

May 23, 2017

Mick Mulvaney
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Director Mulvaney:

Democracy 21 calls on you to immediately withdraw your May 17 request to Walter Shaub, Director of the Office of Government Ethics (OGE), that he stay his earlier request for executive branch agencies to provide OGE with copies of any waivers that have been issued to permit agency appointees to work on matters that they previously worked on as lobbyists or lawyers in the two years prior to joining the government.

According to a published report in *The New York Times*, “Dozens of former lobbyists and industry lawyers are working in the Trump administration, which has hired them at a much higher rate than the previous administration.”¹

There is no basis for the Office of Management and Budget to interfere with OGE’s efforts to carry out its oversight and enforcement responsibilities for Executive Branch ethics rules, including rules established by an Executive Order issued by President Trump.

President Trump in his 2016 presidential campaign repeatedly attacked the role being played by special interest lobbyists in Washington, D.C. to undermine the interests of the American people. He repeatedly promised “to drain the swamp.”

It appears that OMB’s efforts are now aimed at hiding information from the American people that would tell them whether the lobbyists and lawyers who have been brought into the Trump Administration are violating federal ethics rules -- or have been given a pass by the Trump Administration to ignore those rules.”

Your request to OGE that it should delay, perhaps indefinitely, its ability to collect this information is without any merit and would do great harm to the public’s right to effective and transparent oversight and enforcement of the Executive Branch ethics rules.

¹ E. Lipton, “White House Moves to Block Ethics Inquiry Into Ex-Lobbyists,” *The New York Times* (May 22, 2017).

Your letter of May 17, 2017 to Director Shaub states that his request, sent to all appropriate agency officials in an OGE memorandum dated April 28, 2017, raises “legal questions regarding the scope of OGE’s authorities.” You further state that the Office of Legal Counsel at the Department of Justice may need to be consulted regarding these questions, and that Director Shaub should in the meantime postpone the June 1, 2017 deadline he gave agencies to provide OGE with copies of the waivers.

Contrary to your letter, however, and as made clear in a letter sent to you by Director Shaub on May 22, 2017, OGE has clear legal authority to request the information it has asked for from the agencies.

OGE has a duty to provide “overall direction of executive branch policies relating to preventing conflicts of interest.” 5 U.S.C. app. § 402(a). The statute establishing OGE gives its Director very broad authority to require “such reports from executive agencies as the Director deems necessary.” *Id.* § 402(b)(10).

In addition, the Director has equally broad authority to “conduct investigations and make findings concerning possible violations of any rule, regulation, or Executive Order relating to conflicts of interest. . . .” *Id.* § 402(f)(2)(B)(i). It is indisputable that obtaining copies of waivers issued by the agencies that would alleviate or resolve situations that otherwise might pose such conflicts of interest is within the scope of this power.

The pledge taken by government employees not to “participate in any particular matter on which I lobbied within the 2 years before the date of my appointment” is set forth in Executive Order 13770 (Jan. 28, 2017) at § 1(7); *see also id.* at § 1(6) (the same restriction applies for matters involving former employers and clients). The President “or his designee” may grant a waiver of these restrictions. *Id.* § 3.

Importantly, however, the Executive Order grants OGE authority to adopt rules “or procedures” as “are necessary or appropriate” to carry out its responsibilities to assist agency ethics officers regarding the application of the pledge. *Id.* § 4(c). In addition to the broad statutory authorities provided to Director of OGE that are set forth above, this provision of the Executive Order provides additional authority for the request made here by Mr. Shaub to receive a copy of all waivers issued.

In raising unstated “potential legal questions” as a basis to postpone agency compliance with Director Shaub’s request, you have provided no substantive explanation or basis for seeking such a delay. Thus, your request appears to be simply pretext to delay and perhaps deprive OGE, and the public, of any knowledge about the existence, number, scope and nature of the waivers that have been issued to former lobbyists and others.

If former lobbyists or lawyers who represented special interests with business before certain agencies are now serving as decision-makers for those agencies and are passing judgment on matters on which just a few months ago they represented private clients, the public has a right to know that information. The public also has a right to know whether these employees are doing so under color of what is now a secret waiver from Executive Branch ethics rules.

The Administration has issued an Executive Order that purports to draw certain lines to protect the public against conflicts of interests, and has claimed great credit for this action.

The Administration cannot credibly turn around now and hide from both OGE and the American people vital information that is essential to determining whether President Trump's Executive Order is being effectively implemented and enforced, or whether his Executive Order has turned out to be a sham that is being undermined by the inappropriate issuance of multiple waivers.

You should not be raising unspecified "legal questions" to hide from the American people information they have a right to know.

Democracy 21 strongly urges you to withdraw your letter to Director Shaub and to refrain from any future efforts to interfere with OGE from carrying out its statutory responsibilities to oversee and enforce Executive Branch ethics rules.

Sincerely,

/s/ Fred Wertheimer

Fred Wertheimer
President