

Congress of the United States
Washington, DC 20515

January 9, 2017

The Honorable Loretta E. Lynch
Attorney General of the United States
950 Pennsylvania Avenue NW
Washington, D.C. 20530

The Honorable Walter M. Shaub, Jr.
Director
United States Office of Government Ethics
1201 New York Avenue, N.W.
Suite 500
Washington, D.C. 20005

Dear Attorney General Lynch and Director Schaub:

We write to ask that your review a number of legal issues concerning reports that Jared Kushner, President-elect Donald J. Trump's son-in-law, will be appointed to a White House position as senior adviser to the President. Given the Department of Justice's (DOJ's) central role in enforcing ethics and conflicts-of-interest laws applicable to Executive Branch officials, we ask for your prompt attention to these matters.

To begin with, Mr. Kushner's appointment may run afoul of 5 U.S.C. § 3110, the Federal anti-nepotism statute. Under that statute, a "public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving" a relative. The statute defines the term "public official" to include the President and defines the term "relative" to include a "son-in-law." While the anti-nepotism statute does not specify, other statutes that apply to executive agency employees, such as the Hatch Act, have been interpreted to apply to White House staff (excluding the President and Vice President). In this case, given the express *inclusion* of the President as a "public official" under the anti-nepotism statute, there is a strong case to be made that the White House is an "agency" for purposes of the anti-nepotism statute and that it would apply to bar Mr. Kushner's appointment as a White House staff member.

As you know, federal government officials are also required to recuse themselves from matters in which they have a financial interest.¹ While the *Washington Post* reported today that Mr. Kushner plans to resign from his position overseeing his family's real estate business and divest "substantial assets" in preparation for accepting a potential White House position, it is as yet unclear whether these steps would be sufficient to avoid potential conflicts. His attorney has indicated that he would "recuse himself from any matters having a direct impact on his

¹ 18 U.S.C. § 208 (2017).

remaining financial interests,” suggesting that he would not completely divest himself of assets that *could* raise a conflict of interest. Also, there is no indication that his wife, Ivanka Trump, would divest her ownership interest in the Trump Organization or any other financial interests that could further raise potential conflicts of interest in her father’s Administration.

Moreover, Mr. Kushner’s White House position may allow him to influence policy that benefits his business interests. For example, it has been reported that he will meet with Speaker of the House Paul Ryan this evening to discuss tax policy which, at a minimum, raises the appearance that he may be using his public office for private gain – namely adopting tax changes which will benefit Mr. Kushner and his family.

In addition, should Mr. Kushner choose not to be compensated for his role as a White House “senior adviser” in an attempt to circumvent both the anti-nepotism statute and the general prohibition on Executive Branch officials seeking to use their offices to enrich themselves, his appointment may violate the Anti-Deficiency Act. Indeed, this concern may apply with respect to the appointment of other individuals who reportedly will fill positions as unpaid advisers to the incoming Administration, such as Carl Icahn and Corey Lewandowski, and we ask that you review the lawfulness and appropriateness of their circumstances as well.

In light of the foregoing, and given the potential speed of developments, we urge DOJ to consider our concerns and to take any action it may deem appropriate promptly.

Sincerely,

John Long Jr.

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Paul [Signature]

David Nadler

Shirley Jackson Lee

Ann [Signature]