

March 29, 2017

The Honorable Carol F. Ochoa
Inspector General
General Services Administration
1800 F Street, NW
Room 5340
Washington, DC 20405

Dear Inspector General Ochoa:

We write as nonpartisan organizations and individuals concerned with ensuring that the Federal Government maintains the highest ethical standards and upholds the rule of law in the public interest. We respectfully request that you review the recent determination by the General Services Administration (GSA) in its letter dated March 23, 2017 (GSA letter)¹ that Trump Old Post Office LLC is “in full compliance” with its ground lease for the Old Post Office Building despite its clear violation of the lease’s anti-corruption provision governing conflicts of interest. We ask that this review include an examination of the legal basis for GSA’s determination, the extent to which conflicts of interest or their appearance can be mitigated, if at all, and whether the review of this lease provision was conducted consistent with Administration regulations and procedures to prevent undue or inappropriate influence.² Preventing conflicts of interest is imperative to ensuring that taxpayer-owned buildings are not used to inappropriately provide private benefits to government officials at the public’s expense.

The ground lease for the Old Post Office Building contains clear language prohibiting elected officials from benefiting from the lease. Section 37.19 of the Lease states that no “elected official of the Government of the United States...shall be admitted to any share or part of this Lease, or to any benefit that may arise therefrom....”³ Yet, in determining that Trump Old Post Office LLC was in compliance with this provision, GSA provided no legal analysis to suggest that Section 37.19 should be read contrary to its plain meaning. Instead, the GSA letter pejoratively dismisses analyses of the provision’s meaning as “simplistic ‘black and white’ conclusions” and cites a newspaper article quoting individuals suggesting there may be alternative interpretations of the Section 37.19.⁴ The GSA letter does not state whether the agency has adopted any of the alternate interpretations cited in the newspaper article or a

¹ Letter from Kevin M. Terry, Contracting Officer, General Services Administration, to Donald J. Trump, Jr., Mar. 23, 2017 (online at <https://www.gsa.gov/portal/getMediaData?mediaId=157798>).

² Although this may be outside the purview of your office, GSA’s determination may also raise serious constitutional questions as to whether it is a benefit or advantage provided to the President in violation of the Domestic Emoluments Clause. See Brianne J. Gorod, *GSA, Trump International Hotel, and the Constitution, Take Care*, Mar. 24, 2017 (online at <http://takecareblog.com/blog/gsa-trump-international-hotel-and-the-constitution>).

³ General Services Administration, *Ground Lease, By and Between the United States of America (as “Landlord”) and Trump Old Post Office LLC (as “Tenant”)*, Lease No. GS-LS-11-1307 (“Ground Lease”), Aug. 5, 2013 (online at <https://www.gsa.gov/portal/content/305477>).

⁴ Letter from Kevin M. Terry, Contracting Officer, General Services Administration, to Donald J. Trump, Jr., Mar. 23, 2017 (online at <https://www.gsa.gov/portal/getMediaData?mediaId=157798>).

different legal analysis altogether. In the absence of such an analysis, it is impossible to know how GSA believes it is acting consistent with the provisions of the contract in making this determination.

While the GSA letter does not provide any legal analysis to support its determination, GSA appears to rely on certain aspects of Trump Old Post Office LLC's organizational structure in reaching the conclusion that it is not in breach of its lease. Specifically, the letter notes that "during his term in office, the President will not receive any distributions from the Trust that would have been generated from the hotel" and "the funds generated by the hotel will not flow to the President through DJT Holdings LLC...[but rather], the funds will be 'used to support and enhance the business of Tenant [and] operation of the hotel.'"⁵ Yet these aspects of Trump Old Post Office LLC's organizational structure do not obviate the conflict of interest concerns in any way. President Trump has refused to divest his conflicts of interest and still owns the hotel. Enhancing his business and hotel will provide a clear benefit to President Trump, and the arrangement does not deny him this financial benefit, but simply delays it until after he leaves office, when he will be able to reap the financial rewards from improvements to the hotel and business made during his time in office. It is nonsensical to read the ban on "any share or part of this Lease, or . . . any benefit" going to an elected official as meaning only an immediately liquid cash payment. At no point in its cursory discussion of this matter does the GSA letter address or even acknowledge these commonsense concerns or attempt to rebut them, raising serious questions as to the nature and quality of the analysis leading to its determination.

In addition to running contrary to the plain language of the contract, this lease to Trump Old Post Office LLC also creates a serious risk of conflicts of interest. In discussing analogous prohibitions on awarding contracts to Government employees, GSA states that it does so in order to "avoid any conflict of interest that might arise between the employees' interests and their Government duties, and to avoid the appearance of favoritism or preferential treatment by the Government toward its employees."⁶ Yet by allowing President Trump to effectively act as both landlord and tenant, this arrangement creates both the appearance, and very real risk, of favoritism and preferential treatment to the detriment of taxpayers. The President will appoint the Administrator of General Services and then will be in the position of effectively negotiating with himself (or his adult children) through his appointee in determining future changes to the lease agreement that could have significant financial consequences. We ask that your office review this arrangement to determine what steps, if any, GSA can take to reduce the risk of such conflicts of interest, or their appearance.

Moreover, we are concerned that the significant financial interest that the President has in this matter raises the possibility of undue influence in GSA's determination regarding the provisions of this lease. We are particularly concerned about this possibility given that the determination in the GSA letter is contrary to previous statements made by GSA to members of Congress in December regarding this matter.⁷ Further concerns are raised by gratuitous

⁵ *Id.*

⁶ Federal Acquisition Regulation, 48 C.F.R., § 3.601.

⁷ Letter from Ranking Member Elijah E. Cummings, House Committee on Oversight and Government Reform, Ranking Member Peter A. DeFazio, House Committee on Transportation and Infrastructure, Ranking Member Gerald Connolly, Subcommittee on Government Operations, and Ranking Member André Carson, Subcommittee on

statements in the GSA letter to the financial success of the property, saying it is “being put to productive use” and is a “revenue-generating asset”,⁸ that are of no relevance to the determination of whether Trump Old Post Office LLC is in breach of its lease. This is a question of following the rule of law. It is of the utmost importance that your office carefully review the process for making this determination to ensure that it was consistent with Administration regulations and procedures, and that all necessary steps were taken to reduce the potential for undue influence to be exercised.

Thank you for your prompt attention to this matter,

Ambassador (ret.) Norman L. Eisen
American Oversight
Brennan Center for Justice at New York University School of Law
Campaign Legal Center
Center for American Progress
Center for Media and Democracy
Citizens for Responsibility and Ethics in Washington (CREW)
Common Cause
Democracy 21
Every Voice
Free Speech for People
Issue One
Kathleen Clark
Norman Ornstein
Richard Painter
People for the American Way Foundation
Project On Government Oversight
Public Citizen
Sunlight Foundation
The Revolving Door Project
Thomas E. Mann
United to Protect Democracy

Economic Development, Public Buildings and Emergency Management, to the Honorable Denise Turner Roth, Administrator, General Services Administration, Dec. 14, 2016 (online at <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/2016-12-14.EEC%20DeFazio%20Connolly%20Carson%20to%20Roth%20re%20Trump%20Hotel%20Conflicts%20....pdf>).

⁸ Letter from Kevin M. Terry, Contracting Officer, General Services Administration, to Donald J. Trump, Jr., Mar. 23, 2017 (online at <https://www.gsa.gov/portal/getMediaData?mediaId=157798>).