

# Conflicting REPORTS

Administration Lacks Formal Plan to Address  
President Trump's Financial Conflicts of Interest



# CONFLICTING REPORTS

## Administration Lacks Formal Plan to Address President Trump's Financial Conflicts of Interest

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During the course of this Congress, Democratic staff of the Senate Homeland Security and Governmental Affairs Committee has conducted ongoing oversight of the ability of the U.S. Department of the Treasury to address potential conflicts of interest stemming from President Trump's failure to divest his financial holdings.

The Treasury now stands on the front lines of the effort to mitigate President Trump's significant and wide-ranging conflicts of interest. Treasury may confront conflicts in a variety of contexts, including those arising during enforcement actions or settlements, Financial Stability Oversight Council (FSOC) deliberations, Committee on Foreign Investment in the United States (CFIUS) reviews, and reviews of foreign trade practices and evaluations of currency issues. In addition, President Trump has tasked the Treasury with receiving profits the Trump Organization will generate from foreign government patronage of Trump-owned hotels and similar businesses.

As explained in more detail below, however, it appears Treasury has not developed any appropriate policies or procedures in response to these challenges. Instead, to the extent potential conflicts arise concerning the role of President Trump or other White House officials in CFIUS deliberations, Treasury officials assert that the responsibility for developing policies or procedures to mitigate these conflicts lies with the White House and not with the Treasury. Treasury officials have also claimed there is "no pressing need" to develop policies for transfers of Trump Organization profits, given that the Trump Organization will not make payments until 2018.

### CONTEXTS IN WHICH POTENTIAL CONFLICTS OF INTEREST MAY ARISE AT THE TREASURY DEPARTMENT

Conflicts of interest related to President Trump and his business interests may occur in a number of situations connected to the work of the Treasury Department, including in money laundering investigations and FSOC and CFIUS deliberations. Each of these conflicts, in the event they arise, will be the result of President Trump's failure to divest his assets or provide a full accounting of his domestic and foreign debt. Without these actions, a variety of Treasury activities may suffer from the appearance—at the very least—of improper influence.

#### Debts Held by the Trump Organization and President Trump

Debts held by the Trump Organization and by President Trump personally may directly impact critical issues for the Treasury Department in a variety of contexts. First, it is possible these debts could influence government negotiations and investigations involving Deutsche Bank, which holds roughly \$300 million in Trump-related debt and has refinanced almost \$370 million in debt incurred by Kushner Companies, in which President Trump's son-in-law, Jared Kushner, retains real estate holdings.<sup>1</sup> Although the Department of Justice and Deutsche Bank reached a \$7.2 billion settlement earlier this year to resolve claims of mortgage-securities abuses, the bank still faces allegations that "it facilitated transactions that helped investors illegally transfer billions of

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<sup>1</sup> *Trump May Have a \$300 Million Conflict of Interest with Deutsche Bank*, Bloomberg (Dec. 22, 2016) ([www.bloomberg.com/news/articles/2016-12-22/deutsche-bank-s-reworking-a-big-trump-loan-as-inauguration-nears](http://www.bloomberg.com/news/articles/2016-12-22/deutsche-bank-s-reworking-a-big-trump-loan-as-inauguration-nears)); *White House Power Player Jared Kushner Is Keeping Parts of His Real Estate Empire*, ProPublica (Feb. 24, 2017) ([www.propublica.org/article/white-house-power-player-jared-kushner-keeping-parts-of-real-estate-empire](http://www.propublica.org/article/white-house-power-player-jared-kushner-keeping-parts-of-real-estate-empire)).

dollars out of Russia.”<sup>2</sup> According to ethics expert Trevor Potter, “[a]nyone the president appoints in DOJ or Treasury is going to be aware—could not fail to be aware—that the president has a real stake with that enormous loan outstanding.”<sup>3</sup>

It is also possible that Trump-related debts could impact deliberations of the Financial Stability Oversight Council (FSOC), which holds the power to classify a nonbank financial institution as a “systemically important financial institution” or “SIFI”—a designation that imposes additional prudential requirements.<sup>4</sup> For example, in 2014, FSOC classified MetLife, a company that issued a \$300 million loan to a limited liability company in which President Trump owns a 30% interest, as a SIFI, but the company successfully convinced a federal district court to overturn this designation; FSOC then appealed to the U.S. Court of Appeals for the D.C. Circuit.<sup>5</sup> The Trump Administration could decide to drop its appeal of the district court decision, but this would potentially raise questions of whether presidential conflicts of interest had influenced FSOC decisionmaking.<sup>6</sup> It is possible that additional questions would arise if other debts accrued by President Trump appeared to influence future FSOC decisions; for example, BlackRock Inc., Vanguard Group, and Fidelity Investments—all of which reportedly hold securitized Trump debt—have fought against SIFI designations for the asset management industry.<sup>7</sup>

### CFIUS Deliberations and Trump Properties

Chaired by the Secretary of the Treasury, CFIUS is “an inter-agency committee authorized to review transactions that could result in control of a U.S. business by a foreign person ... in order to determine the effect of such transactions on the national security of the United States.”<sup>8</sup> Generally, a U.S. business and a foreign entity looking to enter into an acquisition agreement jointly file a notice with CFIUS, which will then begin a review of the transaction.<sup>9</sup> The initial review may last up to 30 days.<sup>10</sup> CFIUS may institute an additional 45-day investigation in certain circumstances, including for foreign government-controlled transactions.<sup>11</sup> For each review, the

<sup>2</sup> *Deutsche Bank Completes \$7.2 Billion U.S. Mortgage Pact*, Bloomberg (Jan. 17, 2017) ([www.bloomberg.com/news/articles/2017-01-17/doj-deutsche-bank-agrees-to-pay-7-2b-for-misleading-investors](http://www.bloomberg.com/news/articles/2017-01-17/doj-deutsche-bank-agrees-to-pay-7-2b-for-misleading-investors)).

<sup>3</sup> *Deutsche Bank Agrees to Pay \$7.2 Billion to Settle Mortgage-Abuse Case*, Washington Post (Dec. 22, 2016) ([www.washingtonpost.com/business/economy/deutsche-bank-agrees-to-pay-7-2-billion-to-settle-mortgage-abuse-case/2016/12/22/d3eac2b4-c6ca-11e6-bf4b-2c064d32a4bf\\_story.html](http://www.washingtonpost.com/business/economy/deutsche-bank-agrees-to-pay-7-2-billion-to-settle-mortgage-abuse-case/2016/12/22/d3eac2b4-c6ca-11e6-bf4b-2c064d32a4bf_story.html)).

<sup>4</sup> U.S. Department of the Treasury, *Financial Stability Oversight Council: Nonbank Financial Company Designations* (Jan. 31, 2017) ([www.treasury.gov/initiatives/fsoc/designations/Pages/default.aspx#nonbank](http://www.treasury.gov/initiatives/fsoc/designations/Pages/default.aspx#nonbank)) (accessed Oct. 4, 2017).

<sup>5</sup> *Trump's Debt Are Widely Held on Wall Street, Creating New Potential Conflicts*, Wall Street Journal (Jan. 5, 2017) ([www.wsj.com/articles/trump-debts-are-widely-held-on-wall-street-creating-new-potential-conflicts-1483637414](http://www.wsj.com/articles/trump-debts-are-widely-held-on-wall-street-creating-new-potential-conflicts-1483637414)); *MetLife Asks Appeals Court to Uphold Removal of 'SIFI' Label*, Wall Street Journal (Aug. 16, 2016) ([www.wsj.com/articles/metlife-asks-appeals-court-to-uphold-removal-of-sifi-label-1471355267](http://www.wsj.com/articles/metlife-asks-appeals-court-to-uphold-removal-of-sifi-label-1471355267)).

<sup>6</sup> *Id.*

<sup>7</sup> *BlackRock Says Regulators Misunderstand Securities Lending Risks*, Reuters (May 13, 2015) ([www.reuters.com/article/us-blackrock-lending-risks/blackrock-says-regulators-misunderstand-securities-lending-risks-idUSKBN0NY2JM20150513](http://www.reuters.com/article/us-blackrock-lending-risks/blackrock-says-regulators-misunderstand-securities-lending-risks-idUSKBN0NY2JM20150513)); *One Firm Getting What It Wants in Washington: BlackRock*, Wall Street Journal (Apr. 20, 2016) ([www.wsj.com/articles/one-firm-getting-what-it-wants-in-washington-blackrock-1461162812](http://www.wsj.com/articles/one-firm-getting-what-it-wants-in-washington-blackrock-1461162812)).

<sup>8</sup> U.S. Department of the Treasury, Resource Center, *The Committee on Foreign Investment in the United States* (accessed Oct. 4, 2017) ([www.treasury.gov/resource-center/international/Pages/Committee-on-Foreign-Investment-in-US.aspx](http://www.treasury.gov/resource-center/international/Pages/Committee-on-Foreign-Investment-in-US.aspx)).

<sup>9</sup> U.S. Department of the Treasury, Resource Center, *CFIUS Process Overview* (accessed Mar. 1, 2017) ([www.treasury.gov/resource-center/international/foreign-investment/Pages/cfius-overview.aspx](http://www.treasury.gov/resource-center/international/foreign-investment/Pages/cfius-overview.aspx)).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* See also Defense Production Act of 1950, 50 U.S.C. App. 2170 § 721 (1950), amended by Foreign Investment and National Security Act of 2007, Pub. L. No. 110-49.

Treasury Department designates one or more lead agencies to negotiate agreements or impose conditions on the transaction to mitigate national security concerns.<sup>12</sup>

As Ranking Member McCaskill noted in the confirmation hearing of Secretary of the Treasury Steven Mnuchin, under the CFIUS process, “[o]nly the President has the authority to suspend or prohibit a covered transaction” following a recommendation or other referral from CFIUS.<sup>13</sup> Moreover, under the decision of the U.S. Court of Appeals for the D.C. Circuit in *Ralls Corp. v. Committee on Foreign Investment in the United States*, this final presidential determination is not subject to judicial review.<sup>14</sup>

The failure of President Trump to divest his assets raises the concern that a conflict of interest might arise that could appear to compromise CFIUS deliberations on transactions related to the Trump Organization or other Trump family entities. Although President Trump pledged to halt all new foreign deals involving his businesses and place his assets in a trust controlled by his sons, he has declined to release the trust agreement, share his tax returns, or provide any other information to indicate which entities are subject to these measures.<sup>15</sup> Documents released by the General Services Administration also state that the trust “shall distribute net income or principal to Donald J. Trump at his request,” suggesting there is little barrier between the President and Trump Organization profits.<sup>16</sup>

Without a full accounting of creditors to the Trump Organization—foreign and domestic—CFIUS members will have no means of knowing which proposed transactions involve entities with financial leverage over President Trump (and no public reporting suggests CFIUS members have access to non-public information concerning the issue). Subsequent revelations regarding Trump-related financial interests could potentially undermine the legitimacy of CFIUS decisions to recommend, or not recommend, a prohibition on a transaction for national security concerns.

Given these financial interests, and uncertainty regarding the holdings, business partners, and dealmaking related to the Trump Organization, a scenario might arise in which President Trump issues a final determination on a CFIUS recommendation that impacts his business interests or the interests of his immediate family. Presidential involvement in initial deliberations and investigations could also possibly lead CFIUS to decline to even make a referral or recommendation to suspend or prohibit a transaction.

## THE TREASURY AND THE TRUMP ORGANIZATION PLEDGES

In a press conference on January 11, 2017, then President-Elect Trump outlined policies designed to mitigate conflicts of interest stemming from his failure to divest his holdings in the Trump Organization. An accompanying memorandum from the law firm of Morgan, Lewis & Bockius LLP expanded on these

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<sup>12</sup> See 31 C.F.R. § 800 (2008).

<sup>13</sup> U.S. Department of the Treasury, *Office of Investment Security; Guidance Concerning the National Security Review Conducted by the Committee on Foreign Investment in the United States*, 73 Fed. Reg. 74568 (Dec. 8, 2008); see also 50 U.S.C. App. § 2170(d).

<sup>14</sup> *Ralls Corp. v. Committee on Foreign Investment in the United States*, 758 F.3d 296 (D.C. Cir. 2014).

<sup>15</sup> *Trump's Plans on Businesses May Fall Short*, New York Times (Jan. 11, 2017) ([www.nytimes.com/2017/01/11/us/politics/trump-organization-business-conflicts.html](http://www.nytimes.com/2017/01/11/us/politics/trump-organization-business-conflicts.html)); *Trump Lawyer Confirms President Can Pull Money From His Businesses Whenever He Wants*, ProPublica (Apr. 4, 2017) ([www.propublica.org/article/trump-pull-money-his-businesses-when-ever-he-wants-without-telling-us](http://www.propublica.org/article/trump-pull-money-his-businesses-when-ever-he-wants-without-telling-us)).

<sup>16</sup> *Trump Can Quietly Draw Money from Trust Whenever He Wants, New Documents Show*, Washington Post (Apr. 3, 2017) ([www.washingtonpost.com/politics/trump-can-quietly-draw-money-from-trust-when-ever-he-wants-new-documents-show/2017/04/03/7f4c0002-187c-11e7-9887-1a5314b56a08\\_story.html?utm\\_term=.ac5605a0df7f](http://www.washingtonpost.com/politics/trump-can-quietly-draw-money-from-trust-when-ever-he-wants-new-documents-show/2017/04/03/7f4c0002-187c-11e7-9887-1a5314b56a08_story.html?utm_term=.ac5605a0df7f)).

policies and procedures, which include a pledge by President Trump to donate all profits from foreign government patronage of Trump “hotels and similar businesses ... to the U.S. Treasury.”<sup>17</sup>

Notably, this pledge defines “similar businesses” as excluding Trump properties leased as office space. In fact, in a policy released to the House Committee on Oversight and Government Reform on May 11, 2017, the Trump Organization defined “hotels and similar businesses” to only include hotels, condominium-hotels, resorts, and clubs it manages or owns.<sup>18</sup> This approach will exempt, for example, profits from lease payments from the Industrial and Commercial Bank of China, a major tenant at Trump Tower.<sup>19</sup> According to *Bloomberg*, the lease for the Industrial and Commercial Bank will be up for renewal in October 2019.<sup>20</sup> At the same time, per an April 2017 report from the Office of International Affairs at the Treasury Department, the Treasury will, in the coming months, be “scrutinizing China’s trade and currency practices very closely, especially in light of the extremely sizable bilateral trade surplus that China has with the United States.”<sup>21</sup> Treasury deliberations on currency manipulation and other issues, proceeding during a period in which the Chinese government renegotiates a lucrative lease with the Trump Organization, raises the appearance of a conflict of interest.

In addition, the ethics pledge President Trump outlined in January failed to explain how the Trump Organization will convey funds to the Treasury and what details or documentation will accompany these transfers. In fact, the policy the Trump Organization provided on May 11, 2017, states that it will make annual “donations” in one lump sum payment to the Treasury after aggregating company-wide profits.<sup>22</sup> Such an approach will presumably make the provision of details connected with specific profits impossible. Additionally, neither the January plan nor the Trump Organization policy provides a method for the disclosure of “donations”—and therefore no mechanism through which Congress and the American public can exercise their basic oversight responsibilities.<sup>23</sup> This is particularly troubling given President Trump’s documented failure to adhere to his public pledges of charitable donations—including his \$6 million pledge to groups supporting military veterans—in a complete and timely manner.<sup>24</sup>

## NEW INFORMATION REGARDING CONFLICTS OF INTEREST

Since January, Ranking Member McCaskill has sent five requests to the Treasury Department for information regarding potential conflicts of interest, including information on any policies the Treasury

<sup>17</sup> Morgan Lewis, *Conflicts of Interest and the President* (Jan. 11, 2017).

<sup>18</sup> See Letter from George A. Sorial, Executive Vice President and Chief Compliance Counsel, The Trump Organization, to House Committee on Oversight and Government Reform (May 11, 2017) (Ex. A, The Trump Organization, *Donation of Profits from Foreign Government Patronage*).

<sup>19</sup> Erwin Chemerinsky, *Trump May Violate the Constitution on Day One*, *Los Angeles Times* (Jan. 12, 2017) ([www.latimes.com/opinion/op-ed/la-oe-chemerinsky-trump-emoluments-20170111-story.html](http://www.latimes.com/opinion/op-ed/la-oe-chemerinsky-trump-emoluments-20170111-story.html)).

<sup>20</sup> *When Chinese Bank’s Trump Lease Ends, Potential Conflict Begins*, *Bloomberg* (Nov. 28, 2016) ([www.bloomberg.com/news/articles/2016-11-28/trump-s-chinese-bank-tenant-may-negotiate-lease-during-his-term](http://www.bloomberg.com/news/articles/2016-11-28/trump-s-chinese-bank-tenant-may-negotiate-lease-during-his-term)).

<sup>21</sup> U.S. Department of the Treasury, Office of International Affairs, *Foreign Exchange Policies of Major Trading Partners of the United States* (Apr. 14, 2017).

<sup>22</sup> See Letter from George A. Sorial, Executive Vice President and Chief Compliance Counsel, The Trump Organization, to House Committee on Oversight and Government Reform (May 11, 2017) (Ex. A, The Trump Organization, *Donation of Profits from Foreign Government Patronage*).

<sup>23</sup> *Id.*; Morgan Lewis, *Conflicts of Interest and the President* (Jan. 11, 2017).

<sup>24</sup> See, e.g., *What Ever Happened to All That Money Trump Raised for the Veterans?*, *Washington Post* (Mar. 3, 2016) ([www.washingtonpost.com/politics/what-ever-happened-to-all-that-money-trump-raised-for-the-veterans/2016/03/03/fbafd9a0-e0b2-11e5-8d98-4b3d9215ade1\\_story.html](http://www.washingtonpost.com/politics/what-ever-happened-to-all-that-money-trump-raised-for-the-veterans/2016/03/03/fbafd9a0-e0b2-11e5-8d98-4b3d9215ade1_story.html)); *Trump Campaign Admits it Did Not Raise \$6 Million for Veterans*, *CNN* (May 20, 2016) ([www.cnn.com/2016/05/20/politics/trump-veterans-6-million-not-raised/index.html](http://www.cnn.com/2016/05/20/politics/trump-veterans-6-million-not-raised/index.html)); *Four Months After Fundraiser, Trump Says He Gave \$1 Million to Veterans Group*, *Washington Post* (May 24, 2016) ([www.washingtonpost.com/news/post-politics/wp/2016/05/24/four-months-later-donald-trump-says-he-gave-1-million-to-veterans-group/](http://www.washingtonpost.com/news/post-politics/wp/2016/05/24/four-months-later-donald-trump-says-he-gave-1-million-to-veterans-group/)).

has developed to address CFIUS-related conflicts, donations from the Trump Organization, and the impact of debts and financial interests related to the assets President Trump has retained.

In response, the Treasury has provided two responses stating that it monitors its compliance with conflicts of interest laws and mitigates potential conflicts as they arise.<sup>25</sup> The responses from the Treasury are attached to this memorandum as Exhibits A and B.

On May 10, 2017, Treasury officials provided additional information to the Democratic staff of the Committee concerning conflicts of interest.<sup>26</sup> Of particular interest is the new information that the Treasury has not developed any policies or procedures specifically to address the conflict of interest concerns the financial holdings of President Trump and members of his immediate family have raised. Instead, to the extent potential conflicts arise concerning the role of President Trump or other White House officials in CFIUS deliberations, Treasury officials assert that the responsibility for developing policies or procedures to mitigate these conflicts lies with the White House and not with the Treasury.

In addition, to the knowledge of these Administration officials, the Treasury has not and will not undertake an inquiry into the extent of foreign-held Trump debt. This position is contrary to a pledge Secretary Mnuchin made on January 19, 2017. At the Senate Committee on Finance hearing held on this date, Ranking Member McCaskill asked several questions regarding the level of debt the Trump Organization and related businesses owe to foreign entities, and how this debt may impact government decision-making and U.S. national security.<sup>27</sup> In response to this questioning, Secretary Mnuchin stated: “I think you have a valid point about foreign debt ... I will research that and get back to you.”<sup>28</sup> To date, the Democratic staff has not received further information on these debts from the Treasury.

Treasury officials also claimed there is “no pressing need” to develop policies for transfers of Trump Organization profits, including guidelines on details that should accompany these transfers and provisions for their public disclosure, given that the Trump Organization will not make payments until 2018.<sup>29</sup> According to these officials, the Treasury Department will treat Trump Organization profit transfers in the same way as it handles typical donations from U.S. citizens.

The Democratic staff has also learned that no other federal agency has developed new policies to mitigate potential conflicts that may arise during the CFIUS process due to the financial interests of President Trump or his family. The majority of the eight remaining CFIUS agencies—the Department of Commerce, the Department of Homeland Security, the Department of Defense, the Department of Energy, the Department of Justice, the White House Office of Science and Technology Policy, the Department of State, and the Office of the U.S. Trade Representative—simply referred questions regarding CFIUS to the Department of the Treasury. The Department of Homeland Security (DHS), for example, cited the Treasury’s role in “administration of the CFIUS review and investigation of transactions notified to the Committee” and concluded that “questions related to the administration

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<sup>25</sup> Letter from the Deputy Assistant Secretary, Office of Legislative Affairs, U.S. Department of the Treasury, to Senator Claire McCaskill, Ranking Member of the U.S. Senate Committee on Homeland Security and Governmental Affairs (Mar. 31, 2017); Letter from the Deputy Assistant Secretary, Office of Legislative Affairs, U.S. Department of the Treasury, to Senator Claire McCaskill, Ranking Member of the U.S. Senate Committee on Homeland Security and Governmental Affairs (May 19, 2017).

<sup>26</sup> Office of Legislative Affairs and the Office of the General Counsel, U.S. Department of the Treasury, Briefing with U.S. Senate Committee on Homeland Security and Governmental Affairs Minority Staff (May 10, 2017).

<sup>27</sup> Senate Committee on Finance, *Hearing to Consider the Anticipated Nomination of Steven Terner Mnuchin to be Secretary of the Treasury*, 115th Cong. (Jan. 19, 2017).

<sup>28</sup> *Id.*

<sup>29</sup> *Trump Organization: First Treasury Donation on Hotel Stays to Come in 2018*, Politico (Mar. 17, 2017) ([www.politico.com/story/2017/03/trump-hotels-first-treasury-donation-2018-236202](http://www.politico.com/story/2017/03/trump-hotels-first-treasury-donation-2018-236202)).

and oversight of CFIUS deliberations are most appropriately addressed by Treasury."<sup>30</sup> Regarding "potential conflicts of interest arising from the President's involvement in the Committee's decisionmaking process," DHS also stated that "White House Counsel, in his role as advisor [to] the President on all legal issues concerning the President and his Administration, is best situated to speak to actions...the administration [sic] plans to take in this regard."<sup>31</sup> The responses the eight agencies submitted are attached to this report as Exhibit C.

## CONCLUSION

Contrary to recommendations from ethics experts of both political parties, President Trump has refused to divest his wide-ranging financial holdings. As a result, the President has placed an enormous burden on federal agencies to develop policies and procedures to attempt to mitigate significant potential conflicts of interest.

Given the issues within its portfolio, the Department of the Treasury is uniquely positioned to take the lead in fulfilling the President's pledge that only "the American People [will] benefit from his term as President."<sup>32</sup> It is important that the Treasury work productively with Congress—and establish new policies where necessary—to address novel conflicts of interest as they emerge.

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<sup>30</sup> Letter from Deputy Secretary Elaine C. Duke, Department of Homeland Security, to Senator Claire McCaskill, Ranking Member of the U.S. Senate Committee on Homeland Security and Governmental Affairs (May 31, 2017).

<sup>31</sup> *Id.*

<sup>32</sup> Morgan Lewis, *Conflicts of Interest and the President* (Jan. 11, 2017).

# **EXHIBIT A**





CONFLICTING REPORTS: Exhibit A  
DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

March 31, 2017

The Honorable Claire McCaskill  
Ranking Member  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Senator McCaskill:

I write in response to your five recent letters to the Department of the Treasury. We appreciate your interest in the work of the Department. Your letters inquired about a broad range of issues, which I will address in turn.

### *Staffing*

In your letter of January 30, 2017, you asked about staffing at Treasury during the Presidential transition. In particular, you asked about the Department's senior leadership, whether and when staff commenced work as part of the new Administration, and whether and when those new staff received ethics training.

Twenty individuals began work as part of the incoming Administration on Monday, January 23 and Tuesday, January 24. Additional employees have joined the Department since then. All of them received a preliminary ethics vetting in advance of their appointment and ethics training as part of the orientation for new employees of the Department. Further, they either have completed or are in the process of completing their necessary financial disclosure reports, which are due thirty days after their commencement of work. None of these individuals has been appointed in an acting capacity to any positions requiring Senate confirmation. In one case, an individual was recently appointed to a non-career Senior Executive Service position of Deputy General Counsel; by virtue of that appointment, he serves as Acting General Counsel. In addition, the duties of vacant senior leadership positions are being performed by designated senior career staff, or in one instance, by a presidential appointee held-over from the prior administration. All required delegations of authority are in place.

### *Ethics Compliance*

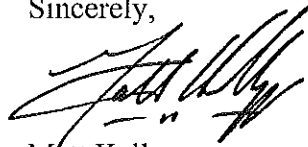
Four other letters relate to conflict of interest issues, including with respect to the work of the Committee on Foreign Investment in the United States (CFIUS). Treasury diligently monitors its own compliance with the applicable conflicts of interest laws, regulations, and Office of Government Ethics guidance. Adherence to these statutes and regulations is the responsibility of

each employee and individual federal agency, including the eight other CFIUS member agencies. As noted previously, employees of the Department complete a standard ethics training when they begin work and also complete the necessary annual training and financial disclosure reports that facilitate identification of potential conflicts. In addition, Treasury's ethics officials work with agency personnel to address and mitigate potential conflicts if and when they arise.

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One of your letters identifies the critical importance of Congress being able to communicate with the Department, even in the early days of the new administration. We agree. Treasury's Office of Legislative Affairs serves as the central point of contact for the Department's engagements with Congress, and dedicated career staff continue to work in that office. We encourage your staff to contact us at (202) 622-1900 if you have any further questions or needs.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Kellogg", written over a horizontal line.

Matt Kellogg  
Deputy Assistant Secretary  
Office of Legislative Affairs

cc: The Honorable Ron Johnson

# **EXHIBIT B**



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

May 19, 2017

The Honorable Claire McCaskill  
Ranking Member  
Committee on Homeland Security  
and Government Affairs  
United States Senate  
Washington, DC 20510

Dear Senator McCaskill:

I write in response to your May 4 letter regarding ethics obligations. As the Department of the Treasury described in a previous letter, adherence to the ethics statutes and regulations is the responsibility of each employee and individual federal agency. Treasury implements a robust ethics program to facilitate its employees' understanding of and compliance with their personal obligations under the ethics laws. Treasury's ethics officials work with Treasury personnel to address and mitigate potential conflicts of interest of its employees if and when they arise. Treasury does not undertake such work on behalf of agency personnel outside of Treasury.

Treasury's Office of Legislative Affairs is available if you or your staff needs additional information. We may be reached at (202) 622-1900.

Sincerely,

Matt Kellogg  
Deputy Assistant Secretary  
Office of Legislative Affairs

cc: The Honorable Ron Johnson

# **EXHIBIT C**

CONFLICTING REPORTS: Exhibit C  
**EXECUTIVE OFFICE OF THE PRESIDENT**  
**OFFICE OF SCIENCE AND TECHNOLOGY POLICY**  
WASHINGTON, D.C. 20502

May 15, 2017

The Honorable Claire McCaskill  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
340 Dirksen Senate Office Building  
Washington, DC 20510-6250

Dear Ranking Member McCaskill,

This letter responds to your letter of April 24, 2017 to The White House Chief of Staff, which was forwarded to the Office of Science and Technology Policy (OSTP). In that letter, you asked about the procedures of the Committee on Foreign Investment in the United States (CFIUS) and about how the Executive Branch addresses conflicts of interest. OSTP understands that you have been in contact with the Department of the Treasury with similar questions and defers to Treasury in answering CFIUS process questions.

With regard to conflicts of interest, each Federal agency, including OSTP, a statutorily established agency within the Executive Office of the President, and each Federal employee is responsible for complying with Federal ethics law and regulations. OSTP complies with ethics law and regulation, and supports OSTP staff in complying, by requiring OSTP staff to attend ethics training and complete financial disclosure reports to identify potential conflicts, and by working with OSTP staff to address potential conflicts. If you have further questions, please contact OSTP's legislative affairs staff at 202-456-4444.

Sincerely,



Ted Wackler  
Acting Director

cc: The Honorable Ron Johnson  
Chairman



**DEPUTY SECRETARY OF DEFENSE  
1010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1010**

MAY 17 2017

The Honorable Claire McCaskill  
Ranking Member  
Committee on Homeland Security and  
Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Senator McCaskill:

Thank you for your letter of April 25, 2017, expressing concerns regarding the Committee on Foreign Investment in the United States (CFIUS). We have reviewed your request for information on the processes, procedures, and actions that the Department of Defense (DoD) takes in investigating, mitigating, and monitoring foreign investment transactions that pose risks to national security.

The DoD is one of nine agency members of the CFIUS, which is chaired by the Department of the Treasury. As a committee member, we are statutorily required to adhere to Executive Order 11858 regarding our engagement with Congressional members and their staff. Pursuant to Executive Order 11858, as amended by Executive Order 13456, sec. 4, paragraph (c), "[t]he chairperson shall have the authority, exclusive of the heads of departments or agencies, after consultation with the Committee . . . to communicate on behalf of the Committee with the Congress and the public."

We therefore request that this inquiry be redirected to the Secretary of the Treasury. Should you have any questions, my point of contact is Navy Captain Nick Rapley, Office of Legislative Affairs, at [nickolas.l.rapley2.mil@mail.mil](mailto:nickolas.l.rapley2.mil@mail.mil) or 703-614-4010.

A handwritten signature in black ink, appearing to read "Nick Rapley".

cc:  
The Honorable Ron Johnson  
Chairman





**Homeland  
Security**

May 31, 2017

The Honorable Claire McCaskill  
Ranking Member  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Ranking Member McCaskill:

Thank you for your April 24, 2017 letter. Secretary Kelly asked that I respond on his behalf.

In your letter, you inquired regarding the Department of Homeland Security's (DHS) participation in the Committee on Foreign Investment in the United States (CFIUS). DHS takes its participation within CFIUS seriously, and works to ensure the review and investigation of transactions notified to the Committee are handled objectively. As a Committee member, Secretary Kelly's role is to lend DHS's subject matter expertise on transactions that have implications for the DHS mission. In so doing, the Department brings substantial resources to bear in order to assess the national security implications of each transaction and legal sufficiency of DHS action. To that end, the DHS Office of General Counsel is consulted in every case.

Consistent with Presidential Policy Directive 21 on Critical Infrastructure and Resilience, DHS serves as the Sector Specific Agency for the Chemical, Commercial Facilities, Communications, Critical Manufacturing, Dams, Emergency Services, Government Facilities, Information Technology, Nuclear, and Transportation critical infrastructure sectors. Accordingly, DHS's participation on the Committee involves serving as the designated "lead agency," with primary responsibility for the transaction's progression through a CFIUS review or investigation, or the negotiation and monitoring of a mitigation agreement or conditions, in those cases that fall within one or more of the above mentioned critical infrastructure sectors.

The Foreign Investment and National Security Act of 2007 identifies the Department of the Treasury ("Treasury") as the CFIUS Chairperson. In the role of Chairperson, Treasury is responsible for administration of the CFIUS review and investigation of transactions notified to the Committee as well as interagency participation in the CFIUS process. Accordingly, questions related to the administration and oversight of CFIUS deliberations are most appropriately addressed by Treasury. My staff has apprised Treasury of your inquiry as well as DHS's deferral to Treasury on matters of this nature.



The Honorable Claire McCaskill

Page 2

Your letter also requested information regarding DHS's plans to address potential conflicts of interest arising from the President's involvement in the Committee's decision-making process. White House Counsel, in his role as advisor the President on all legal issues concerning the President and his Administration, is best situated to speak to actions to actions the administration plans to take in this regard.

Thank you again for your letter and your interest in this important matter. Should you wish to discuss this further, please do not hesitate to contact me.

Sincerely,



Elaine C. Duke

cc: The Honorable Ron Johnson  
Chairman



United States Department of State

Washington, D.C. 20520

JUN 12 2017

The Honorable  
Claire McCaskill  
United States Senate  
Washington, DC 20510

Dear Senator McCaskill:

Thank you for your letter of April 24 sharing your concerns regarding reviews conducted by the Committee on Foreign Investment in the United States (CFIUS).

CFIUS's transaction-by-transaction approach allows for a precise evaluation of the national security risks posed by a specific transaction, taking into account all relevant facts and circumstances surrounding the transaction. The Department of State takes its responsibilities as a member of CFIUS seriously, and thoroughly reviews all cases that come before the Committee.

Your letter raises questions regarding the possibility that government employees involved in the CFIUS process could have a conflict of interest in regard to particular cases. In the first instance, we refer you to the U.S. Department of the Treasury, in its role as Chair of CFIUS, for more information on the CFIUS review process. Like all federal employees, the Department of State staff members involved in the CFIUS process are subject to applicable U.S. government ethics statutes and regulations. The Department of State and its employees take these obligations seriously. Upon discovery of a potential conflict of interest pertaining to a CFIUS case, the Department of State, with advice from the Office of the Legal Adviser, would confer with the Department of the Treasury and other CFIUS members on an appropriate course of action.

We hope you find this information helpful. Please do not hesitate to contact us again on this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Macmanus", with a long horizontal line extending to the right.

Joseph E. Macmanus  
Bureau of Legislative Affairs

CONFLICTING REPORTS: Exhibit C  
EXECUTIVE OFFICE OF THE PRESIDENT  
THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20508

June 14, 2017

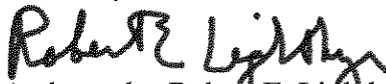
The Honorable Claire McCaskill  
Ranking Member  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Senator McCaskill:

Thank you for your letter of April 24, 2017, which raises questions and requests information regarding the operation of the Committee on Foreign Investment in the United States (CFIUS), specifically with respect to how the Executive Branch addresses conflicts of interest.

As you are aware, USTR is one of the nine departments and agencies that serve as CFIUS members. Given the nature of the inquiry in your letter, we would recommend that you direct this inquiry to the Department of the Treasury as CFIUS chair.

Sincerely,



Ambassador Robert E. Lighthizer  
United States Trade Representative

cc:

The Honorable Ron Johnson, Chairman



CONFLICTING REPORTS: Exhibit C

**UNITED STATES DEPARTMENT OF COMMERCE**  
**Assistant Secretary for Legislative**  
**and Intergovernmental Affairs**  
Washington, D.C. 20230

July 5, 2017

The Honorable Claire McCaskill  
Ranking Member  
Homeland Security and Governmental Affairs Committee  
United States Senate

Dear Senator McCaskill,

Thank you for your letter in regard to potential conflicts of interest for board members of the Committee on Foreign Investment in the United States (CFIUS). The Department of Commerce will take all necessary actions to ensure that officials involved in matters concerning CFIUS comply fully with applicable conflicts of interest laws. The Department is committed to meeting all of its ethical obligations. I assure you that the actions taken by Secretary Ross as a member of the CFIUS Board will be based on the best interests of the United States and independent of any personal interests.

Sincerely,

Brian J Lenihan  
Acting Assistant Secretary

cc: The Honorable Ron Johnson  
Chairman, Homeland Security and Governmental Affairs Committee



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

**AUG 18 2017**

The Honorable Claire McCaskill  
Ranking Member  
Committee on Homeland Security and  
Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Senator McCaskill:

This responds to your letter to the Attorney General dated April 24, 2017, regarding your concerns about possible conflicts of interest relating to the work of the Committee on Foreign Investment in the United States (CFIUS). We understand that the Department of the Treasury (Treasury), which leads the CFIUS, has already responded to your similar letter addressed to that agency. We apologize for our delay in responding to your letter.

Like Treasury, the Department of Justice (the Department) makes substantial efforts through training and other actions to monitor compliance by Department employees with the conflicts of interest laws, regulations, and policies that apply to them. The Department would follow appropriate rules and procedures to manage any potential conflicts of interest of its employees. However, we do not have ethics responsibilities relating to individuals who are employed by other Executive Branch components, including CFIUS member agencies, and, consequently, are not in a position to respond on their behalf.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephen E. Boyd".

Stephen E. Boyd  
Assistant Attorney General

cc: The Honorable Ron Johnson  
Chairman



**Department of Energy**  
Washington, DC 20585

August 28, 2017

The Honorable Claire McCaskill  
Ranking Member  
Committee on Homeland Security  
And Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Senator McCaskill:

I write in response to your April 24, 2017 letter to the Secretary of Energy concerning the Department of Energy's processes related to its membership on the Committee for Foreign Investment in the United States (CFIUS). Your letter requested information regarding the management of conflicts of interest and ethics compliance in the CFIUS process at the Department.

The Department recognizes the critical role it has as a CFIUS member-agency and the importance of that process in protecting our national security. The Department also recognizes the importance of ensuring that in fulfilling that CFIUS role it adheres to all conflict and ethics statutes and regulations. Accordingly, the Department's Designated Agency Ethics Official monitors the Department's compliance with all conflict of interest laws, regulations, and Office of Government Ethics guidance. Adherence to those statutes and regulations is the responsibility of each Department employee. Department employees, including those who work on CFIUS-related matters, receive ethics training when they begin work, complete the necessary annual training and file financial disclosure reports that facilitate the identification of potential conflicts. In addition, Department ethics officials work with agency personnel to address and mitigate potential conflicts if and when they arise. Finally, any person may report potential violations of any conflict of interest or other ethics statute or regulation to the Department's Office of the Inspector General.

We appreciate your interest and support of the Department's CFIUS work. If you have any further questions, please contact Jennifer Loraine, Deputy Assistant Secretary for Senate Affairs, at (202) 586-5450.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric J. Fygi", with a long horizontal stroke extending to the right.

Eric J. Fygi  
Deputy General Counsel

cc: Ron Johnson  
Chairman

