



# PROJECT ON GOVERNMENT OVERSIGHT

Exposing Corruption. Exploring Solutions.

May 25, 2017

The Honorable John M. Mulvaney  
Director  
Office of Management and Budget  
Executive Office of the President  
725 17th Street, NW  
Washington, DC 20503

Dear Director Mulvaney:

The Project on Government Oversight (POGO) urges you to withdraw your May 17, 2017, request that the Office of Government Ethics (OGE) stay its data call for appointees' ethics waivers and authorizations.<sup>1</sup> Moreover, we request that the Trump administration list and provide copies of ethics waivers on its "Ethics Pledge Waivers Released by the White House" website, which currently states that the "information on this page is being updated. Ethics pledge waivers will be published as they become available."<sup>2</sup>

OGE's data call included ethics waivers and authorizations issued and approved pursuant to the appointee ethics-pledge Executive Orders from both President Trump (Executive Order 13770)<sup>3</sup> and President Obama (Executive Order 13490),<sup>4</sup> federal law, and regulatory authorities.<sup>5</sup> Previously the Obama administration had released ethics pledge waivers,<sup>6</sup> and those records were publically available on OGE's website.<sup>7</sup>

We enjoyed working with you in your previous role as Congressman, where you showed a commitment to preventing wasteful spending and demanding accountability and transparency. However, the secrecy regarding ethics records and your reply to OGE are very troubling. President Trump campaigned on the pledge to "drain the swamp," and he proposed a "Five-Point

<sup>1</sup> Mick Mulvaney, Director, Office of Management and Budget, Letter to Walter Shaub, Director, Office of Government Ethics, May 17, 2017. <https://assets.documentcloud.org/documents/3727995/OMB-Director-Mulvaney-Letter-to-Office-of.pdf> (Downloaded May 23, 2017)

<sup>2</sup> The White House, President Donald J. Trump, "Ethics Pledge Waivers Released by the White House." <https://www.whitehouse.gov/briefing-room/disclosures/ethics-pledge-waivers> (Downloaded May 24, 2017)

<sup>3</sup> Executive Order 13770, "Ethics Commitments by Executive Branch Appointees," January 28, 2017. <https://www.gpo.gov/fdsys/pkg/FR-2017-02-03/pdf/2017-02450.pdf> (Downloaded May 24, 2017)

<sup>4</sup> Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," January 21, 2009. <https://www.gpo.gov/fdsys/pkg/FR-2009-01-26/pdf/E9-1719.pdf> (Downloaded May 24, 2017)

<sup>5</sup> Memorandum of Walter M. Shaub, Jr., "Data Call for Certain Waivers and Authorizations," PA-17-02, April 28, 2017, p. 3. [https://oge.gov/web/OGE.nsf/All+Advisories/5B5DECAECCE6CB8185258110007ADC76/\\$FILE/PA-17-02.pdf](https://oge.gov/web/OGE.nsf/All+Advisories/5B5DECAECCE6CB8185258110007ADC76/$FILE/PA-17-02.pdf) (Downloaded May 23, 2017)

<sup>6</sup> The White House, President Barack Obama, "Ethics Pledge Waivers Released by the White House." <https://obamawhitehouse.archives.gov/briefing-room/disclosures/ethics-pledge-waivers> (Downloaded May 24, 2017)

<sup>7</sup> Office of Government Ethics, "Executive Branch Agency Ethics Pledge Waivers." <https://oge.gov/Web/OGE.nsf/Executive%20Branch%20Agency%20Ethics%20Pledge%20Waivers> (Downloaded May 24, 2017)

Plan for Ethics Reform” that promised to “Make Our Government Honest Once Again.”<sup>8</sup> Public release of ethics records will help achieve those goals. Ethics waivers highlight current and former government officials who have conflicts of interest related to their government service. POGO believes that public access to those vital ethics records will help restore the public’s trust and faith in the government.

Posting ethics records is not a political issue. In 2009, Republican Senator Charles Grassley requested that OGE publicly post waivers granted by the Obama administration, stating:

I have watched with interest the implementation and enforcement of the Order. However, the implementation of the Order has not matched the promises of openness and transparency that were made supporting it when it was signed. I write today to request that the Office of Government Ethics (OGE) take immediate action under its authority granted in the Ethics in Government Act of 1978, as amended, (herein Act) to ensure that all waivers issued under Section 3 of the Order be consolidated and publicly displayed on the OGE website.<sup>9</sup>

Senator Grassley made this request, and OGE complied, despite the fact that the Obama ethics order only required OGE to “provide an annual public report on the administration of the pledge and this order.”<sup>10</sup> Since 2009, those annual reports have listed government officials who received waivers.<sup>11</sup>

In addition, the Trump administration’s stance on this issue as demonstrated by agency responses to POGO’s Freedom of Information Act (FOIA) requests for ethics records is not an efficient use of government time and resources. Because no ethics waivers are publicly available, POGO requested them from 54 federal agencies. To date, we have received 20 final responses—13 agencies replied that they had no responsive records, 5 agencies provided recusal agreements but no waivers, 1 agency withheld everything, and 1 agency stated it did not have ethics waivers or a central repository for recusals. This effort is time and taxpayer-money wasted, given that these records should not require a FOIA request in the first place.

Moreover, POGO is concerned that some of the agency responses may indicate a lack of enforcement of the ethics pledge, as some former lobbyists who have entered the administration would need a waiver to work on certain matters on which they previously lobbied or that involved their former employer or clients.

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<sup>8</sup> “Donald J. Trump’s Five-Point Plan for Ethics Reform,” October 17, 2016. <https://www.donaldjtrump.com/press-releases/donald-j.-trumps-five-point-plan-for-ethics-reform> (This page has been removed from the “Trump Pence Make America Great Again!” website); Donald J. Trump on Twitter, @realDonaldTrump, October 18, 2016, at 8:33 am. <https://twitter.com/realDonaldTrump/status/788402585816276992> (Downloaded May 24, 2017)

<sup>9</sup> Press Release of Senator Charles Grassley, “Senator Grassley Urges White House to make Transparent any Ethics Waivers and Recusals,” June 11, 2009. <https://www.grassley.senate.gov/news/news-releases/grassley-urges-white-house-make-transparent-any-ethics-waivers-and-recusals> (Downloaded May 24, 2017)

<sup>10</sup> Executive Order 13490.

<sup>11</sup> The Office of Government Ethics “Annual Report on Executive Order 13490” for 2009 through 2015 can be found at <https://www2.oge.gov/web/oge.nsf/Special+Reports>.

President Trump's appointee ethics pledge states that "[a] copy of the waiver certification shall be furnished to the person covered by the waiver and provided to the head of the agency in which that person is or was appointed to serve." To ensure efficiency of access for the government as well as the public, OMB should support OGE's data call and require that all appointee ethics waivers be publicly posted on the "Ethics Pledge Waivers Released by the White House" and OGE websites.

The enforcement of ethics agreements is vital for ensuring that the federal government is not beholden to special interests at the expense of the public's interest. Enforcement is also important to uphold the intent of President Trump's ethics order. POGO urges you to withdraw your request for a stay and to proactively post all appointee ethics records. Public access to ethics records is necessary for effective accountability and transparency. The public has a right to know who is influencing federal policies, missions, programs, and spending, and if those individuals are answering to former or prospective employers or clients.

If you have any questions, please contact POGO General Counsel Scott Amey at (202) 347-1122.

Sincerely,



Danielle Brian  
Executive Director