

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



March 16, 2017

The Honorable Mark Pocan  
1421 Longworth House Office Building  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Pocan:

As a follow-up to OGE's February 16, 2017, letter to you, please find the enclosed copy of OGE's March 9, 2017, letter to Chairman Chaffetz and Ranking Member Cummings of the House Oversight and Government Reform Committee.

Sincerely,

A handwritten signature in blue ink, appearing to read "Walter M. Shaub, Jr.", written in a cursive style.

Walter M. Shaub, Jr.  
Director

Enclosures

cc: *(identified individually in an enclosure)*



CC:

The Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and  
Government Reform  
U.S. House of Representatives  
2157 Rayburn House Office  
Building  
Washington, DC 20515

The Honorable Elijah E. Cummings  
Ranking Member  
Committee on Oversight and  
Government Reform  
U.S. House of Representatives  
2471 Rayburn House Office  
Building  
Washington, DC 20515

The Honorable John Sarbanes  
Member  
2444 Rayburn House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Barbara Lee  
Member  
2267 Rayburn House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Zoe Lofgren  
Member  
1401 Longworth House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Betty McCollum  
Member  
2256 Rayburn House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Gwendolynne S.  
Moore  
Member  
2252 Rayburn House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Chellie Pingree  
Member  
2162 Rayburn House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable David Price  
Member  
2108 Rayburn House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Jan Schakowsky  
Member  
2367 Rayburn House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Carol Shea-Porter  
Member  
1530 Longworth House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Mark Takano  
Member  
1507 Longworth House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Ted W. Lieu  
Member  
236 Cannon House Office Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Michelle Lujan  
Grisham  
Member  
214 Cannon House Office Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable James P. McGovern  
Member  
438 Cannon House Office Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Jerrold Nadler  
Member  
2109 Rayburn House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Jared Polis  
Member  
1727 Longworth House Office  
Building

U.S. House of Representatives  
Washington, DC 20515

The Honorable Jamie Raskin  
Member  
431 Cannon House Office Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Bradley S.  
Schneider  
Member  
1432 Longworth House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Darren Soto  
Member  
1429 Longworth House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Paul Tonko  
Member  
2463 Rayburn House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Donald S. Beyer  
Member  
1119 Longworth House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Earl Blumenauer  
Member  
1111 Longworth House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Katherine Clark  
Member  
1415 Longworth House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable John K. Delaney  
Member  
1632 Longworth House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Mark DeSaulnier  
Member  
115 Cannon House Office Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Alcee Hastings  
Member  
2353 Rayburn House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Henry C. Johnson,  
Jr.  
Member  
2240 Rayburn House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Marcy Kaptur  
Member  
2186 Rayburn House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Rick Larsen  
Member  
2113 Rayburn House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Brendan F. Boyle  
Member  
1133 Longworth House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable David N. Cicilline  
Member  
2244 Rayburn House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Steve Cohen  
Member  
2404 Rayburn House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Val Demings  
Member  
238 Cannon House Office Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Theodore E. Deutch  
Member  
2447 Rayburn House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Pramila Jayapal  
Member  
319 Cannon House Office Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Jared Huffman  
Member  
1406 Longworth House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Bill Keating  
Member  
2351 Rayburn House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Brenda L. Lawrence  
Member  
1213 Longworth House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Bennie G.  
Thompson  
Member  
2466 Rayburn House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Nydia Velazquez  
Member  
2302 Rayburn House Office  
Building  
U.S. House of Representatives  
Washington, DC 20515

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



March 9, 2017

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

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

Dear Chairman Chaffetz and Ranking Member Cummings:

I am writing to update you regarding the conclusion of the matter you raised in your February 9, 2017, letter regarding Kellyanne E. Conway, Senior Counselor to the President. Enclosed is OGE's reply to the White House's February 28, 2017, response.

On February 13, 2017, I wrote to the White House and recommended that it consider taking disciplinary action against Ms. Conway. As you know, OGE cannot impose disciplinary action on an executive branch employee other than an OGE employee. When an agency declines to take disciplinary action against an employee in connection with an ethics violation, OGE's only recourse is to notify the President.<sup>1</sup> In this case, however, the White House's response makes clear that disciplinary action will not be taken.

Of greater concern, the White House's response includes assertions challenging the applicability of ethics rules and OGE's authority to oversee the ethics program for the entire executive branch. OGE disagrees with these assertions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Walter M. Shaub, Jr.", written in a cursive style.

Walter M. Shaub, Jr.  
Director

Enclosure

<sup>1</sup> See 5 U.S.C. § 402(f)(2)(A)(iv)(II).



UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

---



March 9, 2017

Stefan C. Passantino  
Deputy Counsel to the President  
and Designated Agency Ethics Official  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear Mr. Passantino:

Thank you for your timely response to my February 13, 2017, letter regarding Kellyanne E. Conway, Special Counselor to the President. While I appreciate your explanation of the White House's ethics education and counseling efforts, I am concerned about the response for two reasons.

I remain concerned about Ms. Conway's misuse of position. Your letter concedes that her televised statements from the White House press briefing room implicated the prohibition on using one's official position to endorse any product or service. When an employee's conduct violates 5 C.F.R. § 2635.702, disciplinary action serves to deter future misconduct. Not taking disciplinary action against a senior official under such circumstances risks undermining the ethics program.

I am more concerned about the extraordinary assertion that "many" of OGE's regulations are inapplicable to employees of the Executive Office of the President. The assertion is incorrect, and the letter cites no legal basis for it.<sup>1</sup> Presidential administrations have not considered it appropriate to challenge the applicability of ethics rules to the entire executive branch. It is critical to the public's faith in the integrity of government that White House employees be held to the same standard of ethical accountability as other executive branch employees.

Sincerely,

Walter M. Shaub, Jr.  
Director

---

<sup>1</sup> OGE also disagrees with the separate assertion in a footnote to your letter that White House employees are outside OGE's purview. The underlying theory that the White House Office is not an "executive agency" for certain limited purposes under 5 U.S.C. § 105 has never been applied in the context of government ethics, nor should it be.



Stefan C. Passantino  
Deputy Counsel to the President  
and Designated Agency Ethics Official  
Page 2

cc. Mr. Donald F. McGahn II  
Counsel to the President

Rep. Jason E. Chaffetz  
Chairman  
Committee on Oversight and Government Reform  
U.S. House of Representatives

Rep. Elijah E. Cummings  
Ranking Minority Member  
Committee on Oversight and Government Reform  
U.S. House of Representatives