> See Eric Lipton, *Top Ethics Officer Challenges Trump Over Secret Waivers for Ex-Lobbyists*, N.Y. TIMES, May 1, 2017, <http://nyti.ms/2pFiytL>; Eric Lipton, et al., *With Trump Appointees, a Raft of Potential Conflicts and ‘No Transparency’*, N.Y. TIMES, Apr. 15, 2017, <http://nyti.ms/2pt5tn6>.



1. Will OGE release the information it gathers publicly online? The data call is silent on the disposition of the records received.
2. If not, will OGE exercise independent custody over the results of the data call, thereby permitting the agency to release the information to Freedom of Information Act requesters and/or to Congress? In 2009, OGE initially informed you that it would not serve as a central repository for ethics waiver information and had no control over their release.<sup>4</sup>
3. Will agencies and the White House comply with the data call and if so, what conditions will they place on their disclosures? Recent reports indicate the White House has not yet decided whether to comply, and it has previously asserted that OGE does not have jurisdiction over the White House.<sup>5</sup>

As Chairman of the Judiciary Committee, and a longtime proponent of disclosing ethics waivers publicly, I urge you to support OGE's data call; ensure agencies and the White House comply fully; and take steps to cause OGE, agencies and the White House, or your Committee to release the results of the ethics waiver data call. Any recalcitrance on behalf of the responding officials should raise serious concerns about whether the American people can trust their public servants are serving their interests to the exclusion of all others.

Sincerely,



Austin R. Evers  
Executive Director  
American Oversight

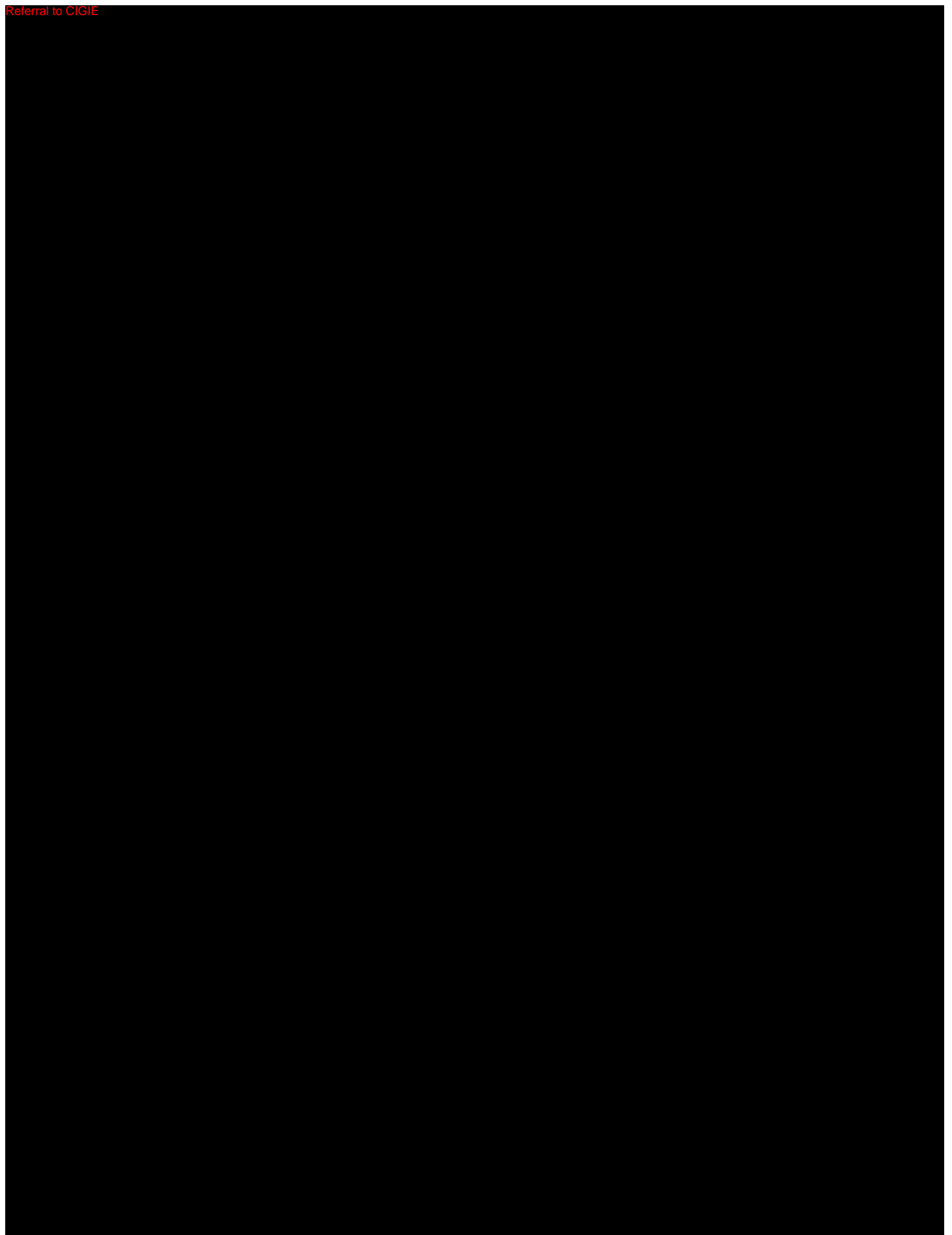
cc: Senator Dianne Feinstein  
Ranking Member, Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, DC 20510-6050

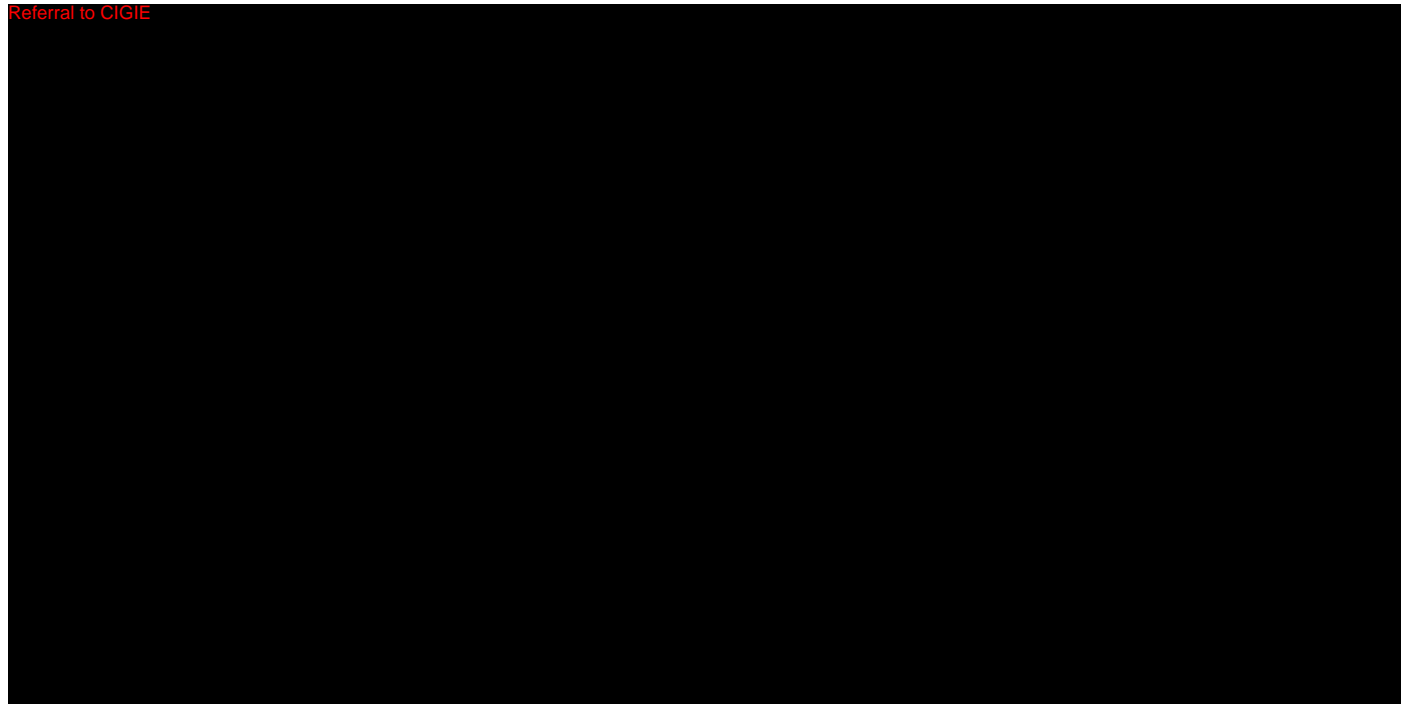
Walter M. Shaub, Jr.  
Director, U.S. Office of Government Ethics  
1201 New York Avenue NW  
Washington, DC 20005

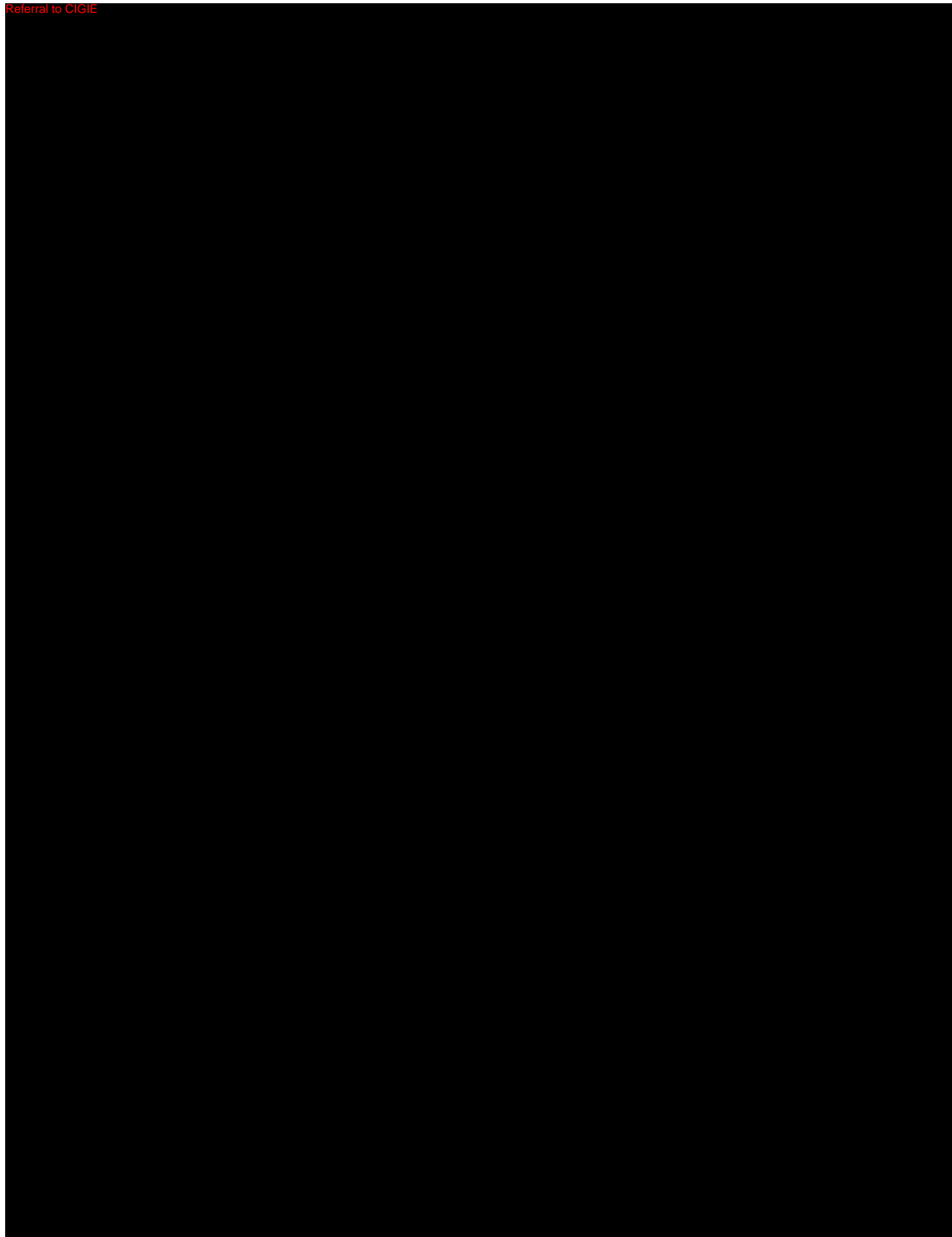
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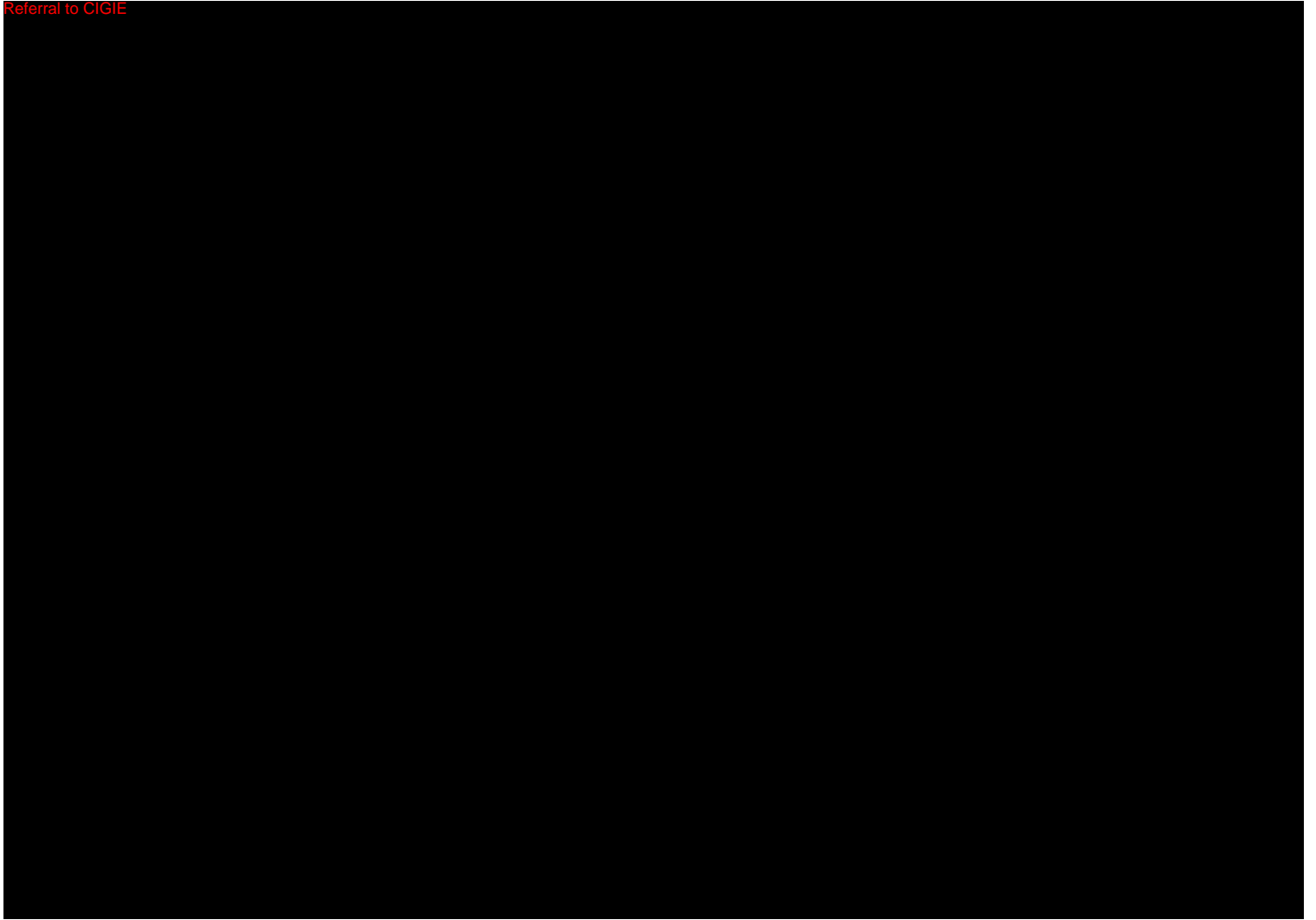
<sup>4</sup> Letter from Don W. Fox, General Counsel, Office of Gov. Ethics, to Charles E. Grassley, U.S. Senator (June 23, 2009), <https://www.documentcloud.org/documents/3688404-2009-Grassley-to-OGE-and-OGE-Response.html>.

<sup>5</sup> See Lipton, *supra* note 3.

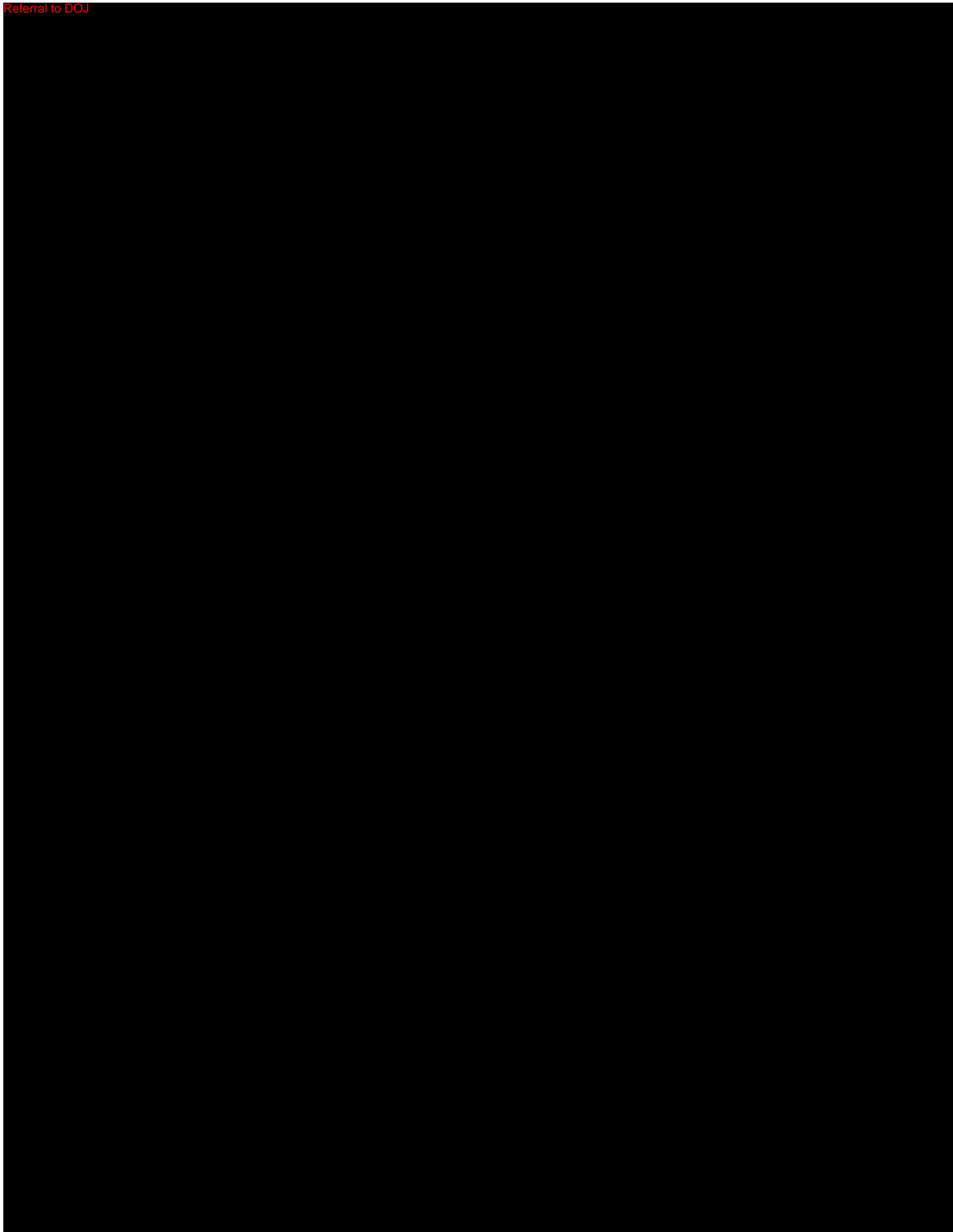


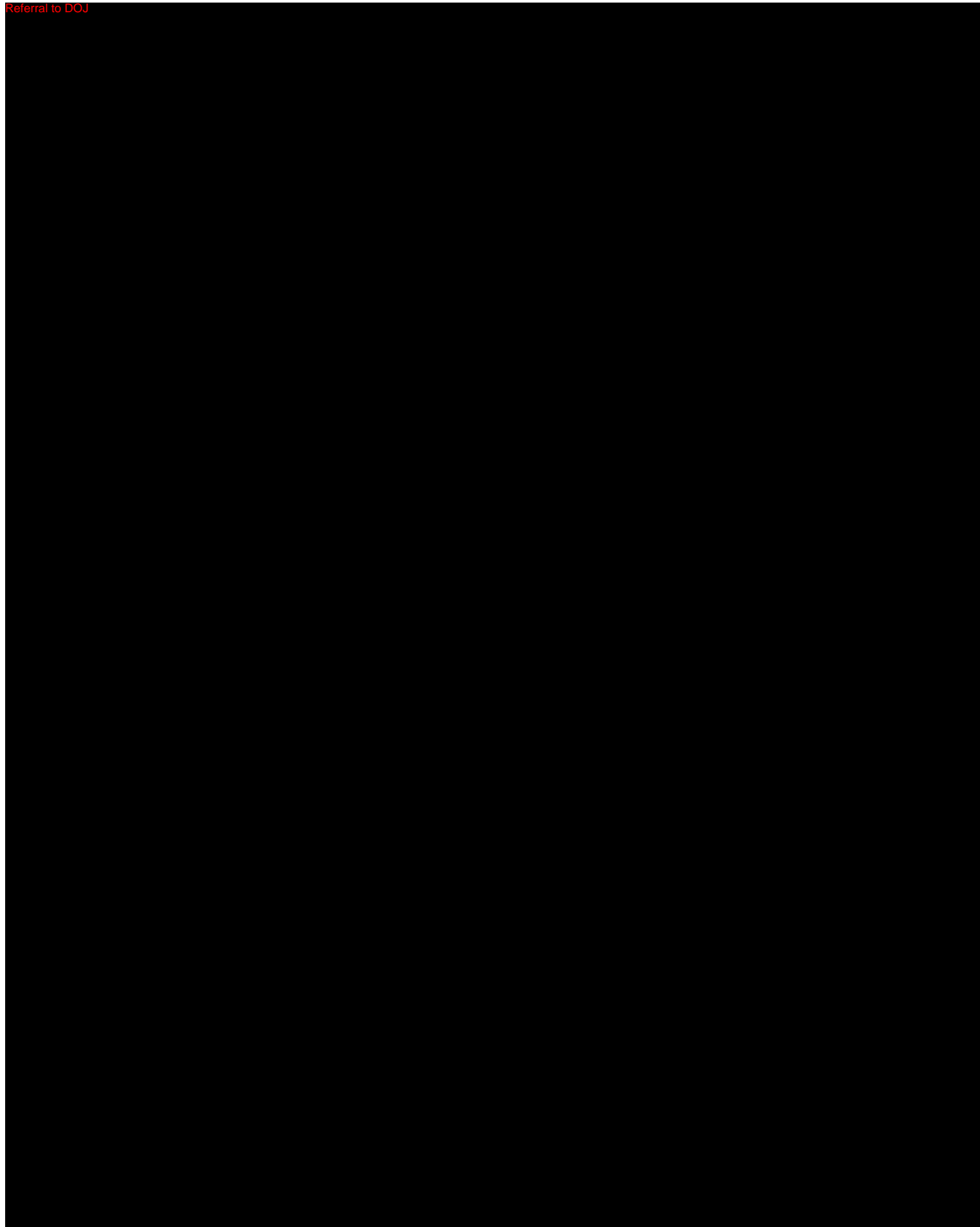








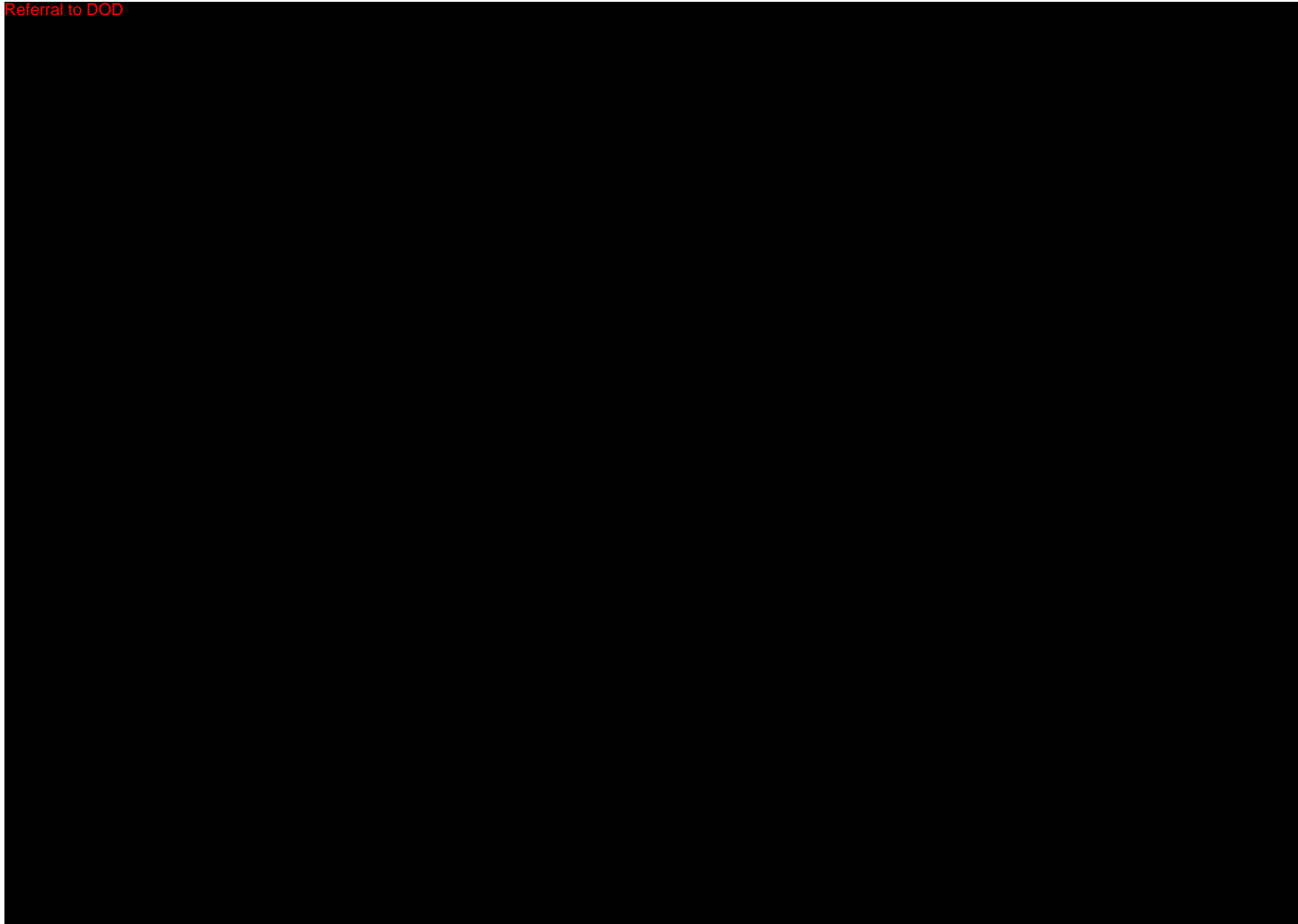




Referral to CIGIE



Referral to DOD



-----Original Message-----

From: George Hancock [<mailto:ghancock@oge.gov>]

Sent: Friday, May 05, 2017 7:56 AM

To: Vetter, Ruth M SES OSD OGC (US)

Cc: Director of OGE

Subject: (b)(5)

Ruth:

(b)(5)

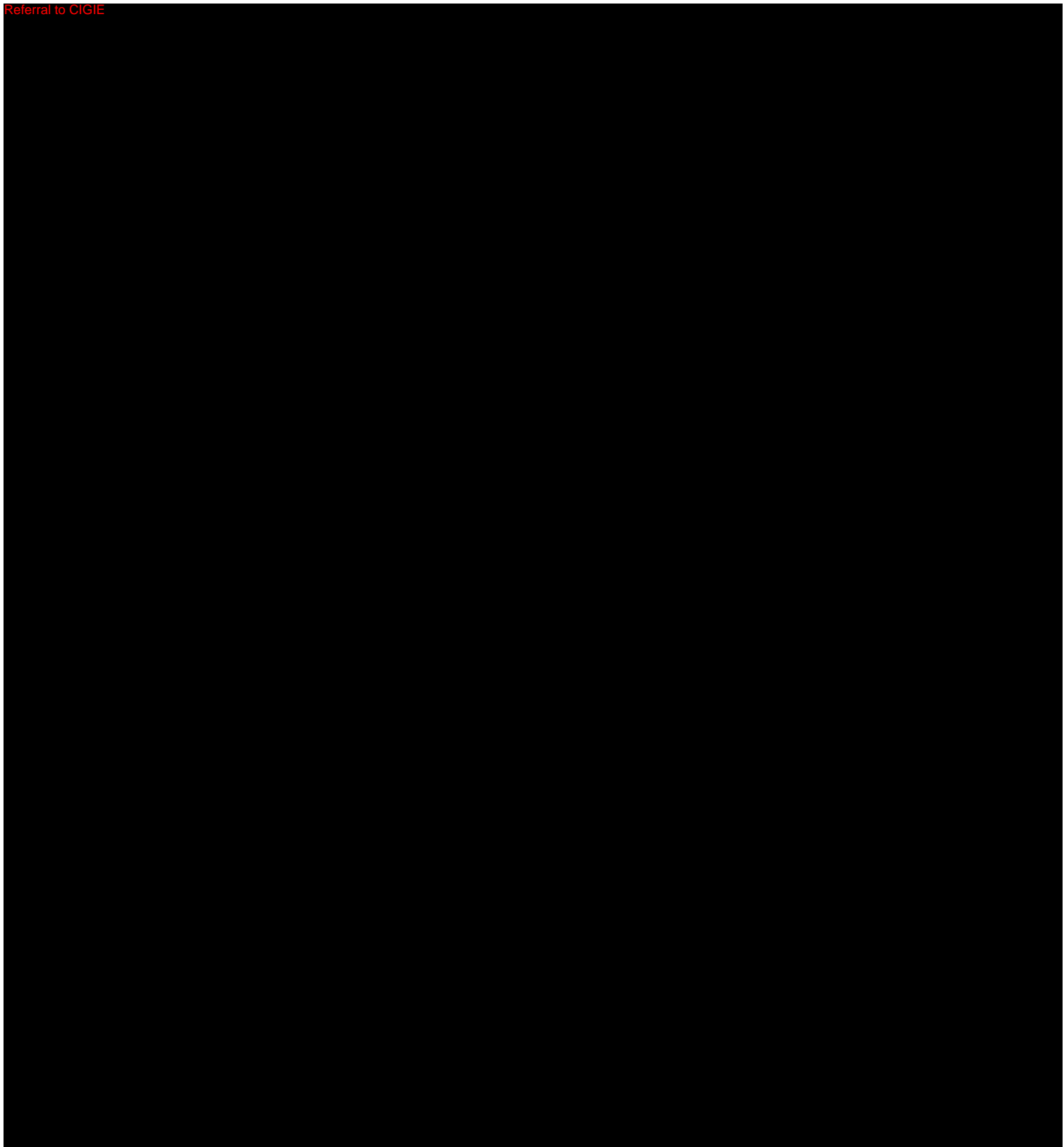


(b)(5)

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Thank you.

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**From:** Kathryn Beard  
**To:** [Walter M. Shaub](#)  
**Subject:** Democracy 21 Urges OGE to Act to Ensure that Kushner's Conflicts of Interest Problems Regarding China Are Eliminated  
**Date:** Monday, May 08, 2017 11:32:24 AM  
**Attachments:** [Shaub Letter Regarding Kushner Conflicts of Interest 5 8 17.pdf](#)  
[D 21 letter calls on Kushner to disclose foreign lenders and business associates 5 3 17.pdf](#)  
[Democracy 21 letter to Jared Kushner 4 25 17.pdf](#)

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Dear Mr. Shaub,

Attachments released below

Attached is a letter from Democracy 21 regarding the conflicts of interest and appearance of conflicts of interest facing Jared Kushner. Also, attached are two letters previously sent to Jared Kushner by Democracy 21.

Thank you,

Kathryn Beard

Communications & Research Director  
**Democracy 21**

2000 Massachusetts Ave NW  
Washington, DC 20036

(b) (6)

(b) (6)

May 8, 2017

Hon. Walter M. Shaub, Jr.  
Director  
Office of Government Ethics  
Suite 500  
1201 New York Avenue, NW  
Washington, DC 20005

Re: Conflict of Interest Issues re Jared Kushner

Dear Director Shaub:

We are forwarding to you two letters recently sent by Democracy 21 to Jared Kushner, Senior Adviser to the President.

As set forth in our first letter, dated April 25, 2017, given the unprecedented responsibilities conferred on Mr. Kushner by President Trump and given Mr. Kushner's extensive business holdings, Mr. Kushner needs to make a full divestiture of his business interests into a blind trust that complied with the requirements of the Ethics in Government Act.

But in light of his refusal to do so, the April 25 letter stated that given the business interests in China of his spouse, Ivanka Trump, including her valuable trademarks and pending trademark applications, Mr. Kushner is required to recuse himself from his foreign policy responsibilities for matters dealing with China. As you know, the business interests of Mr. Kushner's spouse also accrue to Mr. Kushner for purposes of the conflicts of interest rules.

This is a matter that requires the attention of, and appropriate action by, the Office of Government Ethics.

Reports published about the efforts by the Kushner family in China to obtain investors in the Kushner family business enterprise only confirm that there is a clear and compelling case that Mr. Kushner needs to publicly recuse himself promptly from all policy matters dealing with China.

A [\*Washington Post\*](#) report published on May 6, 2017 stated:

Over several hours of slide shows and presentations, representatives from the Kushner family business urged Chinese citizens gathered at a Ritz-Carlton hotel



to consider investing hundreds of thousands of dollars in a New Jersey luxury apartment complex that would help them secure what's known as an investor visa.

The potential investors were advised to invest sooner rather than later in case visa rules change under the Trump administration. "Invest early, and you will invest under the old rules," one speaker said.

The tagline on a brochure for the event: "Invest \$500,000 and immigrate to the United States."<sup>1</sup>

According to the *Post* article, this message was delivered by "Jared Kushner's sister Nicole Kushner Meyer to a ballroom full of wealthy Chinese investors in Beijing." Ms. Meyer was listed in promotional materials as Jared Kushner's sister.

The *Post* article also stated, "At Saturday's event, attendee Wang Yun, a Chinese investor, said the Kushner family's ties to Trump were an obvious part of the project's appeal. 'Even though this is the project of the son-in-law's family, of course it is still affiliated,' Wang said."

A [\*New York Times\*](#) report published on May 7, 2017 stated:

Like many American firms that come to China looking for money, Kushner Companies on Sunday tried to woo a Shanghai audience with promises of potentially big returns and a path toward living in the United States.

But for Bi Ting, who attended the event, part of the appeal was political: Jared Kushner is the son-in-law of — and a powerful adviser to — President Trump. Virtually unheard-of in China just months ago, he is now known here as a deeply influential figure in American politics.

"The Trump relationship is an extra point for me," Ms. Bi said, adding that she and her husband had not decided whether to invest.

The Kushner Companies' China roadshow, promoting \$500,000 investments in New Jersey real estate as the path to a residency card in the United States, moved to Shanghai on Sunday after a similar pitch on Saturday in Beijing.<sup>2</sup>

The *Times* article also stated, "one slide presented to the Shanghai audience on Sunday showed a photograph of Mr. Trump when describing who will decide the future of the visa program for foreign investors, according to a snapshot taken by an audience member."

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<sup>1</sup> E. Rauhala and William Wan, "In a Beijing Ballroom, Kushner Family Pushes \$500,000 'Investor Visa' to Wealthy Chinese," *The Washington Post* (May 6, 2017).

<sup>2</sup> K. Bradsher, A. Tang and J Druckner, "Trump Looms as Kushner Companies Courts Investors in China," *The New York Times* (May 7, 2017).

This crass effort by the Kushner family to raise large amounts of funding in China and to use government “investment visas” as incentives for wealthy Chinese individuals to invest in the Kushner family business is clearly intended to create the appearance that Jared Kushner and his family can be influential in their obtaining investor visas to the United States.

While Jared Kushner has divested his ownership holdings in this particular Kushner business enterprise, the effort by the Kushner family to imply that the influential Jared Kushner can help Chinese individuals to obtain investor visas only confirms the profound appearance of conflicts of interest that exist and will continue to exist so as long as Mr. Kushner has White House foreign policy responsibilities for matters dealing with China.

While a published report today in [CNN Money](#) states that a spokesperson for the Kushner Companies has said that “the name drop at the event in Beijing on Saturday was not intended to be an ‘attempt to lure investors’ to one of its projects in New Jersey,”<sup>3</sup> this after the fact, self-serving denial does not relieve Mr. Kushner of the obvious appearance problems that Mr. Kushner has in matters dealing with China

This appearance of a conflict of interest by Mr. Kushner comes on top of Mr. Kushner’s actual conflict of interest resulting from Ivanka Trump’s business interests in China and, as stated in our April 25 letter, makes it incumbent on Mr. Kushner to recuse himself from all matters dealing with China.

Democracy 21 believes this matter facing Mr. Kushner is a very serious ethics problem that must be effectively addressed.

In our second letter to Mr. Kushner, dated May 3, 2017, we stated that unless and until Mr. Kushner recuses himself from a number of policy areas as outlined in our April 25 letter, he must make a full public disclosure now of all foreign lenders, investors and business associates involved in his extensive business holdings.

Democracy 21 urges you and the Office of Government Ethics to take appropriate action to ensure that Mr. Kushner’s conflicts of interest and the appearance of such conflicts regarding his policy responsibilities for matters dealing with China are eliminated.

Democracy 21 would appreciate your attention to this important ethics problem.

Sincerely,

/s/ Fred Wertheimer

Fred Wertheimer  
President

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<sup>3</sup> C. Alesci & J. Disis, “Kushner family apologizes for mentioning White House adviser Jared Kushner,” *CNN Money* (May 8, 2017).

May 3, 2017

Mr. Jared Kushner  
Senior Adviser to the President  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Mr. Kushner:

Democracy 21 calls on you to make a full public disclosure of the foreign lenders, investors and business associates involved in your extensive business holdings. We believe this information is essential in order to assure the American people that there are no conflicts of interest between the important foreign policy responsibilities assigned to you by President Trump and your extensive business holdings.

On April 25, 2017, Democracy 21 wrote to you to express our concerns about the potential conflicts of interest and the appearance of such conflicts that you currently face in your role as Senior Adviser to the President. The letter cited the unprecedented policy responsibilities you have been given by President Trump in your role as Senior Adviser to, and confidant of, the President, and your extensive business holdings.

The policy responsibilities assigned to you and mentioned in the April 25 letter include foreign policy matters involving China, Canada, Mexico, the Middle East and brokering peace between Israel and the Palestinians. The letter also cited a *Washington Post* article that said you also are “the primary point of contact for presidents, ministers and ambassadors from more than two dozen countries.”<sup>1</sup>

The April 25 letter discussed the fact that your decision to make only a partial divestiture of your business holdings resulted in your continuing to retain extensive business interests. According to a *Washington Post* article that discussed the financial disclosure report you have filed, “Kushner reported owning a stake in nearly 300 different assets or companies collectively worth hundreds of millions of dollars, most of which he still owns.”<sup>2</sup>

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<sup>1</sup> P. Rucker, A. Parker and J. Partlow, “Jared Kushner Proves to be a Shadow Diplomat on U.S.-Mexico Talks,” *The Washington Post* (February 10, 2017).

<sup>2</sup> J. O’Connell, “Watchdog Group: Jared Kushner Must Do More to Avoid Conflicts,” *The Washington Post* (April 25, 2017).

In our April 25 letter, we urged you to publicly recuse yourself from a number of policy areas in order to avoid conflicts of interest and the appearance of such conflicts with your business holdings. We said these recusals should include any involvement in all policy areas that could directly affect your business interests or those of your spouse, including real estate, taxes, trade, banking and financial services, and certain foreign policy areas, including China.

Our letter cited a *New York Times* article that stated that your business depends “on foreign investment from undisclosed sources, as well as billions of dollars in loans from the world’s biggest financial services firms.”<sup>3</sup> The *Times* article also noted that your disclosure reports “do not reveal the names of investors and lenders to ventures that Mr. Kushner is retaining a stake in.”

A *New York Times* article published on April 26, 2017,<sup>4</sup> stated that you remain the beneficiary of trusts that own your “sprawling real estate firm” and that “the firm has taken part in roughly \$7 billion in acquisitions over the last decade, many of them backed by foreign partners whose identities [you] will not reveal.”<sup>5</sup>

The *Times* article discussed your business relationship over the years with Raz Steinmetz, an Israeli citizen. According to the article, you and the Steinmetz family “have purchased numerous properties in the New York City area together, spending around \$188 million for about two dozen buildings in Manhattan and New Jersey.”

As we noted in our April 25 letter and as stated in the *Times* article, “Kushner Companies has taken out at least four loans from Israel’s largest bank, Bank Hapoalim.”

The *Times* article stated that your partnership with Steinmetz “underscores the mystery behind his family’s multibillion-dollar business and its potential for conflicts with his role as perhaps the second-most powerful man in the White House, behind only his father-in-law, President Trump.”

One of the most important responsibilities assigned to you by President Trump is to try to facilitate peace between Israel and the Palestinians. The fact that your business is reportedly financially obligated to an Israeli bank and that you have Israeli business associates illustrates why we believe recusal is called for in regard to this and other policy responsibilities.

Absent the recusals we called for in our letter of April 25, we believe that full public disclosure is required by you of your foreign financial ties, including foreign lenders, investors and business associates. Such full disclosure is needed in order for the public to know whether

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<sup>3</sup> J. Drucker, E. Lipton and M. Haberman, “Ivanka Trump and Jared Kushner Still Benefiting From Business Empire, Filings Show,” *The New York Times* (March 31, 2017).

<sup>4</sup> J. Drucker, “Bribe Cases, a Secret Jared Kushner Partner and Potential Conflicts,” *The New York Times* (April 26, 2017).

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

your foreign financial ties and obligations cause any conflicts of interest with your foreign policy responsibilities.

Democracy 21 continues to believe that the recusals we called for in our April 25 letter are essential. Unless and until you make such recusals, Democracy 21 calls on you to make a full public disclosure now of all foreign lenders, investors and business associates involved in your extensive business holdings.

Sincerely,

/s/ Fred Wertheimer

Fred Wertheimer  
President

April 25, 2017

Mr. Jared Kushner  
Senior Adviser to the President  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC 20500

Dear Mr. Kushner:

Democracy 21 is writing to express our concerns about the potential conflicts of interest and the appearance of such conflicts that you currently face in your role as Senior Adviser to the President, and to strongly urge you to promptly take steps to address these problems.

In light of the unprecedented policy responsibilities you have been given by President Trump in your role as Senior Adviser to, and confidant of, the President, and the very substantial business interests you continue to hold in your personal capacity, Democracy 21 calls on you to publicly announce now that you are recusing yourself from any involvement in a number of policy areas in order to avoid conflicts of interest and the appearance of such conflicts.

These recusals should include any involvement in all policy areas that could directly affect your business interests or those of your spouse, including real estate, taxes, trade, banking and financial services, and certain foreign policy areas.

This problem would have been best addressed by your making a full divestiture of your business assets into a blind trust that complied with the requirements of the Ethics in Government Act. This remains the best way for you to resolve these issues.

However, you have chosen to make only a partial divestiture and to continue ownership of a vast array of assets, including scores of real estate business interests, in a portfolio that is valued at as much as \$740 million.<sup>1</sup>

Given these circumstances, a prophylactic solution – announcing in advance your recusal from certain issue areas – is called for in order to provide necessary assurances to the American people that your conflicts problems are being avoided and that your public office is not being used for personal financial gain.

According to an article in *The New York Times*, “Although Mr. Kushner has stepped down from his management positions at the more than 200 entities that operated aspects of the family real estate business, he will remain a beneficiary of a vast majority of the business he ran for the past decade, through a series of trusts that already owned the various real estate

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<sup>1</sup> D. Smith, “Ivanka Trump and Jared Kushner retain scores of property assets while in White House,” *The Associated Press* (April 1, 2017).

companies.”<sup>2</sup> The article noted that you are “still the sole primary beneficiary of a majority of the trusts that will retain assets,” with your children named as the secondary beneficiaries.<sup>3</sup>

The *Times* article also stated that your businesses depend “on foreign investment from undisclosed sources, as well as billions of dollars in loans from the world’s biggest financial services firms.” The *Times* article noted that your disclosure reports “do not reveal the names of investors and lenders to ventures that Mr. Kushner is retaining a stake in.”<sup>4</sup>

The *Times* article also stated that the Kushner real estate firm “has borrowed money from the likes of Goldman Sachs, the Blackstone Group, Deutsche Bank and the French bank Natixis.”<sup>5</sup> The article said the firm has “also received loans from Israel’s largest bank, Bank Hapoalim, which is the subject of a United States Justice Department investigation into allegations that it helped wealthy Americans evade taxes using undeclared accounts.”<sup>6</sup>

A subsequent article in *The New York Times* stated that you continue “to hold multimillion-dollar lines of credit from institutions such as Citigroup and Deutsche Bank, while companies he is still a beneficiary of have billions of dollars in additional loans from heavily regulated institutions.”<sup>7</sup>

For purposes of the federal conflict of interest laws, the assets of your spouse, Ivanka Trump, are also attributed to you. Your wife’s assets include valuable trademarks granted by foreign governments.

An *Associated Press* story stated that your spouse recently “won provisional approval from the Chinese government for three new trademarks, giving it monopoly rights to sell Ivanka brand jewelry, bags and spa services in the world’s second-largest economy. That night, the first daughter and her husband, Jared Kushner, sat next to the president of China and his wife for a steak and Dover sole dinner at Mar-a-Lago.”<sup>8</sup>

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<sup>2</sup> J. Drucker, E. Lipton and M. Haberman, “Ivanka Trump and Jared Kushner Still Benefiting From Business Empire, Filings Show,” *The New York Times* (March 31, 2017).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

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

<sup>6</sup> *Id.*

<sup>7</sup> E. Lipton and J. Drucker, “Trump Couple, Now White House Employees, Can’t Escape Conflict Laws,” *The New York Times* (April 1, 2017).

<sup>8</sup> E. Kinetz and A. D’Innocenzio, “Ivanka’s Biz Prospers as Politics Mixes with Business,” *Associated Press* (April 18, 2017).

A *New York Times* story notes that your wife already has “at least 23 trademarks for everything from swimwear to wedding dresses” in China.<sup>9</sup> Another *Associated Press* story stated that your spouse’s company, Ivanka Trump Marks LLC, applied for 36 trademarks in China between March and July of last year.<sup>10</sup>

Your formally assigned duties as Senior Adviser to President Trump include heading a new White House Office of American Innovation that has a mandate to reorganize the federal government and that reports directly to President Trump. Your duties also include reforming the treatment of veterans, solving the opioid crisis, and foreign policy matters involving China, Canada, Mexico and the Middle East, including brokering peace between Israel and the Palestinians. According to *The Washington Post* you also are “the primary point of contact for presidents, ministers and ambassadors from more than two dozen countries.”<sup>11</sup>

The principal statutory protection against conflicts-of-interest, 18 U.S.C. § 208, makes it illegal for an employee of the United States to participate “personally and substantially” in any “particular matter” in which he or his family “has a financial interest.”

Under regulations adopted by the Office of Government Ethics (OGE), section 208 prohibits any federal employee “from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he ... has a financial interest, if the particular matter will have a direct and predictable effect on that interest.” 5 C.F.R. § 2640.103.

Importantly, OGE regulations apply the conflict of interest rules where an employee knows that a particular matter “is likely to have a direct and predictable effect on the financial interest of a member of his household” and “the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter.” 5 C.F.R. § 2635.502.

According to published reports, you “will abide by all the appropriate recusal requirements of the ethical guidelines.”<sup>12</sup> Democracy 21 assumes this means that you will comply with the conflict of interest provisions of section 208 and 5 C.F.R. § 2635.502 and will recuse yourself when particular matters are likely to have a direct effect on your business and financial matters or those of your spouse.

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<sup>9</sup> D. Hakim and R. Abrams, “Ivanka Trump’s Global Reach Undeterred by a White House Job,” *The New York Times* (April 19, 2017).

<sup>10</sup> E. Kinetz and Anne D’Innoncenzio, “Ivanka Trump’s Brand Ramped up China Trademark Work in 2016,” *Associated Press* (April 21, 2017)

<sup>11</sup> A. Parker and J. Wagner, Kushner Has a Singular and Almost Untouchable Role in Trump’s White House,” *The Washington Post* (April 3, 2017) .

<sup>12</sup> D. Kurtzleben, “Trump Names Son-in-Law Jared Kushner As White House Senior Adviser,” *NPR* (January 9, 2017).



In the case of your spouse's business interests in China, including her valuable trademarks and pending trademark applications, we believe you are required by the law and regulations to recuse yourself from all matters dealing with China in carrying out your responsibilities.

Because the Chinese government exercises complete control over all foreign business interests in the country, we believe that any actions you take or any policy advice you give on any matter dealing with China is "likely" to affect your spouse's business interests, and would cause "a reasonable person with knowledge of the relevant facts to question [your] impartiality in the matter."

With regard to other matters, and in light of your unprecedented White House portfolio, your role as adviser to President Trump, your relationship with the President as his son-in-law and your family's very substantial domestic and foreign business interests, more is required of you to avoid conflicts of interest and the appearance of such conflicts than simply adhering to the letter of section 208 and its implementing regulations.

Your commitment to abide by the law's conflicts of interest provisions is necessary but not sufficient to address the multitude of potential conflicts of interest and the appearance of such conflicts that you face in light of the unique role you are playing in the Trump Administration. Your approach is also inadequate as a means of assuring the American public that your White House office is not being used to benefit your personal financial holdings, or those of your spouse.

For example, given the unique role that you are playing with President Trump, there is no way for the public to know which policy matters you are discussing with the President and how they relate to your family business holdings.

And, as noted above, your financial disclosure reports do not meaningfully inform the public of the identity of a multitude of the business partners, investors, banks or other lenders which are involved in your dozens of business enterprises. Without knowing the identity of your business partners or the lenders to whom you are obligated, it is impossible for the public to assess whether your actions as Senior Adviser to the President are affecting those partners or lenders, and inuring to your financial benefit.

The American people are entitled to know that with business holdings worth as much as \$740 million, you are avoiding all actual and apparent conflicts of interest and that you are not using your unique role in the Trump Administration for personal financial gain. In addition to satisfying the standards of section 208 and its implementing regulations, this requires broad, prophylactic recusals on your part in a number of policy areas.

Accordingly, given your unique role in the Trump Administration, Democracy 21 calls on you to publicly announce now that you are recusing yourself from participating in all policy matters that relate to your vast business interests, including real estate, taxes, trade, banking and financial services. We also call on you to recuse yourself from all policy matters relating to China and to other foreign countries where your wife has substantial business interests.

These steps are necessary to protect the integrity of our government and the interests of the American people whom you have chosen to serve.

Sincerely,

/s/ Fred Wertheimer

Fred Wertheimer  
President

**From:** Roberts, Blake  
**To:** [Walter M. Shaub](mailto:Walter.M.Shaub)  
**Subject:** RE: Need to talk  
**Date:** Tuesday, May 09, 2017 9:29:36 AM

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202-663-6920

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**From:** Walter M. Shaub [mailto:wmshaub@oge.gov]  
**Sent:** Tuesday, May 9, 2017 9:25 AM  
**To:** Roberts, Blake <Blake.Roberts@wilmerhale.com>  
**Subject:** Need to talk

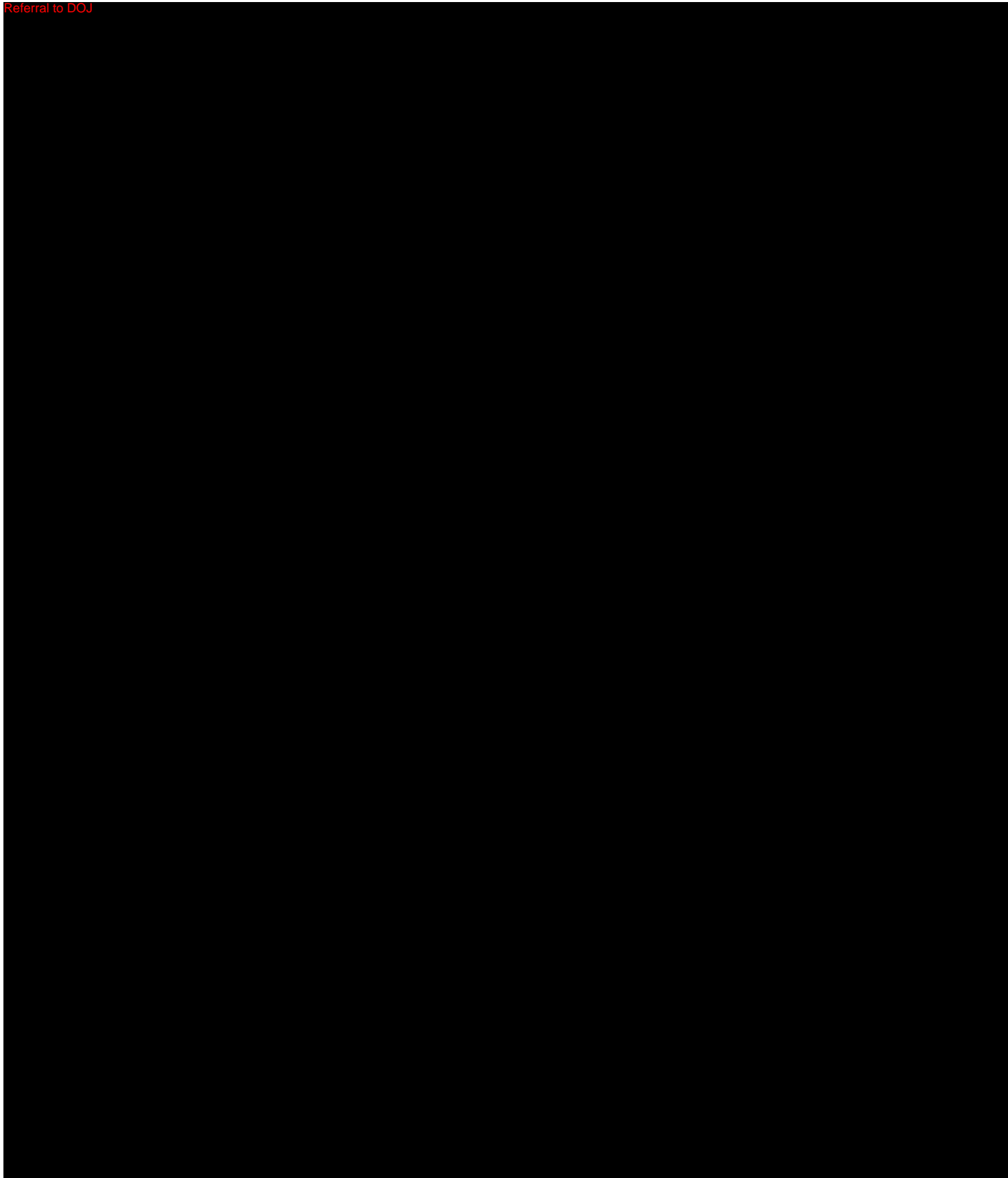
Blake,

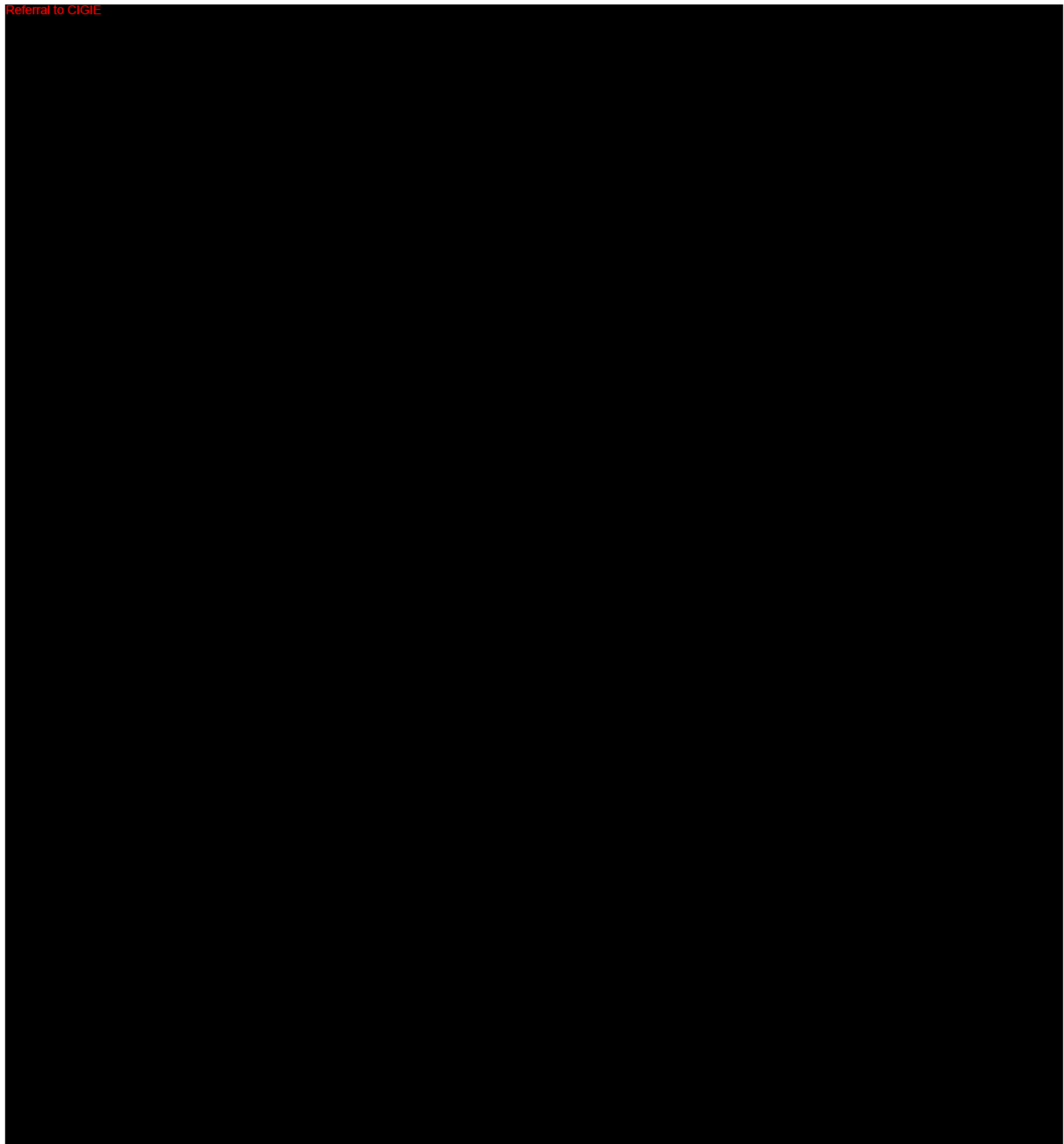
I need to talk to you. What number can I call?

Walt

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

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**From:** Gorelick, Jamie  
**To:** [Walter M. Shaub](#)  
**Subject:** call?  
**Date:** Wednesday, May 10, 2017 12:02:37 PM

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Walt –

I know that we are scheduled to have a call, but I need a very quick conversation regarding the certificate of divestiture process, if you have one minute.

Many thanks.

Jamie

**Jamie S. Gorelick | WilmerHale**  
1875 Pennsylvania Avenue NW  
Washington, DC 20006 USA  
+1 202 663 6500 (t)  
+1 202 663 6363 (f)  
[jamie.gorelick@wilmerhale.com](mailto:jamie.gorelick@wilmerhale.com)

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**From:** [Jennifer Matis](#)  
**To:** [Director of OGE](#); [Shelley K. Finlayson](#); [Diana Veilleux](#)  
**Subject:** FW: Letter to Treasury DAEO on Mnuchin, Linton and Dune Entertainment  
**Date:** Wednesday, May 10, 2017 1:24:30 PM  
**Attachments:** [051017 Mnuchin Linton Dune Entertainment Letter FINAL.pdf](#)

Attachment released below

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**From:** Nicholson, Ian (Finance) [mailto:[\(b\) \(6\)](#)]  
**Sent:** Wednesday, May 10, 2017 1:08 PM  
**To:** Jennifer Matis  
**Subject:** Letter to Treasury DAEO on Mnuchin, Linton and Dune Entertainment

Attachment released below

Hi Jen,

Attached is a letter from Ranking Member Wyden to the Treasury DAEO, with OGE Director Shaub cc'd. Thanks for getting it to the right folks as always 😊

Ian

**Ian Nicholson**

Investigator

U.S. Senate Committee on Finance

219 Dirksen Senate Building

Washington, D.C. 20510

Main: [\(b\) \(6\)](#)

Direct: [\(b\) \(6\)](#)

ORRIN G. HATCH, UTAH, CHAIRMAN

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# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

CHRIS CAMPBELL, STAFF DIRECTOR  
JOSHUA SHEINKMAN, DEMOCRATIC STAFF DIRECTOR

May 10, 2017

Ms. Rochelle F. Granat  
Assistant General Counsel  
(General Law, Ethics & Regulation)  
and Designated Agency Ethics Official  
U.S. Department of the Treasury  
1500 Pennsylvania Ave. NW  
Washington, DC 20220

Dear Ms. Granat,

On January 10, 2017, Secretary Mnuchin signed a letter to you in your capacity as the Treasury Department's Designated Agency Ethics Official (DAEO) which described the steps he would take to avoid any actual or apparent violations of conflict of interest laws upon his confirmation as Treasury Secretary ("Ethics Agreement"). In that agreement, Secretary Mnuchin stated he would resign from his position with Dune Entertainment Partners LLC upon confirmation. Additionally, Secretary Mnuchin affirmed that he would divest all interests in Dune Entertainment Partners LLC within 90 days and all interests in RatPac-Dune Entertainment Holdings LLC within 120 days of his confirmation.<sup>1</sup> This letter was transmitted to the Committee on Finance by Walter M. Shaub, Jr., Director of the United States Office of Government Ethics, on the same date.<sup>2</sup>

I am therefore writing to you concerning a recent report indicating that Secretary Mnuchin's fiancée, Louise Linton, has been named CEO of Dune Entertainment, a company for which Secretary Mnuchin served as Chairman until his resignation as required by his ethics agreement. On May 5, 2017, *Deadline* reported that Ms. Linton was the new CEO of Dune Entertainment. *Deadline* cited a Facebook post from Ms. Linton where she stated "As the new CEO of Dune Entertainment I'm very excited about 'Dunkirk' which we co-financed with Warner Brothers. Check out the trailer."<sup>3</sup>

18 U.S.C. § 208 prohibits an executive branch employee from participating personally and substantially in a particular government matter that will affect his own financial interests, as well as the financial interests of his spouse. Although not yet his spouse, Secretary Mnuchin's ethics agreement acknowledged the potential conflicts presented by Ms. Linton's financial

<sup>1</sup> January 10, 2017 letter from Steven Mnuchin to Rochelle F. Granat, Assistant General Counsel and Designated Agency Ethics Official, U.S. Department of Treasury.

<sup>2</sup> January 10, 2017 letter from Walter M. Shaub, Jr. Director, Office of Government Ethics to the Honorable Orrin Hatch, Chairman.

<sup>3</sup> *Deadline*, May 5, 2017; <http://deadline.com/2017/05/steve-mnuchin-louise-linton-dune-entertainment-ceo-1202085675/>



interests. In the agreement, Secretary Mnuchin stated “(u)ntil we are married, I will not participate personally and substantially in any particular matter involving specific parties that to my knowledge has a direct and predictable effect on my fiancée’s financial interests, or any member of my household, unless I am first authorized to participate pursuant to 5 C.F.R. § 2635.502(d), or would, if we were married, qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).” Secretary Mnuchin also stated he would fully disclose “all assets of my fiancée that would have been reportable under 5 U.S.C. app. § 102 if we were married.”<sup>4</sup> In addition to the specific provisions contained in the ethics agreement, it appears that his current relationship with Ms. Linton falls within the scope of a “covered relationship” as that term is defined in 5 CFR § 2635.502 (b)(ii), both as a member of his household or as a relative with whom he has a close relationship.<sup>5</sup> Once married, Ms. Linton would clearly fall within the scope of spousal employment and asset requirements.

Given that Secretary Mnuchin has agreed to resign from Dune Entertainment (and divest his financial interests in Dune Entertainment and its related entities) to avoid any real or apparent conflicts of interest as outlined in his letter to the Treasury DAEO, I am concerned that these steps may be undermined by any direct or indirect transfer or acquisition of management responsibility or financial interests to or by his fiancée, if such a transfer has taken, or is expected to take, place.

Therefore, I am writing to ask for additional information related to Secretary Mnuchin’s ethics agreement and the reports of Ms. Linton’s new role in Dune Entertainment. Please provide answers to the following questions:

- 1) Are you aware of reports that Ms. Linton is the new CEO of Dune Entertainment? Please describe her role and any related financial interests associated with that role or any relationship with Dune Entertainment or its related entities.
- 2) Has Secretary Mnuchin resigned his position from Dune Entertainment as required by his ethics agreement?
- 3) Has Secretary Mnuchin divested any or all interests in the company and related entities? If so, please provide the dates of those transactions.
- 4) If Secretary Mnuchin has already divested his interests in Dune Entertainment, did he retain any type of arrangement with the company or any of its executives that will provide him with the opportunity to reinvest or regain his interests in the company at a later date?
- 5) Did Secretary Mnuchin disclose Ms. Linton’s assets to the DAEO as required in his ethics agreement? If so, did Ms. Linton possess any interest in Dune Entertainment or related entities?

---

<sup>4</sup> January 10, 2017 letter from Steven Mnuchin to Rochelle F. Granat, Assistant General Counsel and Designated Agency Ethics Official, U.S. Department of Treasury.

<sup>5</sup> Under 5 USC App 109(16), the term relative “...shall be deemed to include the fiancé or fiancée of the reporting individual.”

- 6) Did Secretary Mnuchin, at any point before or after his confirmation sell, gift, or otherwise transfer any of his interests in Dune Entertainment or its related entities to Ms. Linton?
- 7) Does any sort of contract or agreement exist between Secretary Mnuchin and/or Ms. Linton and Dune Entertainment or any of its related partners or entities pertaining to Ms. Linton's employment by, or other relationship with, Dune Entertainment?
- 8) Were Ms. Linton to become CEO of Dune Entertainment, or acquire an additional financial interest in the company, would that development require an ethics waiver? If so has such a waiver been sought or issued?
- 9) Is the divestiture of assets or resignation from any entity or position pursuant to an Office of Government Ethics ethics agreement, by itself, considered a "particular matter" for purposes of 5 C.F.R. § 2635.502?
- 10) Do you consider the transfer of any assets to Ms. Linton—a future spouse—by Secretary Mnuchin, were they to occur, to be in compliance with the divestment requirements of the ethics agreement signed by Secretary Mnuchin?

Please respond to these questions in writing no later than Wednesday, May 24. Thank you for your prompt attention to this inquiry.

Sincerely,



---

Ron Wyden  
Ranking Member

Cc: Walter M. Shaub, Jr.  
Director, Office of Government Ethics

**From:** [Walter M. Shaub](#)  
**To:** ["Kiernan, Leslie"](#)  
**Subject:** CD?  
**Date:** Wednesday, May 10, 2017 3:05:27 PM

---

Leslie,

I've got people standing by but we haven't got anything from you or the agency. Are you going to be sending it today?

Walt

Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

Telephone: 202.482.9292  
Email: [walter.shaub@oge.gov](mailto:walter.shaub@oge.gov)

Referral to DOS OIG



**From:** [Walter M. Shaub](#)  
**To:** [Elaine Newton](#); [Seth Jaffe](#)  
**Subject:** FW: Dr. Gottlieb CD Request  
**Date:** Wednesday, May 10, 2017 3:44:44 PM  
**Attachments:** [cover letter for CDs.msg](#)  
[CD Request.msg](#)  
[EA Final 3-28-17.pdf](#)

2 page attachment withheld in full - (b)(4), (5), (6); 1 page attachment withheld in full - (b)(4), (5), (6). You may obtain a copy of EA at [https://extapps2.oge.gov/2017/Presiden.nsf/BD4592091CA01C31852580F2002C008C/\\$FILE/Gottlieb,%20Scott%20finalEA.pdf](https://extapps2.oge.gov/2017/Presiden.nsf/BD4592091CA01C31852580F2002C008C/$FILE/Gottlieb,%20Scott%20finalEA.pdf)

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Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

Telephone: 202.482.9292  
Email: [walter.shaub@oge.gov](mailto:walter.shaub@oge.gov)

---

**From:** Kiernan, Leslie [<mailto:lkiernan@akingump.com>]  
**Sent:** Wednesday, May 10, 2017 3:22 PM  
**To:** Walter M. Shaub  
**Subject:** Dr. Gottlieb CD Request

Walt,

Dr. Gottlieb was confirmed as FDA Commissioner last night and is to be sworn in tomorrow morning. Attached are the CD request materials sent to the agency ethics official and the ethics agreement. Dr. Gottlieb would like to divest as soon as possible so would appreciate expedited processing of this request. Thank you in advance for your assistance.

Regards,

Leslie

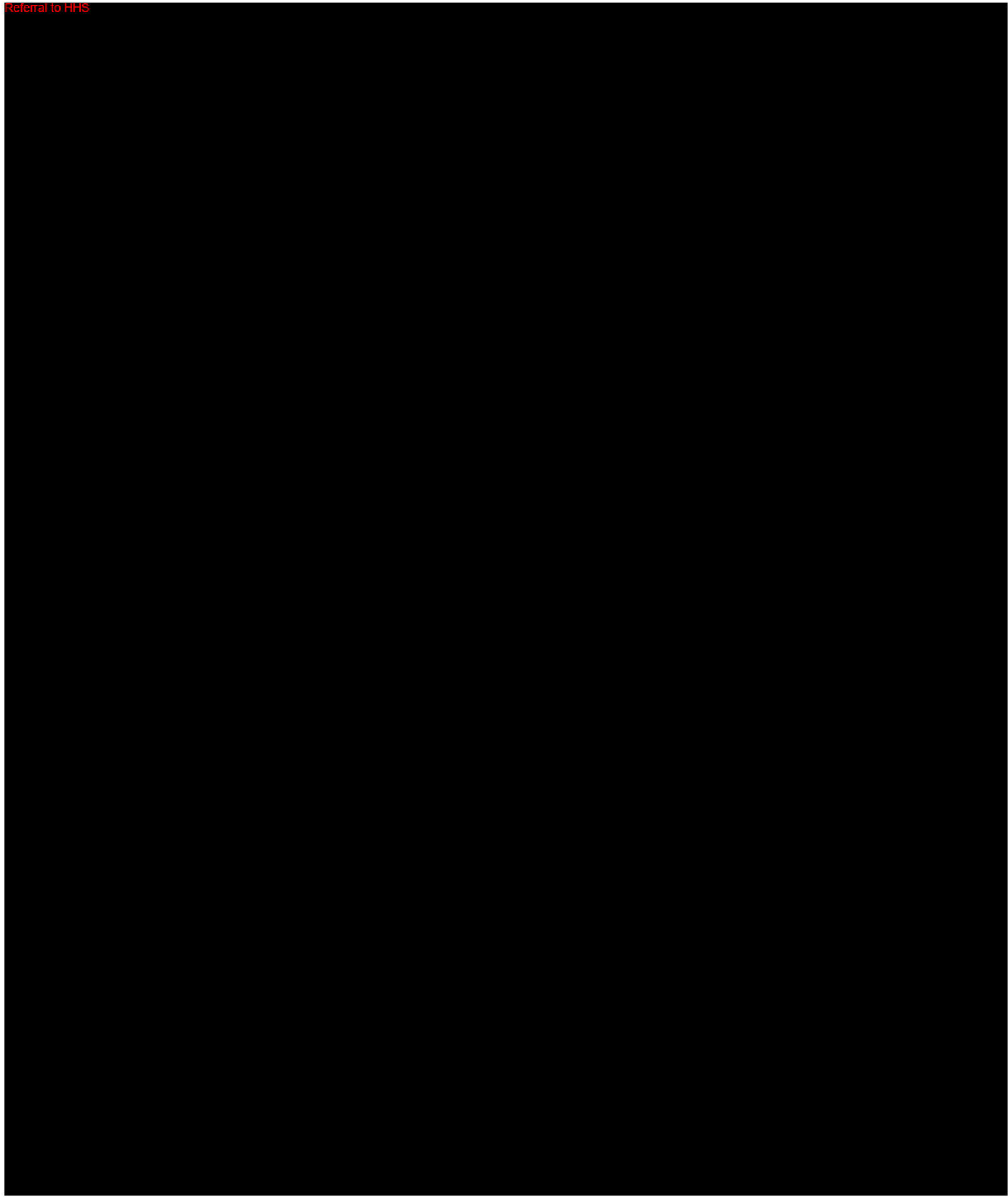
The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.

Referral to CIGIE

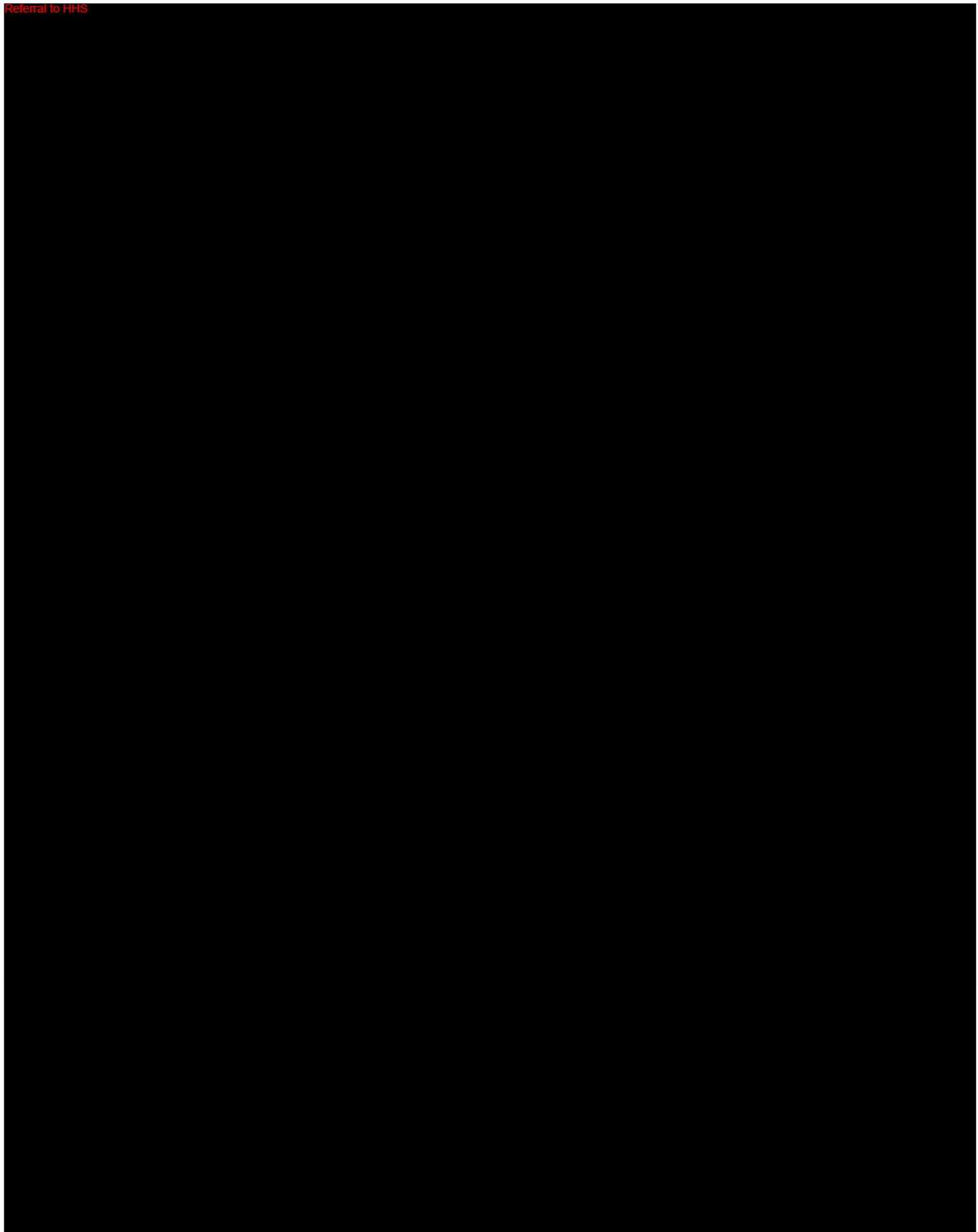


Referral to HHS









Referral to HHS



**From:** [Walter M. Shaub](#)  
**To:** [Matthew A. Marinec](#)  
**Subject:** FW: Letter attached, original to follow  
**Date:** Wednesday, May 10, 2017 6:40:56 PM  
**Attachments:** [10 May 2017 Letter to S Dillon.pdf](#)

Attachment released below

---

Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

Telephone: 202.482.9292  
Email: [walter.shaub@oge.gov](mailto:walter.shaub@oge.gov)

---

**From:** Director of OGE  
**Sent:** Wednesday, May 10, 2017 6:41 PM  
**To:** 'sheri.dillon@morganlewis.com'  
**Subject:** Letter attached, original to follow

Attachment released below

Please find attached a letter dated May 10, 2017. The original will follow by regular United States Mail.

Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

Telephone: 202.482.9292  
Email: [walter.shaub@oge.gov](mailto:walter.shaub@oge.gov)

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

---



May 10, 2017

Sheri A. Dillon  
Morgan, Lewis & Bockius, LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004

Dear Ms. Dillon:


Thank you for your letter dated May 9, 2017, regarding the President's decision to adhere to the longstanding tradition of voluntarily filing a public financial disclosure report in the first year after taking office. The U.S. Office of Government Ethics (OGE) is happy to work with you to ensure that the President's report is compliant with the Ethics in Government Act of 1978, as amended, and OGE's implementing regulations before he files it.

As we discussed, OGE will provide this assistance on the condition that the President is committed to certifying that the contents of his report are true, complete and correct. When we met on April 27, 2017, you requested that he be excused from providing this certification. In connection with the request, you emphasized that he is not required to file a report with OGE this year. I agreed with your analysis that he is not legally required to file, but I indicated that OGE would be unwilling to certify a report that failed to meet the requirements generally applicable to public financial disclosure in the executive branch. I also indicated that OGE would be amenable to providing assistance prior to the President's filing the report only if all parties are in agreement that he will, in fact, certify his report.

Based on your subsequent conversations with members of my staff and your May 9, 2017, letter, my understanding is that the President will sign the following standard certification without qualification: "I certify that the statements I have made in this report are true, complete and correct to the best of my knowledge." Based on this understanding, OGE has begun providing the requested assistance. If I am incorrect in this understanding, please notify me as soon as possible so that I can reassign the involved staff members to other duties.

As OGE previously advised you and, early this year, the White House, I anticipate that the work will take approximately 30 days if we receive prompt responses to requests for needed information. Please do not hesitate to contact me if you find that you have any questions or concerns about the assistance my staff is providing.

Sincerely,



Walter M. Shaub, Jr.  
Director



**From:** [Diana Veilleux](#)  
**To:** [Director of OGE](#)  
**Subject:** FW:  
**Date:** Wednesday, May 10, 2017 6:49:38 PM  
**Attachments:** [20170510184428644.pdf](#)

Attachment released below

---

Diana J. Veilleux  
Diana J. Veilleux  
Chief  
Legal, External Affairs and Performance Branch  
Program Counsel Division  
Office of Government Ethics  
(202) 482-9203  
[Diana.veilleux@oge.gov](mailto:Diana.veilleux@oge.gov)

Visit OGE's website at: [www.oge.gov](http://www.oge.gov)  
Follow OGE on Twitter: @OfficeGovEthics

-----Original Message-----

From: Diana Veilleux [<mailto:djveille@oge.gov>]  
Sent: Wednesday, May 10, 2017 6:44 PM  
To: Diana Veilleux  
Subject:

This E-mail was sent from **Nonresponsive network info**

Scan Date: 05.10.2017 18:44:28 (-0400)

Queries to: **Nonresponsive**  
t k i f

# Morgan Lewis

**Sheri A. Dillon**

Partner  
+1.202.739.5749  
sheri.dillon@morganlewis.com

May 9, 2017

Walter M. Shaub, Jr., Director  
U.S. Office of Government Ethics  
1201 New York Avenue, N.W.  
Suite 500  
Washington, D.C. 20005

Re: Voluntary Public Financial Disclosure

Dear Mr. Shaub:

As we have discussed, President Trump is preparing to make a voluntary disclosure of his financial interests on OGE Form 278. This filing will be voluntary, because, having filed a report during the campaign, the President is not required to file a new report until next May. Nonetheless, President Trump welcomes the opportunity to provide this optional disclosure to the public, and hopes to file it shortly.

As we have also discussed, the President hopes we will have the opportunity to confer with the Office of Government Ethics before filing, so as to address any questions prior to submission of the report, as is standard with this process. Here, consultation seems to be especially advisable because the President's disclosure will include an atypically large number of investments and entities, and because the President's affairs have been totally restructured since his prior filing. Consequently, this filing will be a template for future required filings.

The President has instructed us to work with you and your office so he can sign and file the completed Form 278 as close as practicable to May 15 (which will be the required filing date in the future), notwithstanding the unique complexity of this voluntary disclosure. To that end, we are nearing the end of our effort to compile the report and are now ready to further the consultative process. Our goal is that by working together, the President can make this voluntary filing mid-June.

**Morgan, Lewis & Bockius LLP**

1111 Pennsylvania Avenue, NW  
Washington, DC 20004  
United States

T +1.202.739.3000  
F +1.202.739.3001

Walter M. Shaub, Jr., Director  
May 9, 2017  
Page 2

We appreciate your consideration in this matter and look forward to working with you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sheri A. Dillon".

Sheri A. Dillon

**From:** [Walter M. Shaub](#)  
**To:** "Steve Linick"; [REDACTED] - Michael Mobb's email address  
**Cc:** [Shelley K. Finlayson](#)  
**Subject:** call  
**Date:** Wednesday, May 10, 2017 6:51:56 PM

---

Steve and Mike, I'm copying Shelley Finlayson, OGE's Chief of Staff, to connect you with her. Shelley will be in the office on Thursday but not Friday.

Shelley, Steve is the Inspector General for the Department of State, and Mike is Counsel to the IG.

Walt

Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

Telephone: 202.482.9292  
Email: [walter.shaub@oge.gov](mailto:walter.shaub@oge.gov)



**From:** Horowitz, Michael E.(OIG)  
**To:** [Walter M. Shaub](mailto:Walter.M.Shaub)  
**Subject:** RE: AG Sessions  
**Date:** Thursday, May 11, 2017 9:38:31 AM

---

Thanks, Walt.

---

**From:** Walter M. Shaub [mailto:wmshaub@oge.gov]  
**Sent:** Thursday, May 11, 2017 9:01 AM  
**To:** Horowitz, Michael E.(OIG)  
**Subject:** Fw: AG Sessions

Fyi

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

---

**From:** Walter M. Shaub <[wmshaub@oge.gov](mailto:wmshaub@oge.gov)>  
**Sent:** Wednesday, May 10, 2017 8:50 PM  
**To:** Lofthus, Lee J (JMD)  
**Subject:** AG Sessions

Lee,

I hope I'm not too late to prevent an ethics problem. I'm hearing that the AG is going to interview candidates for interim FBI Director. He needs to refrain from asking any questions about how they would handle an investigation of Russian contacts with the Trump campaign (if there is such an investigation). In fact, he needs to leave the room if anyone else is going to ask about that. (Again, I am not saying there is such an investigation or that I have any knowledge of one.)

Walt

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

OGE Confidential Notice: This message contains Controlled Unclassified Information (CUI) that requires safeguarding or dissemination control under applicable law, regulation, or Government-wide policy. This email, including all attachments, may constitute a Federal record or other Government property that is intended only for the use of the individual or entity to which it is addressed. If you are not the intended recipient or the employee or agent responsible for delivering the transmission to the intended recipient, you are hereby notified

that any dissemination, distribution, copying or use of this email or its contents is strictly prohibited. If you have received this email in error, please notify the sender by responding to the email and then immediately delete the email.

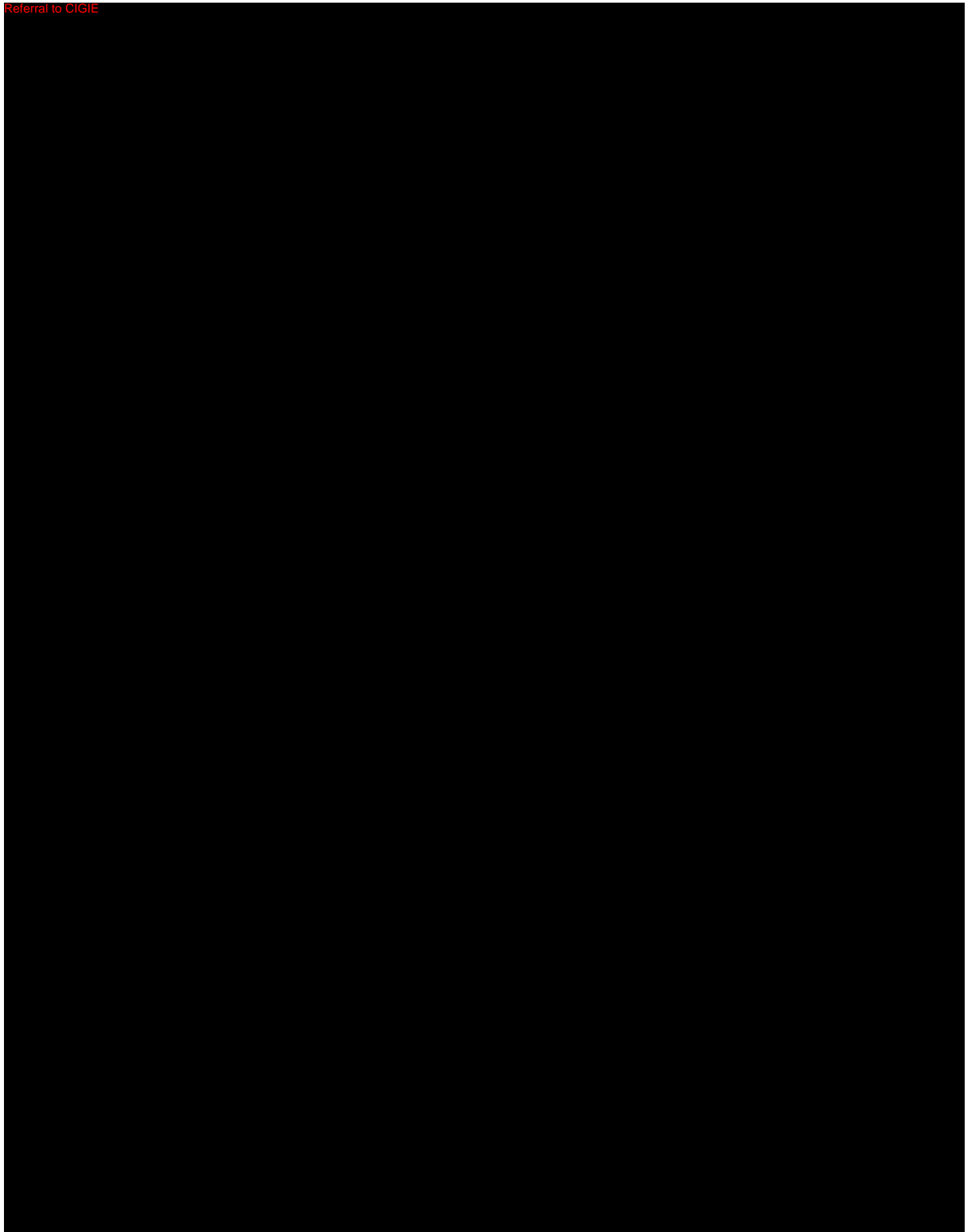
**From:** [Walter M. Shaub](#)  
**To:** ["Kiernan, Leslie"](#)  
**Subject:** CD has been issued  
**Date:** Thursday, May 11, 2017 1:01:49 PM

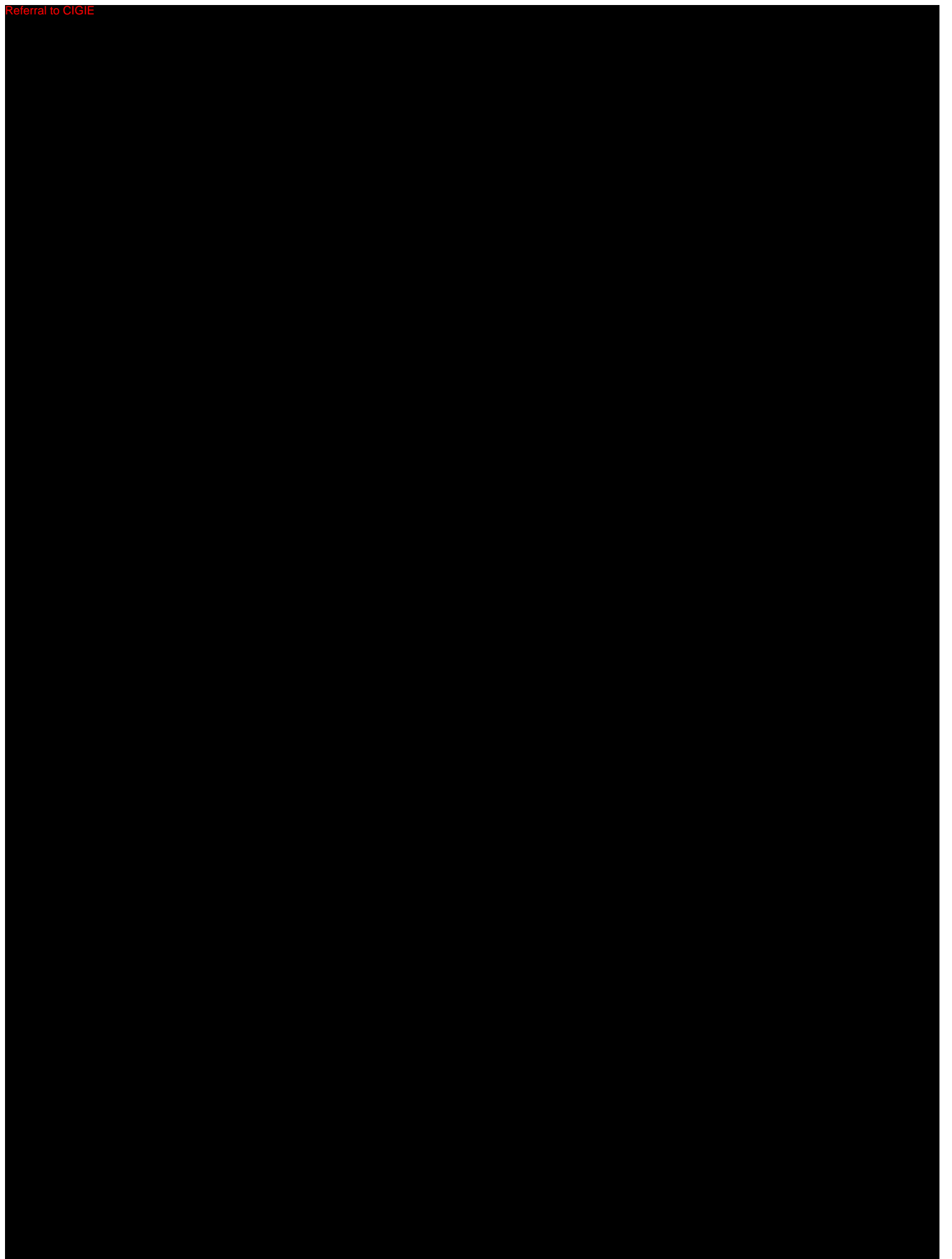
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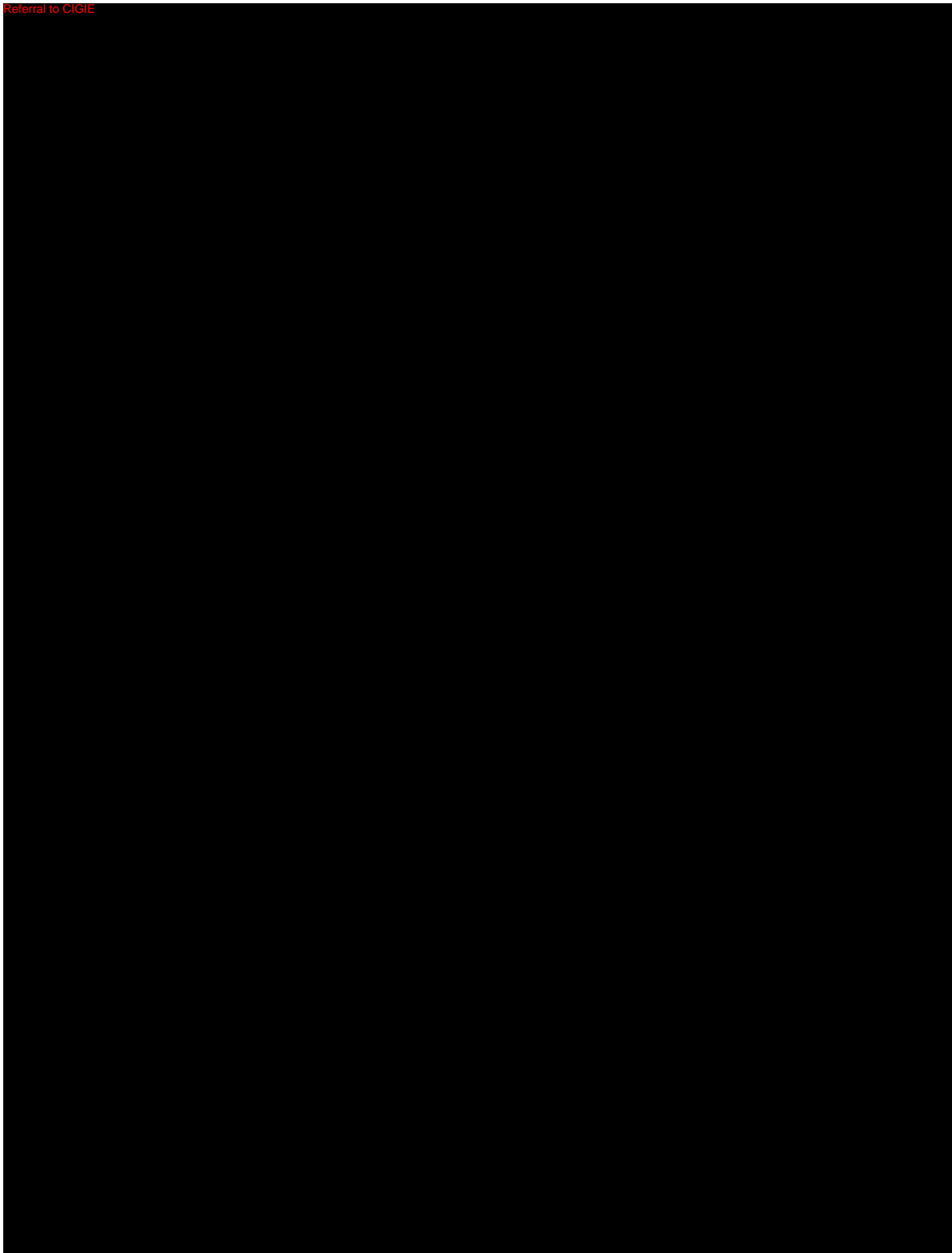
CD issued and sent to agency

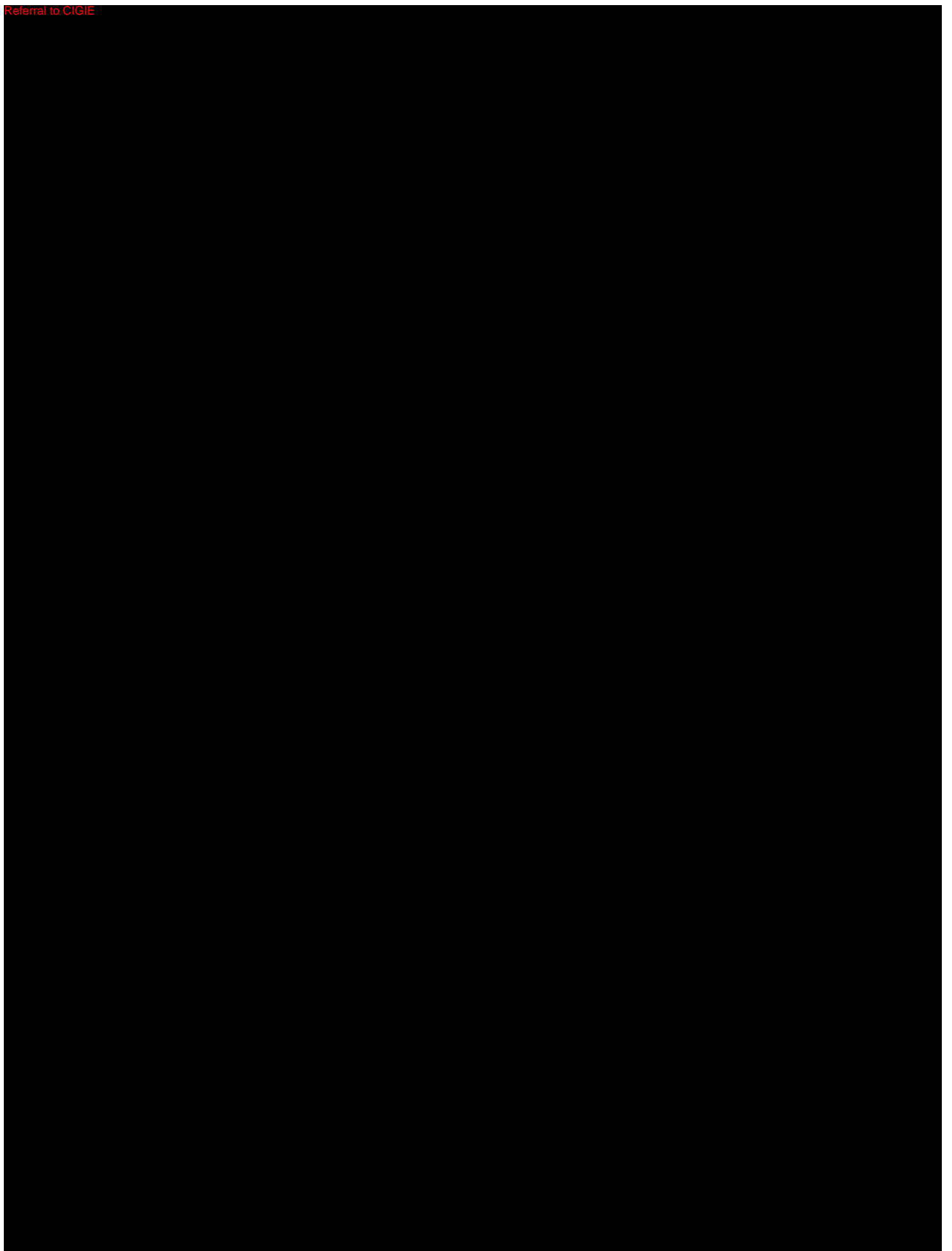
Referral to CIGIE



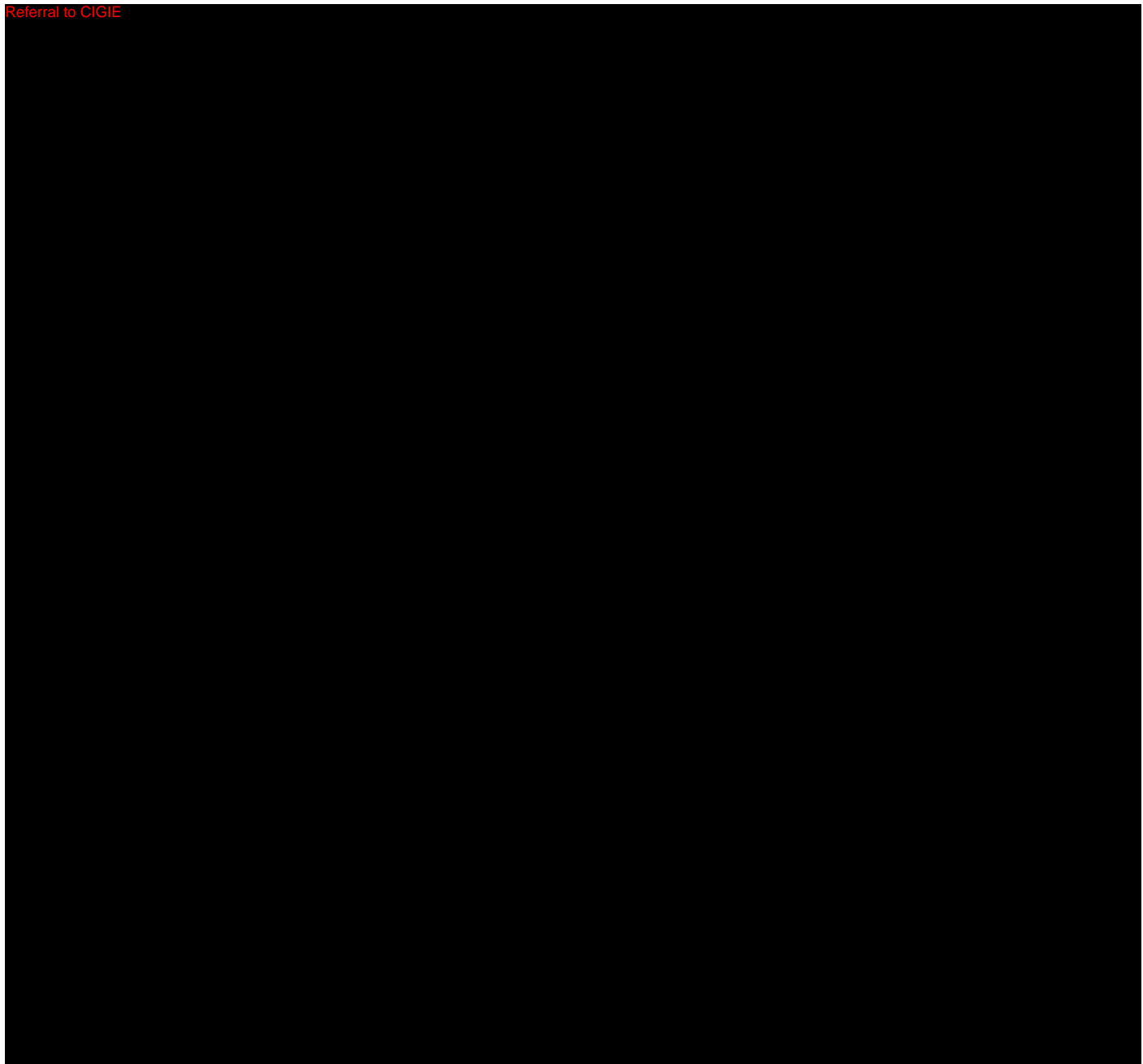


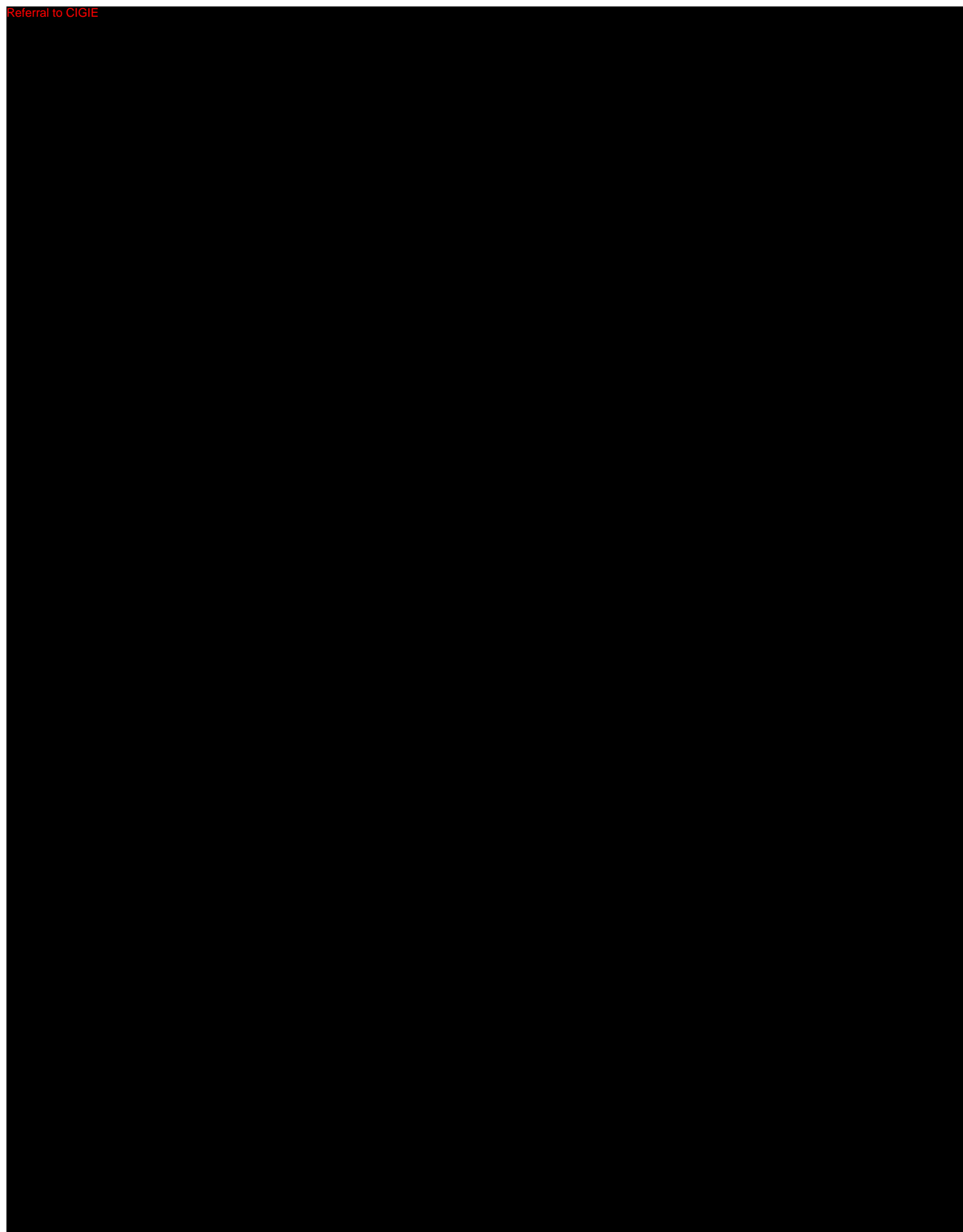


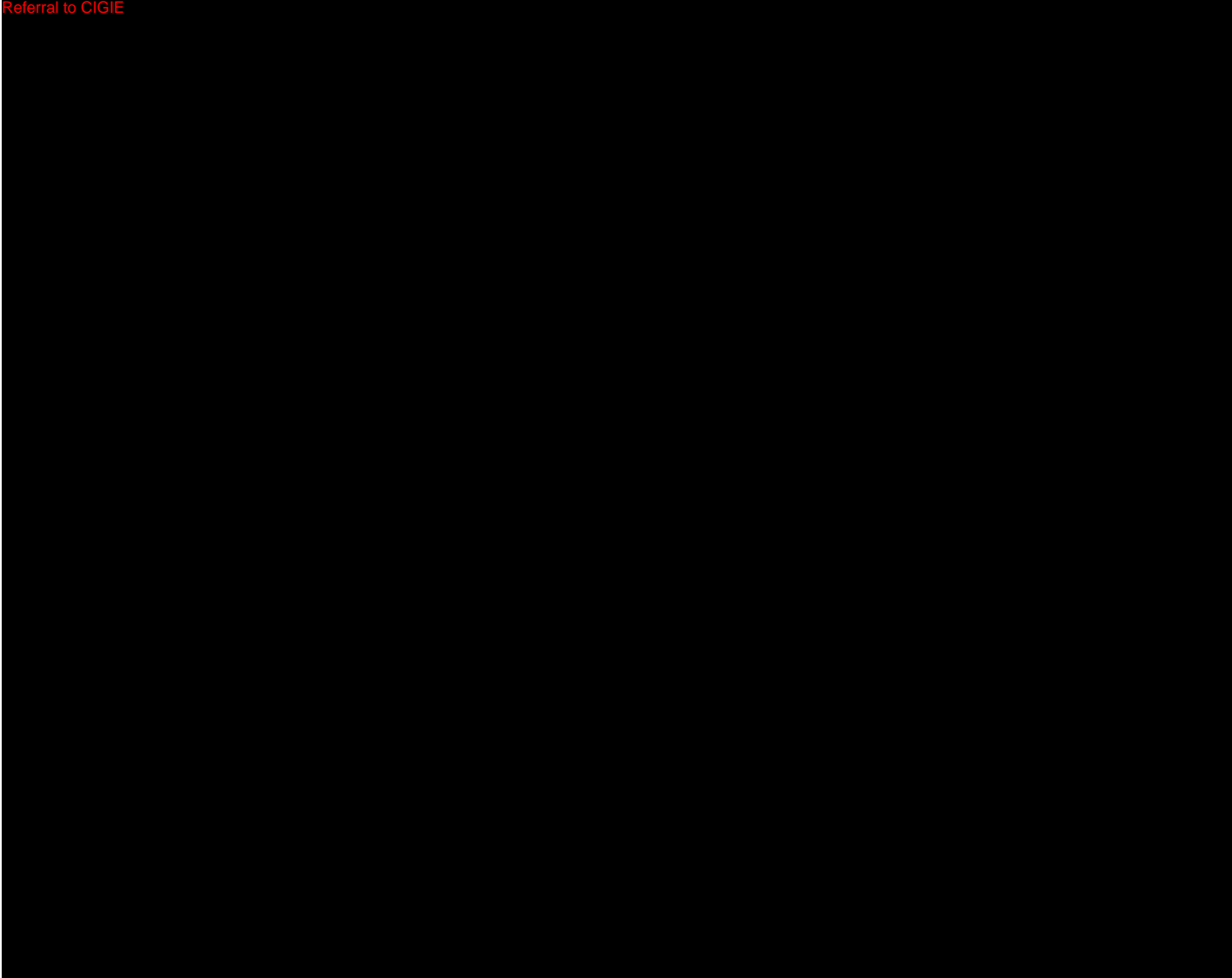












**From:** Matthew A. Marinec  
**To:** [Walter M. Shaub](#)  
**Subject:** FW: WAG Ceiling Final Rule for elec sig  
**Date:** Friday, May 12, 2017 1:04:11 PM  
**Attachments:** [OGE 2017 Gifts Threshold and WAG Ceiling Final Rule.doc](#)

---

9 page attachment withheld in full  
- (b)(5)

Ready for signature. You can sign electronically and email to Jen.

Thanks!  
Matt Marinec

---

**From:** Jennifer Matis  
**Sent:** Friday, May 12, 2017 9:28 AM  
**To:** Director of OGE; Matthew A. Marinec  
**Subject:** WAG Ceiling Final Rule for elec sig

For Walt's electronic signature. Dated today.

Referral to CIGIE



**From:** [Jennifer Matis](#)  
**To:** [Director of OGE](#); [Matthew A. Marinec](#); [David J. Apol](#); [Seth Jaffe](#); [Patrick J. Lightfoot](#)  
**Subject:** FW: Office of the federal Register:Submission Status: ID:W512201715274669  
**Date:** Friday, May 12, 2017 3:29:44 PM

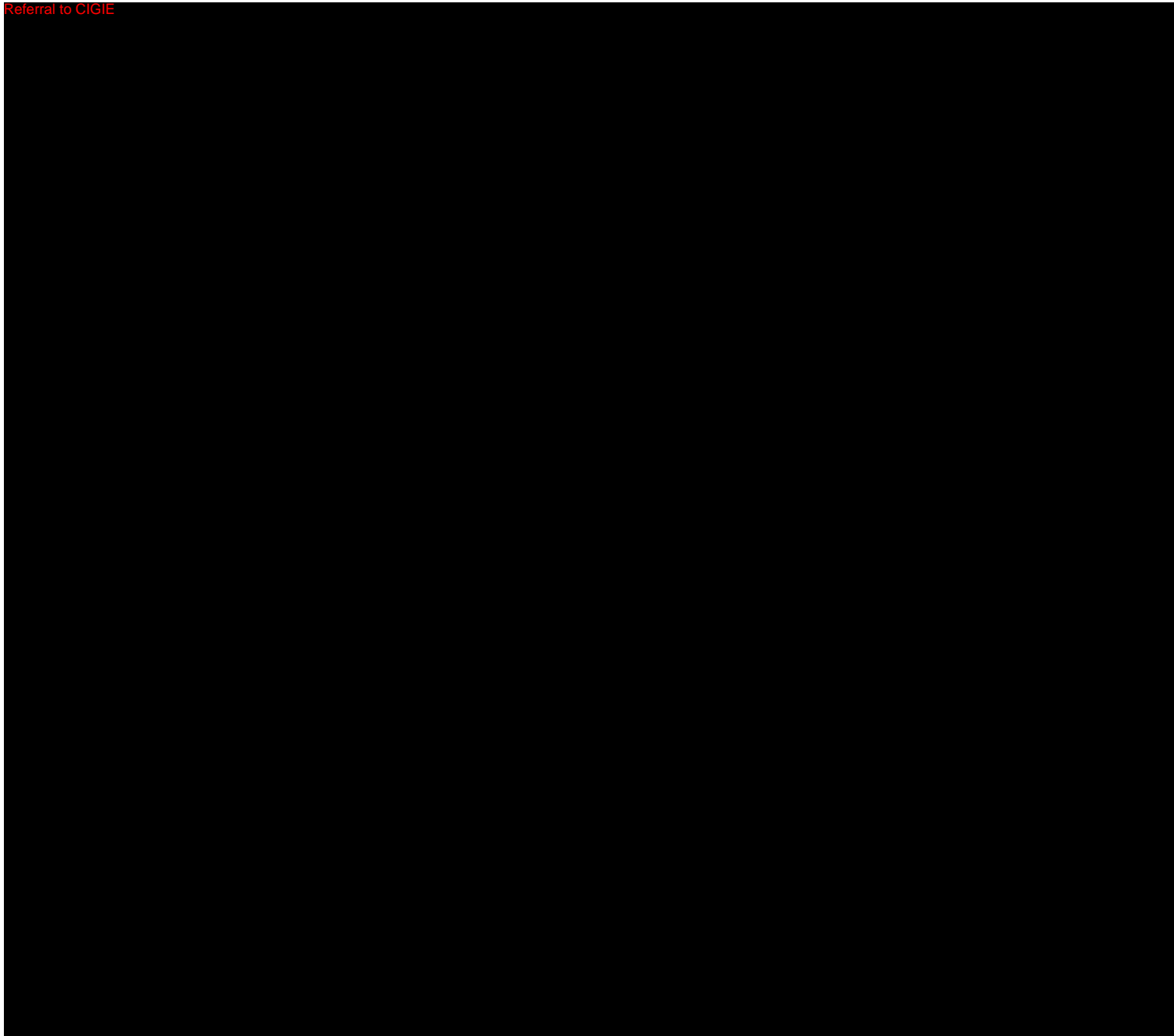
---

Gift Threshold and WAG Ceiling Rule was submitted to FR.

**From:** noreply@fedreg.gov [mailto:noreply@fedreg.gov]  
**Sent:** Friday, May 12, 2017 3:28 PM  
**To:** Jennifer Matis  
**Subject:** Office of the federal Register:Submission Status: ID:W512201715274669

**Submission ID: W512201715274669**

File Name	Validation Result	Handling File	Validation Result	Upload Status	Remarks
OGE 2017 Gifts Threshold and WAG Ceiling Final Rule.doc.p7m	PASSED			PASSED	



**From:** [Jennifer Matis](#)  
**To:** [Director of OGE](#); [David J. Apol](#); [Shelley K. Finlayson](#); [Seth Jaffe](#); [Diana Veilleux](#); [Patrick J. Lightfoot](#); [Matthew A. Marinec](#)  
**Cc:** [Gilbert Carlson](#); [Vincent Salamone](#); [Nicole Stein](#)  
**Subject:** FW: SCHEDULED: Document Number - 2017-10012  
**Date:** Monday, May 15, 2017 10:06:02 AM

---

New rule updating the reporting thresholds for gifts and travel reimbursements will be published on THURSDAY, on public inspection Wednesday.

**From:** noreply@fedreg.gov [mailto:noreply@fedreg.gov]  
**Sent:** Monday, May 15, 2017 9:57 AM  
**To:** Jennifer Matis  
**Cc:** (b)(6) - Smulligan's email address  
**Subject:** SCHEDULED: Document Number - 2017-10012

Please do not reply directly to this e-mail. If you have any questions or comments regarding this email, please contact [Stacey Mulligan](#).

Attention : Jennifer Matis, (GEO) Government Ethics Office

Document 2017-10012, Category RULES has been scheduled to publish on 05-18-2017. This document will be placed on public inspection on 05-17-2017 08:45:00.

The subject of this document is Executive Branch Financial Disclosure and Standards of Ethical Conduct Regulations.

The submitting Agency is (GEO) Government Ethics Office.

The Docket Id is NA.

The RIN is 3209-AA00, 3209-AA04.

This document has an effective date of 05-18-2017.

The comments due date is NA.

The separate part # for this document is NA.

Agency/CFR Title/CFR Part:

(GEO) Government Ethics Office, CFR Title is 05, CFR Part is 2634,2635



**From:** [Walter M. Shaub](#)  
**To:** "Dan Koffsky" (b) (6)  
**Subject:** urgent question  
**Date:** Monday, May 15, 2017 11:11:53 AM  
**Importance:** High

---

Dan,

I have an urgent question for you. I'm going to try to reach you by phone, but please call me at 202-482-9302 if you get this and are able to call me.

Walt

Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

Telephone: 202.482.9292  
Email: [walter.shaub@oge.gov](mailto:walter.shaub@oge.gov)



Referral to CIGIE

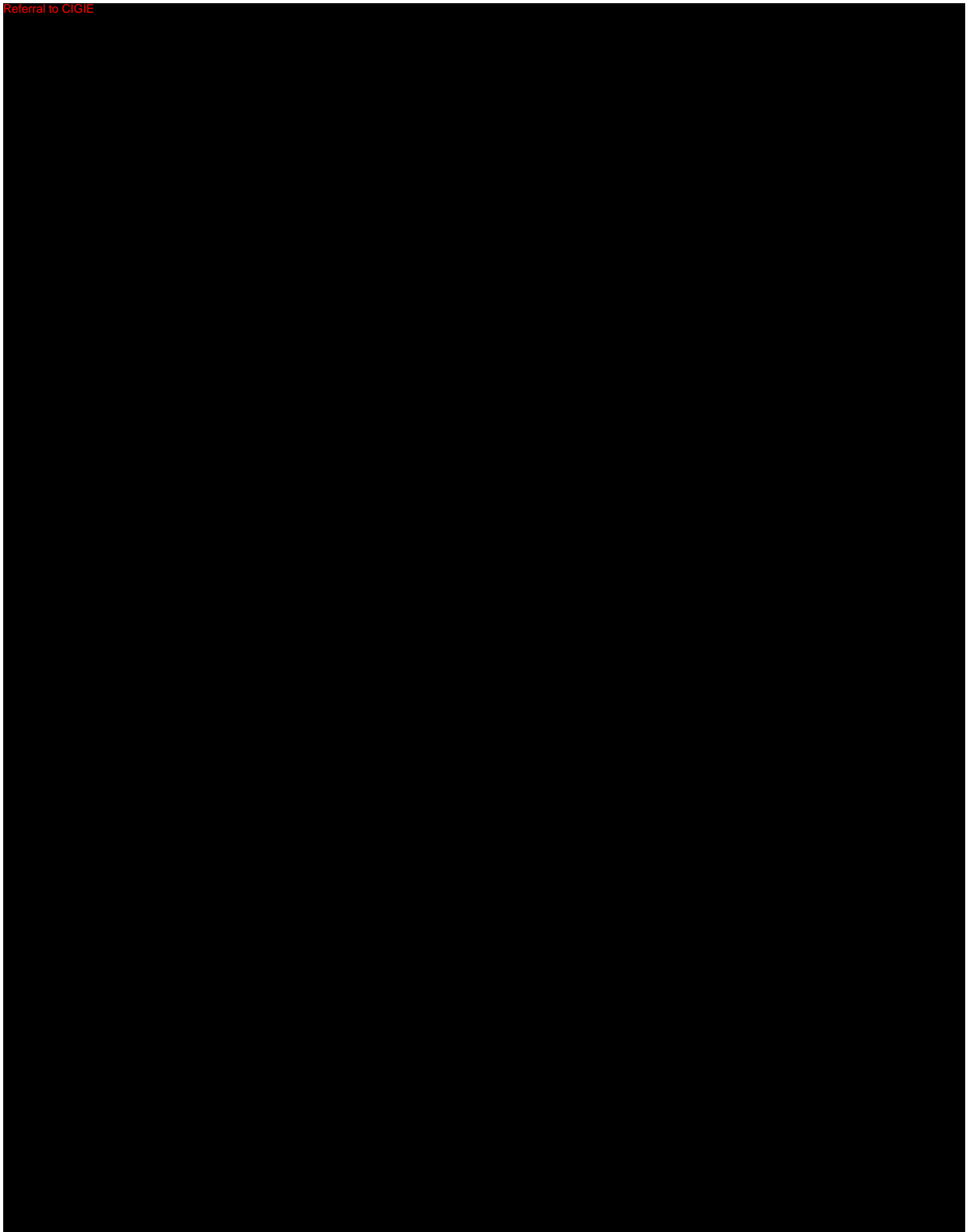


Referral to CIGIE



Referral to CIGIE





Referral to CIGIE



Referral to NTSB

**From:** [Walter M. Shaub](#)  
**To:** ["Gorelick, Jamie"; "Roberts, Blake"](#)  
**Subject:** FW: Letter to Ranking Member Wyden  
**Date:** Monday, May 15, 2017 6:24:23 PM  
**Attachments:** [Letter to Ranking Member Wyden 5-15-17.pdf](#)

Attachment released below

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Jamie and Blake,

Here's a copy of our response to the letter we received from Senator Wyden. You've seen the previous letter we sent to Senators Carper and Warren. Our policy is to post these on our website in the Congressional correspondence section, usually a day after it was sent to the Hill. I'm not sure what happens when it goes out late in the afternoon. It might show up on the website tomorrow or it might show up on Wednesday. Because the Carper and Warren letter was so comprehensive, this one does not cover new ground. As a courtesy, I want to send this to you before it goes up on the website in the unlikely event that there's any coverage. Here's a link to the letter from the Senator to which we are responding: <https://www.finance.senate.gov/ranking-members-news/wyden-urges-review-of-ivanka-trumps-trade-relations-financial-conflicts-of-interest>

Walt

Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

Telephone: 202.482.9292  
Email: [walter.shaub@oge.gov](mailto:walter.shaub@oge.gov)

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



May 15, 2017

The Honorable Ron Wyden  
Ranking Member  
Committee on Finance  
United States Senate  
219 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Ranking Member Wyden:

I am in receipt of your April 27, 2017 letter regarding Ivanka Trump's role as an advisor to the President.

With regard to the review of her financial interests and any potential conflicts of interest, Ms. Trump's financial disclosure report has not yet been certified by the White House and provided to OGE. In general, when OGE receives an appointee's report, OGE reviews the report and discusses with White House ethics officials any deficiencies in the appointee's compliance with financial disclosure requirements. In turn, the White House ethics officials work with the appointee to resolve them. It is normal for an appointee to make changes to a financial disclosure report and to add information during this review process. After the report is revised, OGE seeks information about how the White House is addressing any potential conflicts of interest identified during the review process. OGE then makes a determination regarding apparent compliance with financial disclosure and conflict of interest rules and either certifies or declines to certify the financial disclosure report.<sup>1</sup> Once complete, the report is publicly available.<sup>2</sup>

To provide additional details in answer to your letter, I have enclosed a copy of OGE's response to a recent letter from Senators Warren and Carper,<sup>3</sup> which summarizes the financial disclosure and conflict of interest requirements applicable to Ms. Trump in her role as an advisor to the President. In pertinent part, the letter explains the timeframes, process, and role of the White House with regard to Ms. Trump's financial disclosure obligations and its responsibilities for monitoring compliance with the remedies put in place to resolve actual or apparent conflicts of interest.

<sup>1</sup> 5 U.S.C. app. § 106(b); 5 C.F.R. § 2634.605.

<sup>2</sup> 5 U.S.C. app. § 105(b).

<sup>3</sup> Letter from Walter M. Shaub, Jr., Director, U.S. Office of Government Ethics, to Senator Elizabeth Warren and Senator Thomas R. Carper, United States Senate (April 25, 2017), available at: <https://goo.gl/bMIzzy>.





The Honorable Ron Wyden  
Ranking Member  
Senate Committee on Finance  
Page 2

I hope this explanation and the enclosure address the issues your letter raises. If members of your staff have questions, OGE's Chief of Staff, Shelley K. Finlayson, is available to assist them. She can be reached at 202-482-9292.

Sincerely,

A handwritten signature in blue ink, appearing to read "Walter M. Shaub, Jr.", with a stylized flourish at the end.

Walter M. Shaub, Jr.  
Director

Enclosure

cc. The Honorable Orrin G. Hatch  
Chairman  
Committee on Finance  
United States Senate  
219 Dirksen Senate Office Building  
Washington, D.C. 20510

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



April 25, 2017

The Honorable Elizabeth Warren  
United States Senator  
317 Hart Senate Office Building  
Washington D.C. 20510

The Honorable Thomas R. Carper  
United States Senator  
513 Hart Senate Office Building  
Washington D.C. 20510

Dear Senators Warren and Carper:

I am in receipt of your letter dated March 29, 2017, requesting information about the ethics rules that apply to Ms. Ivanka Trump in her capacity as an advisor to the President.

At the time of your letter, it was unclear whether the White House would recognize Ms. Trump as having the status of an executive branch employee. Although OGE was not consulted by the White House on this issue, I contacted both Ms. Trump's attorney and the White House's ethics official on March 24, 2017, to express OGE's view that Ms. Trump appeared to meet the legal standard to be considered an employee covered by the executive branch ethics rules.<sup>1</sup> During those conversations, both Ms. Trump's attorney and the White House's ethics official seemed open to the possibility of recognizing Ms. Trump's status as an employee through a formal appointment. Thereafter, on March 29, 2017, the White House announced Ms. Trump's decision to accept a formal appointment as an executive branch employee.<sup>2</sup> With her newly recognized status as an executive branch employee, Ms. Trump is covered by the ethics laws and regulations applicable to executive branch employees.

Executive branch employees are subject to a variety of ethics laws and rules designed to ensure the impartiality of the government's decision making. These authorities include the anti-bribery and criminal conflict of interest statutes;<sup>3</sup> the Ethics in Government Act;<sup>4</sup> the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct);<sup>5</sup> certain restrictions established in President Bush's 1989 Executive Order on ethics;<sup>6</sup> the Stop Trading on

<sup>1</sup> Others had raised similar concerns publicly. See, e.g., Julie Bykowitz, *Ivanka Trump: A White House Force, Just Not An Employee*, BLOOMBERG (Mar. 24, 2017), <https://goo.gl/1dX33u>; Jackie Northam and Marilyn Geewax, *Ivanka Trump's Move To The White House Raises Questions About Ethics*, NATIONAL PUBLIC RADIO (Mar. 21, 2017), <https://goo.gl/9o56B3>.

<sup>2</sup> See Abby Phillip, *Ivanka Trump reverses course, will become a government employee*, THE WASHINGTON POST (Mar. 29, 2017), <https://goo.gl/Grgeyh>; see also Office of the Press Secretary, *Background Press Briefing on Financial Disclosure Forms from the White House Office of the Press Secretary*, THE WHITE HOUSE (Mar. 31, 2017), <https://goo.gl/hbWGAF>.

<sup>3</sup> 18 U.S.C. §§ 201-209.

<sup>4</sup> 5 U.S.C. app. §§ 101 et seq.

<sup>5</sup> 5 C.F.R. part 2635.

<sup>6</sup> Exec. Order 12674 (Apr. 12, 1989), as amended by Exec. Order 12731 (Oct. 17, 1990).



Congressional Knowledge Act;<sup>7</sup> and other legal provisions. Certain political appointees are also subject to additional restrictions established in Executive Order 13770 (Jan. 28, 2017). Presidential appointees in the White House are subject to these authorities to the same extent as other executive branch employees.<sup>8</sup>

Of particular relevance to your inquiry, Ms. Trump is now subject to financial disclosure requirements. Like other appointees, Ms. Trump must file new entrant financial disclosure reports within 30 days of appointment to the government.<sup>9</sup> These reports include information about the financial interests of the filers, their spouses, and their dependent children, as well as certain positions outside the government.<sup>10</sup> The White House is authorized to grant an extension, upon a showing of good cause, of up to 45 days and, upon a written showing of good cause, a second extension of up to 45 additional days.<sup>11</sup> The approval of a second extension must be in writing.<sup>12</sup> After appointees file their reports, the White House's ethics officials review the reports for compliance with financial disclosure requirements and substantive ethics requirements.<sup>13</sup> White House ethics officials are expected to work with an appointee to resolve any potential conflicts of interest that they identify through their review of the financial disclosure reports.<sup>14</sup>

In addition to filing a new entrant report, Ms. Trump must satisfy other financial disclosure requirements. She will have to file periodic transaction reports within 30 days of receiving notice of any covered transaction.<sup>15</sup> She will have to file an annual financial disclosure report by May 15 each year.<sup>16</sup> In addition, she will have to file a termination financial disclosure report within 30 days of terminating her federal service.<sup>17</sup> The process for resolving conflicts of interest identified during the review of these subsequently filed financial disclosure reports is the same as that associated with new entrant financial disclosure reports.

With regard to your questions about the steps Ms. Trump must take to remedy any potential or actual conflicts of interest identified through her financial disclosures, the primary criminal conflict of interest statute prohibits senior White House appointees and other executive branch employees from participating personally and substantially in particular matters directly and predictably affecting their financial interests.<sup>18</sup> Among other things, this prohibition extends to the financial interests of companies in which they have ownership interests.<sup>19</sup> It is important to note, however, that the criminal conflict of interest statute is not a prohibited holdings statute. Instead, it requires an appointee to refrain from participating in the particular matter affecting the appointee's

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<sup>7</sup> Pub. L. No. 112-105, 126 Stat. 291 (2012), as amended.

<sup>8</sup> Note, however, the Department of Justice (DOJ) recently opined that the anti-nepotism statute does not apply to the White House Office. *See Application of the Anti-Nepotism Statute to a Presidential Appointment in the White House Office*, OFFICE OF LEGAL COUNSEL, U.S. DEP'T JUSTICE, 41 Op. O.L.C. 1 (Jan. 20, 2017). DOJ's decision is applicable to Ms. Trump. *See id.*

<sup>9</sup> 5 U.S.C. app. § 101(a).

<sup>10</sup> 5 U.S.C. app. § 102.

<sup>11</sup> 5 C.F.R. § 2634.201(f).

<sup>12</sup> *Id.*

<sup>13</sup> 5 U.S.C. app. § 106(a); 5 C.F.R. § 2634.605.

<sup>14</sup> 5 U.S.C. app. § 106(a); 5 C.F.R. § 2634.605.

<sup>15</sup> 5 U.S.C. app. § 103(l).

<sup>16</sup> 5 U.S.C. app. § 101(d).

<sup>17</sup> 5 U.S.C. app. § 101(e).

<sup>18</sup> *See* 18 U.S.C. § 208(a).

<sup>19</sup> *See, e.g.*, OGE Informal Advisory Opinion 92 x 2 (1992).

financial interests or the financial interests of persons whose interests are imputed to the appointee.<sup>20</sup> Thus, the most common mechanism for resolving conflicts of interest is to recuse from particular matters that would affect the appointee's personal and imputed financial interests.

Recusal is not the only means for resolving conflicts of interest. Other remedies for resolving conflicts of interest can include reassignment, divestiture, waiver, or the establishment of a qualified blind or diversified trust.<sup>21</sup> In some cases, an employee can rely on an exemption to the criminal conflict of interest statute.<sup>22</sup> OGE and the Department of Justice have established regulatory exemptions for certain types of financial interests because the conflicts of interest they pose are too remote or inconsequential to be likely to affect the integrity of an employee's service to the government.<sup>23</sup>

The White House can direct an appointee to sell, or otherwise divest, an asset in order to avoid a conflict of interest.<sup>24</sup> If selling the asset will result in a capital gain, the appointee may be eligible for a Certificate of Divestiture to offset the tax burden of complying with the government's conflict of interest requirements.<sup>25</sup> Pending the divestiture, the appointee must recuse from particular matters in which the asset poses a conflict of interest. Recusal is achieved by not participating in a particular matter.<sup>26</sup> A White House appointee is not normally required to file a disqualification statement or other document regarding the recusal.<sup>27</sup> Thus, the important requirement is only that the appointee not participate.

Only after the White House has certified the appointee's financial disclosure report does the White House transmit the report to OGE.<sup>28</sup> OGE then conducts a second-level review.<sup>29</sup> As part of this review process, OGE advises White House ethics officials of any deficiencies in an appointee's compliance with financial disclosure requirements. In turn, the White House ethics officials work with the appointee who filed the report in order to resolve them. It is normal for an appointee to make changes to a financial disclosure report and to add information during this review process. After the report is revised, OGE seeks information about how the White House is addressing any potential conflicts of interest identified during the review process. OGE then makes a determination regarding apparent compliance with financial disclosure and conflict of interest rules and either certifies or declines to certify the financial disclosure report.<sup>30</sup>

In response to your specific inquiry, the ethics provisions and requirements discussed above are generally applicable to Ms. Trump. For example, the primary criminal conflict of interest statute

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<sup>20</sup> See 18 U.S.C. § 208(a).

<sup>21</sup> See, e.g., Memo from Amy L. Comstock, Director, U.S. Office of Gov't Ethics, to Designated Agency Ethics Officials, *Nominee Ethics Agreements*, DO-01-013 (2001) (discussing remedies for conflicts of interest in the analogous case of Presidential nominees); 5 C.F.R. pt. 2634, subpt. D.

<sup>22</sup> 18 U.S.C. § 208(b)(2).

<sup>23</sup> See 5 C.F.R. pt. 2640, subpt. B.

<sup>24</sup> See 5 C.F.R. § 2635.403(b).

<sup>25</sup> 26 U.S.C. § 1043; 5 C.F.R. pt. 2634, subpt. J.

<sup>26</sup> 5 C.F.R. § 2640.103(d).

<sup>27</sup> 5 C.F.R. § 2640.103(d)(2). *But see* Stop Trading on Congressional Knowledge Act of 2012, Pub. L. No. 112-105, § 17, 126 Stat. 291, 303-04 (requiring notice of recusal in the limited case of an appointee negotiating for post-government employment).

<sup>28</sup> 5 U.S.C. app. § 103(c).

<sup>29</sup> 5 U.S.C. app. § 106(a).

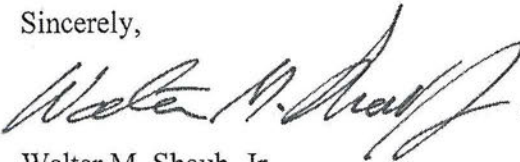
<sup>30</sup> 5 U.S.C. app. § 106(b); 5 C.F.R. § 2634.605.

prohibits Ms. Trump from participating in particular matters affecting her financial interests, including the financial interests of Trump family businesses and other companies in which she has an ownership interest.<sup>31</sup> That conflict of interest statute also covers her spouse's financial interests, which are imputed to her.<sup>32</sup> Another statute prohibits her from representing any person, including any family business organized as a legal entity, before the government.<sup>33</sup> She is also subject to the Standards of Conduct.<sup>34</sup> If, as has been reported,<sup>35</sup> she is not receiving a salary, she is not covered by a prohibition on supplementation of government salary or a prohibition on earning outside income ordinarily applicable to appointees at her level.<sup>36</sup>

The White House is responsible for providing Ms. Trump with ethics support and advice. This support includes new employee ethics training within three months of her appointment and, thereafter, ethics training on an annual basis.<sup>37</sup> The White House is also responsible for monitoring compliance with the remedies put in place to resolve actual or apparent conflicts of interest. In addition, White House officials and Ms. Trump's representatives are free to consult with OGE if they require assistance in addressing any ethics issues that arise.<sup>38</sup>

I hope this explanation addresses the issues your letter raises. If members of either of your staffs have questions, OGE's Chief of Staff, Shelley K. Finlayson, is available to assist them. She can be reached at 202-482-9292.

Sincerely,



Walter M. Shaub, Jr.  
Director

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<sup>31</sup> 18 U.S.C. § 208(a).

<sup>32</sup> *Id.*

<sup>33</sup> See 18 U.S.C. § 205.

<sup>34</sup> See 5 C.F.R. pt. 2635.

<sup>35</sup> See Gabrielle Levy, *Ivanka Trump's New Official Job: Special Assistant to the President*, U.S. NEWS AND WORLD REPORT, (Mar. 29, 2017), <http://bit.ly/2paFx00>.

<sup>36</sup> See 18 U.S.C. § 209(c); Exec. Order 12674, § 102 (Apr. 12, 1989), as amended by Exec. Order 12731 (Oct. 17, 1990).

<sup>37</sup> 5 C.F.R. pt. 2638, subpt. C.

<sup>38</sup> For example, OGE recently provided verbal advice to Ms. Trump's representatives on ways to comply with the Standards of Conduct in connection with a deal for a book that was written before she entered government.

**From:** Nicholson, Ian (Finance)  
**To:** [Director of OGE](#)  
**Subject:** Re: Letter to Ranking Member Wyden  
**Date:** Monday, May 15, 2017 6:34:01 PM

---

Thanks! Received.

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

**From:** Director of OGE <[director@oge.gov](mailto:director@oge.gov)>  
**Date:** 5/15/17 6:02 PM (GMT-05:00)  
**To:** "Nicholson, Ian (Finance)" (b) (6) >  
**Subject:** RE: Letter to Ranking Member Wyden

No attachment found in search

That is correct and my apologies. Please substitute the attached with updated enclosure.

Thank You,

Matthew Marinec, M.P.P.  
Confidential Assistant to the Director  
U.S. Office of Government Ethics  
1201 New York Ave., NW, Suite 500  
Washington, DC 20005-3917  
Tel. 202.482.9286

Visit OGE's website: [www.oge.gov](http://www.oge.gov)  
Follow OGE on Twitter: @OfficeGovEthics

---

**From:** Nicholson, Ian (Finance) [mailto:(b) (6)]  
**Sent:** Monday, May 15, 2017 5:29 PM  
**To:** Director of OGE  
**Subject:** RE: Letter to Ranking Member Wyden

Thanks very much, Matthew. I read through it, and correct me if I'm wrong, but didn't the OGE response say it would include the response to the Warren/Carper letter? It looks to just include the original letter they wrote without the accompanying response. Sorry if I'm off-base here.

Please let me know.

Ian

---

**From:** Director of OGE [<mailto:director@oge.gov>]  
**Sent:** Monday, May 15, 2017 5:21 PM  
**To:** Nicholson, Ian (Finance)

**Subject:** Letter to Ranking Member Wyden

Please find attached letter from OGE Director Walter M. Shaub, Jr.

The original will follow by standard mail.

Thank You,

Matthew Marinec, M.P.P.  
Confidential Assistant to the Director  
U.S. Office of Government Ethics  
1201 New York Ave., NW, Suite 500  
Washington, DC 20005-3917  
Tel. 202.482.9286

Visit OGE's website: [www.oge.gov](http://www.oge.gov)  
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**From:** Roberts, Blake  
**To:** [Walter M. Shaub](#); [Gorelick, Jamie](#)  
**Subject:** RE: Letter to Ranking Member Wyden  
**Date:** Monday, May 15, 2017 9:38:42 PM

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Walt,

Thanks very much for sharing this. We appreciate it.

Thanks,  
Blake

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**From:** Walter M. Shaub [mailto:[wmshaub@oge.gov](mailto:wmshaub@oge.gov)]  
**Sent:** Monday, May 15, 2017 6:24 PM  
**To:** Gorelick, Jamie <[Jamie.Gorelick@wilmerhale.com](mailto:Jamie.Gorelick@wilmerhale.com)>; Roberts, Blake <[Blake.Roberts@wilmerhale.com](mailto:Blake.Roberts@wilmerhale.com)>  
**Subject:** FW: Letter to Ranking Member Wyden

Jamie and Blake,

Here's a copy of our response to the letter we received from Senator Wyden. You've seen the previous letter we sent to Senators Carper and Warren. Our policy is to post these on our website in the Congressional correspondence section, usually a day after it was sent to the Hill. I'm not sure what happens when it goes out late in the afternoon. It might show up on the website tomorrow or it might show up on Wednesday. Because the Carper and Warren letter was so comprehensive, this one does not cover new ground. As a courtesy, I want to send this to you before it goes up on the website in the unlikely event that there's any coverage. Here's a link to the letter from the Senator to which we are responding: <https://www.finance.senate.gov/ranking-members-news/wyden-urges-review-of-ivanka-trumps-trade-relations-financial-conflicts-of-interest>

Walt

Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

Telephone: 202.482.9292  
Email: [walter.shaub@oge.gov](mailto:walter.shaub@oge.gov)

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**From:** Matthew A. Marinec  
**To:** [Walter M. Shaub](#)  
**Subject:** Congressional Inquiry on Special Advisor and White House Counsel 5-16-17  
**Date:** Tuesday, May 16, 2017 10:46:04 AM  
**Attachments:** [Congressional Inquiry on Special Advisor and White House Counsel 5-16-17.pdf](#)

---

Attachment released below

Attached.

Thank You,

Matthew Marinec, M.P.P.  
Confidential Assistant to the Director  
U.S. Office of Government Ethics  
1201 New York Ave., NW, Suite 500  
Washington, DC 20005-3917  
Tel. 202.482.9286

Visit OGE's website: [www.oge.gov](http://www.oge.gov)  
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# Congress of the United States

Washington, DC 20510

May 16, 2017

Walter Shaub  
Director  
Office of Government Ethics  
1201 New York Avenue, NW, Suite 500  
Washington, D.C. 20005

Dear Director Shaub,

We write today to request information about the ethics rules that President Trump's Deputy White House Counsel and Designated Agency Ethics Official, Stefan Passantino, is required to follow regarding current Administration officials for whom he provided paid legal services prior to joining the Administration, which now appears to result in a financial conflict of interest. We also request your assistance with understanding the role your office or other government offices will play in ensuring Mr. Passantino's compliance with these rules.

## **Mr. Passantino's Financial Connections to Special Advisor Carl Icahn and Other Trump Administration Officials**

Billionaire investor Carl Icahn serves as a "special advisor to the president on issues related to regulatory reform."<sup>1</sup> The White House has treated Mr. Icahn as an informal advisor, allowing him to avoid complying with basic ethics requirements that apply to other federal employees, such as requirements to disclose conflicts of interest, recuse himself from participating in issues on which he has conflicts, or divest from financial assets that pose potential conflicts.<sup>2</sup> As a result, Mr. Icahn has been advising President Trump while simultaneously serving as the Chairman of the Board and majority shareholder of Icahn Enterprises, a "diversified holding company."<sup>3</sup>

The White House has not offered any justification for its unofficial classification of Mr. Icahn or the decision to allow him to forego basic ethics procedures for government employees. Several of us have written to both White House Counsel, Don McGahn, and Mr. Icahn seeking

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<sup>1</sup> The Trump-Pence Transition Team, "President-Elect Donald J. Trump Names Carl Icahn Special Advisor to the President on Regulatory Reform" (December 21, 2016) (online at <https://greatagain.gov/icahn-advisor-regs-cd3c949af118>).

<sup>2</sup> See Senator Elizabeth Warren, "Senators Lodge Concerns About Icahn's Control of Renewable Fuel Standards" (February 21, 2017) (online at [https://www.warren.senate.gov/?p=press\\_release&id=1455](https://www.warren.senate.gov/?p=press_release&id=1455)).

<sup>3</sup> Icahn Enterprises L.P., "Investor Relations" (online at <http://www.ielp.com/investor.cfm>); Jennifer A. Dlouhy, Ari Natter, and Bill Allison, "'Purest Definition of a Conflict': Icahn's \$126 Million Gain on Biofuel Deal Draws Criticism," *Bloomberg Markets* (March 1, 2017) (online at <https://www.bloomberg.com/news/articles/2017-02-28/icahn-s-126-million-gain-on-biofuel-deal-prompts-criticism>).

information on Mr. Icahn's role in the White House and any financial disclosures he has been required to file, but have received no response.<sup>4</sup>

As you know, Mr. Passantino is the Designated Agency Ethics Official ("DAEO") for the Executive Office of the President.<sup>5</sup> In his capacity as the DAEO, he is "responsible for coordinating and managing the...ethics program"<sup>6</sup> by enforcing the executive branch's financial disclosure requirements included in Title I of the Ethics in Government Act of 1978 and 5 C.F.R. Part 2634.<sup>7</sup> In addition, he is responsible for ensuring that the classification of Mr. Icahn is appropriate, determining which ethics rules do and do not apply to Mr. Icahn, and ensuring that Mr. Icahn is complying with these rules.

However, Mr. Passantino's public disclosures show that he previously worked as an attorney at various law firms, where he provided legal services for Mr. Icahn.<sup>8</sup> Specifically, prior to his White House service, and until January 2017, Mr. Passantino was employed as a partner at the law firm Dentons US, LLP. From July 2004 to July 2015, he was a partner at McKenna, Long & Aldridge LLP, until that firm merged with Dentons. According to his financial disclosures, Mr. Passantino received "compensation exceeding \$5,000 in a year" within the past two calendar years from Icahn Capital LP, a "wholly owned subsidiary" of Icahn Enterprises, after providing the company with "legal services."<sup>9</sup>

Mr. Passantino's ethics disclosures also indicate that he provided "legal services" to Dr. Ben Carson, the current Secretary of Housing and Urban Development, and Tom Price for Congress, the official campaign of now-Secretary of Health and Human Services Tom Price.<sup>10</sup>

### Federal Ethics Requirements

President Trump signed Executive Order 13770 on January 28, 2017, committing all political appointees in the Trump Administration to an "Ethics Pledge."<sup>11</sup> Among other

<sup>4</sup> Letter to Don McGahn, White House Counsel, from Senators Whitehouse, Stabenow, Brown, Klobuchar, Franken, Baldwin, and Warren (February 13, 2017).

<sup>5</sup> U.S. Office of Government Ethics, "DAEO List" (May 8, 2017) (online at <https://www.oge.gov/Web/OGEnsf/Resources/DAEO+List>).

<sup>6</sup> 5 C.F.R. § 2635.107 (online at <https://www.law.cornell.edu/cfr/text/5/2635.107>).

<sup>7</sup> U.S. Office of Government Ethics, "Designated Agency Ethics Official and Alternate Designated Agency Ethics Official" (online at <https://www.oge.gov/Web/278eGuide.nsf/Content/Definitions-Designated+Agency+Ethics+Official+and+Alternate+Designated+Agency+Ethics+Official>).

<sup>8</sup> OGE Form 278e for Stefan Passantino, Deputy Counsel to the President (updated on February 22, 2017).

<sup>9</sup> See OGE Form 278e for Stefan Passantino, Deputy Counsel to the President (updated on February 22, 2017); Icahn Enterprises, "Icahn Enterprises L.P. Announces Hiring of Dr. Richard C. Mulligan" (March 1, 2017) (online at <http://www.ielp.com/releasedetail.cfm?ReleaseID=1015132>); New entrants to the executive branch are required to file a Form 278e, which includes their "sources of compensation exceeding \$5,000 in a year" over the "preceding two years to [the] filing date." See U.S. Office of Government Ethics, "2.01: Reporting Periods" (online at <https://www2.oge.gov/Web/278eGuide.nsf/2cf9ac792bc0654a85257ea1005f838a/5df300cba7fca98485257f450074e3a4?OpenDocument>).

<sup>10</sup> OGE Form 278e for Stefan Passantino, Deputy Counsel to the President (updated on February 22, 2017).

<sup>11</sup> President Donald J. Trump, "Executive Order 13770," *WhiteHouse.gov* (January 28, 2017) (online at <https://www.whitehouse.gov/the-press-office/2017/01/28/executive-order-ethics-commitments-executive-branch-appointees>).

provisions, the Ethics Pledge requires that an appointee not “participate in any particular matter involving specific parties that is directly and substantially related to” any person that the appointee “served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment.” The ban extends for two years after the date of appointment.<sup>12</sup>

In addition, federal ethics regulations require executive branch employees performing “official duties” to “avoid an appearance of loss of impartiality.”<sup>13</sup> An employee “should not participate in a particular matter” when he or she is in a “covered relationship” with a person who “is or represents a party” in that matter.<sup>14</sup> An executive branch employee is considered to be in a “covered relationship” with individuals “for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee.”<sup>15</sup>

Given these ethics requirements, it appears that Mr. Passantino may be legally required to recuse himself from (or receive a waiver allowing him to participate in) any matters related to Mr. Icahn, Dr. Carson, or Dr. Price. But there is no record of Mr. Passantino recusing himself, and on at least one occasion, he has commented to the media on Mr. Icahn’s relationship with the Administration<sup>16</sup> – indicating that he has not recused himself.

### Questions

On April 21, 2017, we sent a letter to Mr. Passantino expressing our concerns and asking him to clarify his relationship with Mr. Icahn, Dr. Carson, and Dr. Price and whether he has recused himself on ethics matters related to these individuals.<sup>17</sup> We have yet to receive a response. As such, we ask your office to provide us with clarity on the ethics requirements that apply to Mr. Passantino’s interactions with Mr. Icahn, Dr. Carson, and Dr. Price, and the entities responsible for enforcing them. We request that you provide us with answers to the following questions no later than June 5, 2017.

1. Please provide an overview of relevant ethics laws, executive orders, precedents, and legal opinions regarding Mr. Passantino’s role as both a Deputy White House Counsel and White House DAEO.
  - a. Given the content of Mr. Passantino’s financial disclosures, which of these laws, precedents, executive orders, and legal opinions apply to Mr. Passantino’s involvement in matters related to Mr. Icahn?

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<sup>12</sup> *Id.*

<sup>13</sup> 5 C.F.R. § 2635.501 (online at <https://www.law.cornell.edu/cfr/text/5/2635.501>).

<sup>14</sup> *Id.*

<sup>15</sup> 5 C.F.R. § 2635.502 (online <https://www.law.cornell.edu/cfr/text/5/2635.502>).

<sup>16</sup> Jennifer A. Dlouhy, Ari Natter, and Bill Allison, “‘Purest Definition of a Conflict’: Icahn’s \$126 Million Gain on Biofuel Deal Draws Criticism,” *Bloomberg Markets*.


<sup>17</sup> Letter to Stefan C. Passantino, Deputy White House Counsel and Designated Agency Ethics Official, from Senators Warren, Whitehouse, Carper, and Leahy, and Representative Cummings (April 21, 2017) (online at [https://www.warren.senate.gov/files/documents/2017\\_04\\_21\\_%20Passantino\\_Letter\\_on\\_Icahn.pdf](https://www.warren.senate.gov/files/documents/2017_04_21_%20Passantino_Letter_on_Icahn.pdf)).

- b. Given the content of Mr. Passantino's financial disclosures, which of these laws, executive orders, precedents, and legal opinions apply to Mr. Passantino's involvement in matters related to Dr. Carson and Dr. Price?
2. Does Mr. Passantino's involvement in matters related to Mr. Icahn, Dr. Carson, and Dr. Price appear to be compliant with the relevant laws, executive orders, precedents, and legal opinions?
  - a. Are you aware of whether Mr. Passantino has recused himself from any matters relating to Mr. Icahn, Dr. Carson, or Dr. Price?
  - b. Alternatively, are you aware of any involvement by Mr. Passantino on issues relating to Mr. Icahn, Dr. Carson, or Dr. Price?
  - c. Are you aware of whether Mr. Passantino requested or the White House provided a waiver from Executive Order 13770, or an authorization under 5 C.F.R. § 2635.502, to allow him to work on particular matters related to Mr. Icahn, Dr. Carson, or Dr. Price?
3. If Mr. Passantino is not following relevant laws, executive orders, precedents, and legal opinions, what are the potential consequences for him? Which government officials in the White House or elsewhere are responsible for determining if Mr. Passantino is in compliance, and with enforcing these consequences if he is not?
4. Did Mr. Passantino request or did OGE provide any guidance related to Mr. Passantino's apparent conflicts of interest and recusal requirements related to any work on matters pertaining to Mr. Icahn, Dr. Carson, or Dr. Price?
  - a. If so, please describe the nature of the guidance given, and provide a copy of any such written guidance.
  - b. Did Mr. Passantino follow this guidance?
5. Have any other White House officials requested or has OGE provided guidance regarding Mr. Passantino's conflicts of interest and recusal requirements related to Mr. Icahn, Dr. Carson, and Dr. Price?

- a. If so, please describe the nature of the guidance given, and provide a copy of any such written guidance.
- b. Was this guidance followed?

Please do not hesitate to reach out to Brian Cohen of Senator Warren's staff at 202-224-2245, Joe Gaeta of Senator Whitehouse's staff at 202-224-2921, John Kilvington of Senator Carper's staff at 202-224-2241, Erica Chabot of Senator Leahy's staff at 202-224-4242, or Krista Boyd of Representative Cummings' staff at 202-225-9493 with any questions or concerns.

Sincerely,



Elizabeth Warren  
United States Senator



Sheldon Whitehouse  
United States Senator



Thomas R. Carper  
United States Senator



Patrick J. Leahy  
United States Senator

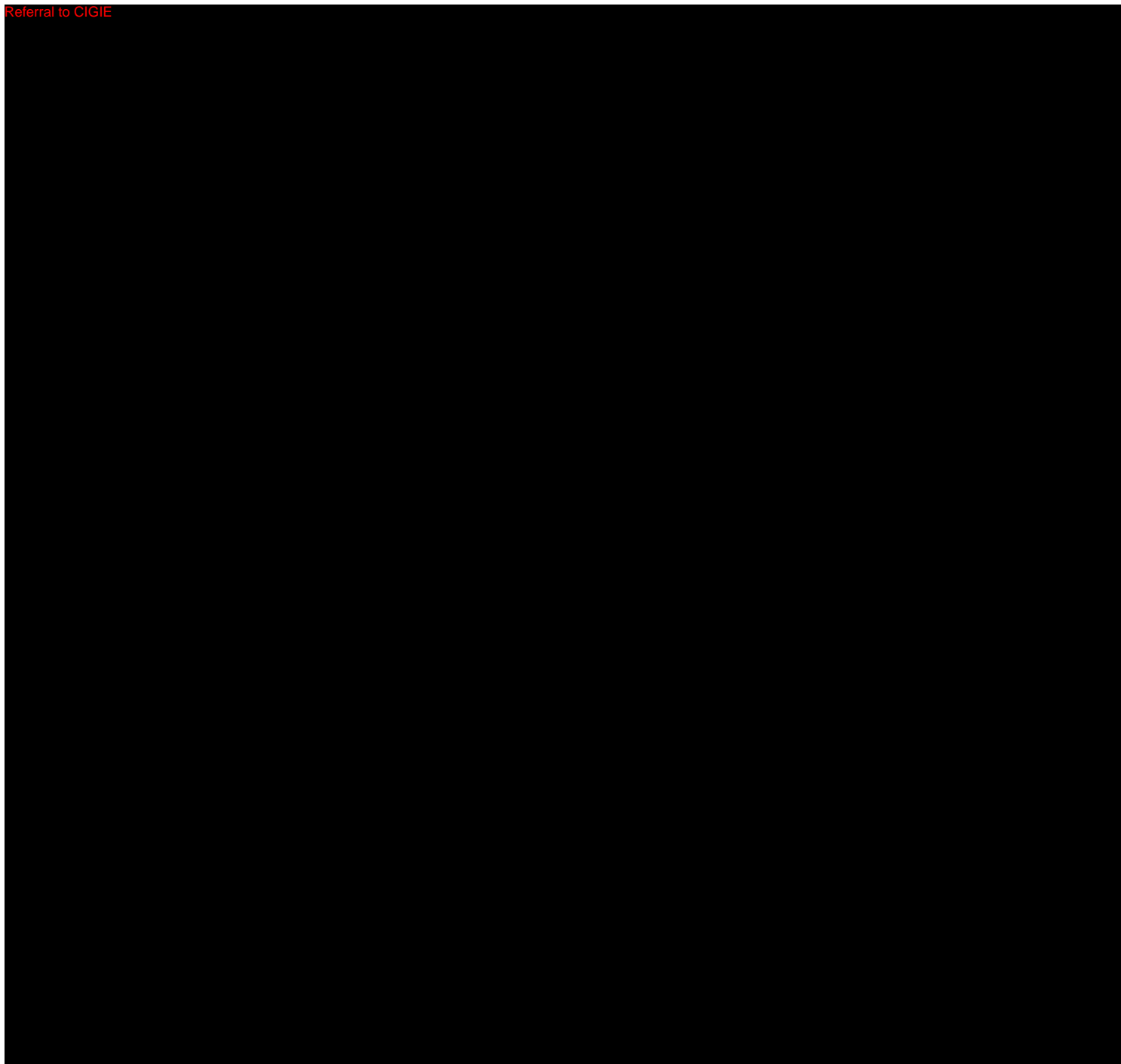


Elijah E. Cummings  
Member of Congress

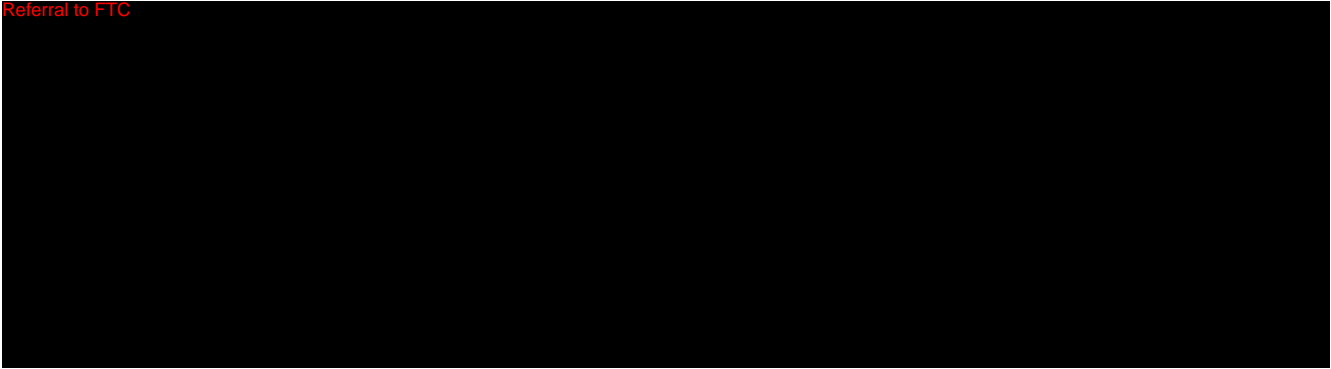
Referral to CIGIE



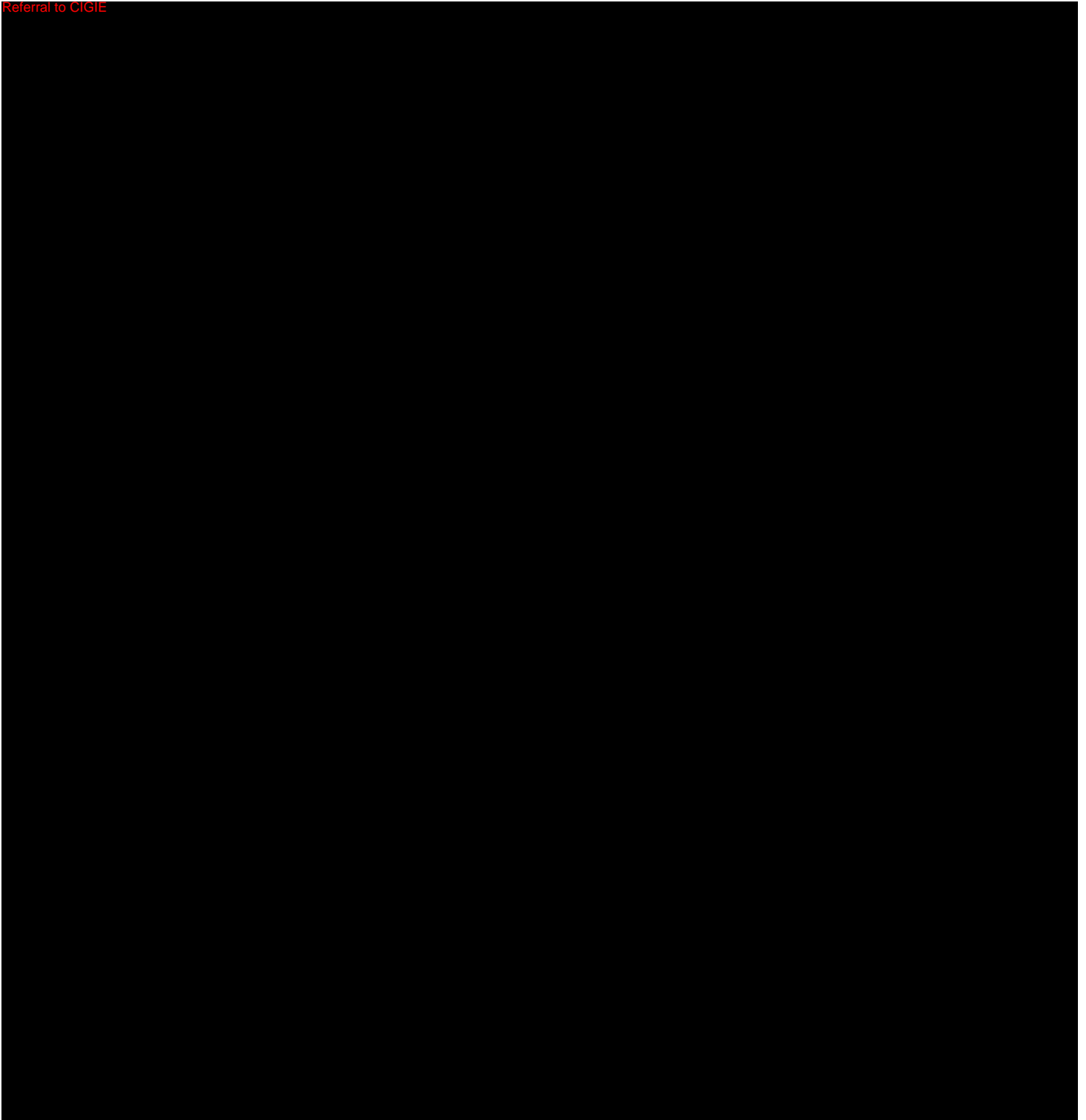




Referral to FTC



Referral to CIGIE





**From:** Sean Moulton  
**To:** [Walter M. Shaub](#)  
**Cc:** [Danielle Brian](#)  
**Subject:** Re: New OGE compliance form  
**Date:** Tuesday, May 16, 2017 2:23:12 PM

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Sure. I'm going to run out and grab a late lunch so later should be fine. You can call me here at the office 202-347-1122 or you can get me on my cell (b) (6)

Thanks  
Sean

Sean Moulton  
Open Government Program Manager  
(b) (6)

Project On Government Oversight | [pogo.org](#)  
1100 G Street NW, Washington DC 20005  
202.347.1122

On Tue, May 16, 2017 at 2:02 PM, Walter M. Shaub <[wmschaub@oge.gov](mailto:wmschaub@oge.gov)> wrote:

Hi Sean, I'm going into a 2:00 meeting. Can I call you when it's done? If so, what's the best number?

Walt

Walter M. Shaub, Jr.

Director

U.S. Office of Government Ethics

1201 New York Avenue, NW, Suite 500

Washington, DC 20005-3917

Telephone: [202.482.9292](tel:202.482.9292)

Email: [walter.shaub@oge.gov](mailto:walter.shaub@oge.gov)

**From:** Sean Moulton [mailto:(b) (6)]  
**Sent:** Tuesday, May 16, 2017 1:58 PM  
**To:** Walter M. Shaub; Danielle Brian  
**Subject:** New OGE compliance form

Walt

I thought I would email you the questions we raised about the new OGE compliance form in case this was an easier format to respond to.

The questions revolve around the fact that the letter introducing the new form explains that it will make the process of reporting and monitoring compliance with ethics agreements simpler and more uniform. So what was the process previously? Was the information/results of the previous compliance process posted for the public?

The letter state that ordinarily OGE expects the designated agency ethics official to provide documentation of of compliance. Was there a different form that they used? Or did each ethics official provide the information they believed was relevant and sufficient?

I didn't see any particular portions on the form that were reserved for ethics officials to comment or fill in. Does this self reporting by individuals completely replace the previous reporting by agency ethics officials or do they still play some role in review and reporting on compliance? If so, what is the role now of agency ethics officials in compliance?

Thanks.  
Sean

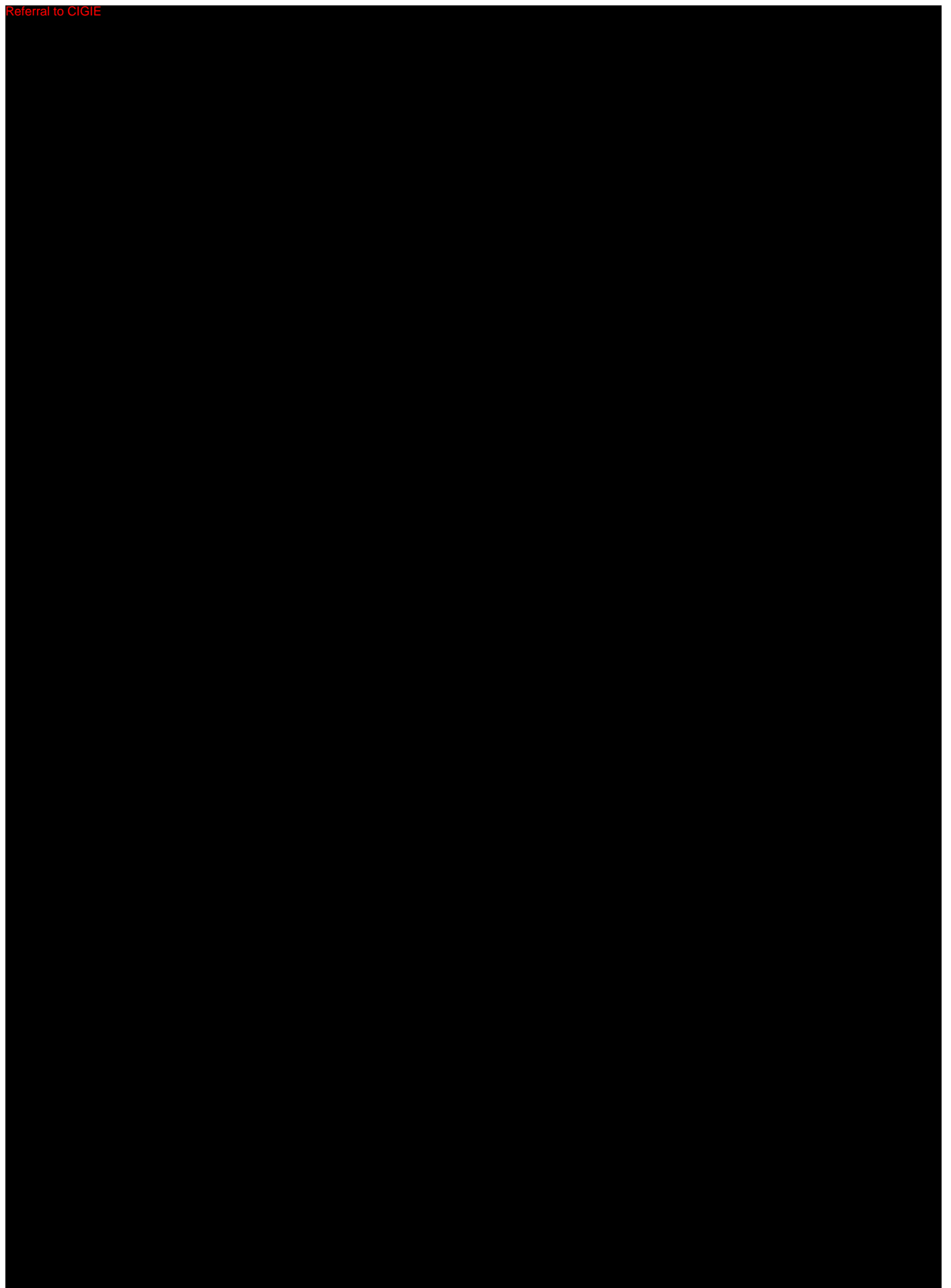
Sean Moulton  
Open Government Program Manager

(b) (6)

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(b) (6)

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