

# CREW | citizens for responsibility and ethics in washington

March 14, 2017

The Honorable Donald F. McGahn  
White House Counsel  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Dear Mr. McGahn:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the White House Counsel’s Office determine whether Assistant to the President and Director of Strategic Initiatives Christopher P. Liddell’s participation in White House meetings between President Donald J. Trump and representatives of companies in which Mr. Liddell appears to have held millions of dollars in stock should be referred to the Department of Justice for investigation.

Mr. Liddell started working at the White House on or about January 20, 2017. In the following two weeks, on January 23 and 24 and February 3, Mr. Liddell participated in three meetings between President Trump and business executives in which a variety of tax, regulatory, infrastructure, and investment issues were discussed. Many of those executives represented companies in which Mr. Liddell at the time apparently held large amounts of stock through a trust. Mr. Liddell’s involvement in these meetings while holding stock in the participating companies may violate the federal criminal conflict of interest statute, 18 U.S.C. § 208, which prohibits a federal employee like Mr. Liddell from participating personally and substantially in any particular matter in which, to his knowledge, he has a financial interest.

## **Background**

### **Appointment of Mr. Liddell as Assistant to the President for Strategic Initiatives**

On January 17, 2017, President-elect Trump named Mr. Liddell as the Assistant to the President and Director of Strategic Initiatives,<sup>1</sup> and he appears to have assumed his duties on or about January 20. Mr. Liddell was designated to lead the Strategic Development Group, which focuses on “priority projects,” to “interface with private sector forums.”<sup>2</sup> Before joining the administration, Mr. Liddell served as the Chief Financial Officer of several companies, including Microsoft, International Paper, and General Motors.<sup>3</sup> As discussed below, General Motors was invited to two of the White House meetings, and International Paper was invited to one of them.

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<sup>1</sup> See <http://www.presidency.ucsb.edu/ws/index.php?pid=49389>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

Mr. Liddell's stock holdings

At the time of the White House meetings, Mr. Liddell appears to have held significant amounts of stock in several of the companies that participated in them.

On February 9, 2017, the Office of Government Ethics ("OGE") issued four Certificates of Divestiture for Mr. Liddell in response to a February 2, 2017, request from James D. Schultz, Alternate Designated Agency Ethics Official for the White House Office.<sup>4</sup> These Certificates of Divestiture were issued to Mr. Liddell, his spouse, and BNY Mellon Trust Company ("BNY Mellon") as Trustee of the JMH Marital Trust, having been deemed "eligible persons" under applicable OGE regulations.<sup>5</sup> The Certificates of Divestiture will allow Mr. Liddell, his spouse, and BNY Mellon the opportunity to defer capital gains treatment for the sale of the stock.<sup>6</sup>

The Certificates of Divestiture covering these holdings were issued based on a determination by OGE General Counsel David J. Apol that "divestiture of the described property is reasonably necessary to comply with 18 U.S.C. § 208, or other applicable Federal conflict of interest statutes, regulations, rules or executive orders."<sup>7</sup> Specifically, Certificate No. OGE-2017-011 was issued to BNY Mellon as the trustee for the JMH Marital Trust ("BNY Mellon Certificate of Divestiture").<sup>8</sup> Based on this information, it appears Mr. Liddell has or had at the time of the White House meetings a beneficial or imputed interest in the holdings of the JMH Marital Trust for purposes of 18 U.S.C. § 208. The BNY Mellon Certificate of Divestiture listed more than 800 separate stock holdings, including in the following companies that participated in the White House meetings: Arconic, Blackrock Inc., Corning, Dell Technologies, Dow Chemical, Ford Motor Co., General Motors Co., IHS Markit LTD, International Paper, Johnson & Johnson, JP Morgan Chase & Co., Lockheed Martin, Pepsico Inc., Tesla Motors Inc., Walmart Stores Inc., and Whirlpool.<sup>9</sup>

White House Meetings on January 23, January 24, and February 3, 2017

On January 23, 2017, Mr. Liddell participated with President Trump in a meeting with business leaders that included representatives from 12 companies, including 10 companies in which Mr. Liddell appears to have held stock worth approximately \$2.1 million: Arconic, Corning, Dell Technologies, Dow Chemical, Ford Motor Co., International Paper, Johnson &

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<sup>4</sup> Office of Government Ethics, Certificate of Divestiture, Certificate No. OGE-2017-009 (Feb. 9, 2017); Office of Government Ethics, Certificate of Divestiture, Certificate No. OGE-2017-010 (Feb. 9, 2017); Office of Government Ethics, Certificate of Divestiture, Certificate No. OGE-2017-011 (Feb. 9, 2017); Office of Government Ethics, Certificate of Divestiture, Certificate No. OGE-2017-012 (Feb. 9, 2017) (all attached as Exhibit A).

<sup>5</sup> The financial interests of his spouse and any trust in which Mr. Liddell has a beneficial interest are imputed to him under 18 U.S.C. § 208, and are considered "eligible persons" to receive Certificates of Divestiture under 5 C.F.R. § 2634.1001 and § 2634.1003.

<sup>6</sup> 5 C.F.R. § 2634.1001; 26 U.S.C. § 1043.

<sup>7</sup> See Exhibit A.

<sup>8</sup> Certificate No. OGE-2017-011.

<sup>9</sup> *Id.*

Johnson, Lockheed Martin, Tesla Motors, and Whirlpool.<sup>10</sup> During the meeting, President Trump reportedly told attendees that his “administration would prioritize corporate tax cuts and decrease regulation, following up on his ‘America First’ campaign promise.”<sup>11</sup> He also repeated his threat to impose a “border tax” on companies that move production outside the United States, saying: “There will be advantages to companies that do indeed make their products here.”<sup>12</sup> In that regard, President Trump was making a specific overture to these companies to support his tax and regulatory reform initiatives, and to encourage these companies to make their products in the United States so that they could obtain the “advantages” being offered.

On January 24, 2017, Mr. Liddell also participated with President Trump in a meeting with General Motors, Ford Motors, Fiat Chrysler Automobiles NV, and the head of an automobile manufacturer trade association.<sup>13</sup> At the time he participated in the meeting, Mr. Liddell and his spouse apparently held stock holdings in General Motors and Ford Motors worth more than \$72,000.<sup>14</sup> Prior to meeting with representatives of these companies, President Trump tweeted: “Will be meeting at 9:00 with top automobile executives concerning jobs in America. I want new plants to be built here for cars sold here!”<sup>15</sup> During the meeting, President Trump reportedly urged the executives to build new factories and vowed to change environmental regulations to encourage the creation of jobs.<sup>16</sup> Based on the invitation list, President Trump’s morning tweet about the meeting, and related news reports, this particular meeting appears to have been focused on the automotive industry and included a direct appeal to its representatives to build more plants in the United States.

On February 3, 2017, Mr. Liddell further participated with President Trump in a meeting with members of the Strategic and Policy Forum chaired by Blackstone Group Chairman and CEO Stephen Schwarzman.<sup>17</sup> Representatives from approximately 14 other companies also were

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<sup>10</sup> See <http://www.gettyimages.com/license/633088382> (photo of meeting showing Mr. Liddell); Richard Feloni, *Here Are the 12 Business Leaders Trump Hosted For His First Big White House Meeting*, *Business Insider*, Jan. 23, 2017, available at <http://www.businessinsider.com/business-leaders-trump-white-house-meeting-2017-1>; Certificate No. OGE-2007-011. The amounts of stock holdings were determined by multiplying the number of shares listed in the Certificates of Disclosure by the values of stock on the New York Stock Exchange (“NYSE”) or the Nasdaq Stock Market on the date of each meeting, according to Google Finance. See <https://www.google.com/finance>.

<sup>11</sup> Feloni, *Business Insider*, Jan. 23, 2017.

<sup>12</sup> *Id.*

<sup>13</sup> See Simon Plumb, *First Photos of Kiwi in Trump’s Team*, *New Zealand Herald*, Jan. 29, 2017, available at [http://m.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=11790581](http://m.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11790581); David Shepardson and Roberta Rampton, *Trump Talks to U.S. Automakers, Pushes For New American Plants*, *Reuters*, Jan. 24, 2017, available at <http://www.reuters.com/article/us-usa-trump-autos-idUSKBN1581CA>.

<sup>14</sup> Certificate Nos. OGE-2007-010, OGE-2007-011. Mr. Liddell’s stock holdings were worth approximately \$65,263 on the day of the meeting and his wife’s holdings were worth approximately \$7,400.

<sup>15</sup> See <https://twitter.com/realDonaldTrump/status/823850781946343427>.

<sup>16</sup> Bill Vlasic, *Trump, In Meeting, Urges Automakers to Build in United States*, *New York Times*, Feb. 3, 2017, available at [https://www.nytimes.com/2017/01/24/business/trump-us-automakers-meeting.html?\\_r=0](https://www.nytimes.com/2017/01/24/business/trump-us-automakers-meeting.html?_r=0).

<sup>17</sup> See <http://www.gettyimages.com/license/633692742> (photo of meeting showing Mr. Liddell); Matthew Townsend and Justin Sink, *Trump CEO Brain Trust Huddles as Corporate America Splits*, *Bloomberg*, Feb. 3, 2017, available at <https://www.bloomberg.com/politics/articles/2017-02-03/trump-ceo-brain-trust-huddles-as-rifts-open-in-corporate-america>.

in attendance, including the following companies in which Mr. Liddell appears to have held a financial interest: BlackRock, General Motors, IHS Markit LTD, International Business Machines, JP Morgan Chase, Pepsico, Tesla Motors Inc., and Walmart Stores.<sup>18</sup> At the time he participated in the meetings, Mr. Liddell's stock holdings in these companies appears to have been worth approximately \$2.3 million.<sup>19</sup> President Trump and the CEOs in attendance reportedly discussed topics "ranging from tax reform to infrastructure," and some executives presented prepared remarks on specific issues, including the CEO of General Motors who "was expected to talk about the auto industry's desire for a second look at fuel-economy rules that the Obama administration affirmed just before leaving office."<sup>20</sup>

### **Potential Violations**

#### **Criminal Conflict of Interest – 18 U.S.C. § 208**

Under 18 U.S.C. § 208, a federal employee is prohibited from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under the statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest.<sup>21</sup> As defined in OGE regulations, a "particular matter" includes only matters that involve deliberation, decision, or action that is focused on the interests of either specific persons or a discrete and identifiable class of persons.<sup>22</sup> The term does not extend to the consideration or adoption of broad policy options that are directed to the interests of a large and diverse group of persons.<sup>23</sup>

It is not fully known what was discussed at the three White House meetings. The January 24 meeting with representatives of the automobile manufacturers seemingly was convened by President Trump to make a direct appeal to the three biggest American automobile manufacturers to build factories in the United States and to discuss changes in environmental regulations to help them in this regard. As a result, this meeting appears to have been a particular matter because it was carried out in furtherance of the government's stated policy to build more factories in the United States for cars sold here and was focused narrowly on the auto industry as a discrete and identifiable class of persons.

The January 23 and February 3 meetings also may have been particular matters under the statute and regulations. At the January 23 meeting, President Trump apparently appealed to the

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<sup>18</sup> In addition, two retired executives, Jim McNerney of Boeing and Jack Welch of General Electric, attended the meeting. Mr. Liddell held stock in these companies as well. Richard Feloni, Here's Who Sat Where in Trump's First Big Business Council Meeting - And What The Layout Communicates, *Business Insider*, Feb. 3, 2017, available at <http://www.businessinsider.com/who-sat-where-in-president-trumps-business-advisory-council-and-why-2017-2>; Certificate No. OGE-2007-011.

<sup>19</sup> *Id.*

<sup>20</sup> Townsend and Sink, *Bloomberg*, Feb. 3, 2017.

<sup>21</sup> 5 C.F.R. § 2635.402(a).

<sup>22</sup> 5 C.F.R. § 2635.402(b)(3).

<sup>23</sup> *Id.*

attendees to specifically support his tax and regulatory reform initiatives. Moreover, it is unknown the extent to which President Trump and the executives discussed policies focused on the interests of a discrete and identifiable group of companies. Similarly, it appears likely that the fuel-economy rules specifically impacting the auto industry were discussed at the February 3 meeting, and it is unknown whether the participants discussed other policies focused on the interests of a discrete and identifiable group of companies.

The White House meetings also may have constituted particular matters for Mr. Liddell due to the extent of his involvement in planning and organizing them. Based on his stated responsibility to “focus on priority projects” and to “interface with private sector forums,” there is a reasonable basis to believe that Mr. Liddell had responsibility to organize the meetings, and to oversee and participate in the selection process for prospective attendees. To the extent that Mr. Liddell participated in, oversaw, and engaged in planning activities for these meetings, including but not limited to developing and/or approving the invitation list, he may be viewed as having personally and substantially participated in the White House meetings as particular matters involving specific parties that would have a direct and predictable effect on his financial interests.

At the time of the White House meetings, Mr. Liddell appears to have held significant amounts of stock in several of the companies that participated in them. The fact that OGE issued Certificates of Divestiture on February 9, 2017 strongly indicates Mr. Liddell still held stock in the companies at that point and had not divested his financial interests in these assets prior to his participation in the meetings. In addition, there is no evidence indicating he received a waiver under 18 U.S.C. § 208(b)(1) or OGE regulations that would have permitted him to be involved in the meetings despite his financial interest in the participating companies.

Beyond the particular financial conflict of interest statute and regulations, Mr. Liddell’s participation in the White House meetings under these circumstances also appears to violate the guiding ethical principles for every federal employee.<sup>24</sup> Those basic obligations of public service form the basis for the standards of conduct, and when a situation is not covered by the rules, they broadly oblige employees to place public service above private gain, to not hold financial interests that conflict with the conscientious performance of duty, and to avoid any actions creating the appearance that they are violating the law or the ethical standards.<sup>25</sup>

### **Conclusion**

The purpose of the conflicts of interest statute is to ensure that a government employee’s official conduct is directed solely to advancing the public interest and not the employee’s private financial gain. If Mr. Liddell personally participated in meetings with companies in which he held significant amounts of stock, he may have violated these rules.

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<sup>24</sup> 5 C.F.R. § 2635.101(b).

<sup>25</sup> 5 C.F.R. § 2635.101(b)(1), (2), and (14).



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These potential violations come to light after repeated incidents of apparent disregard for the importance of ethics and conflicts, as well as potential ethics violations, among White House staff. CREW has sent you two letters regarding Counselor to the President Kellyanne Conway's improper use of office to benefit a private interest, and the responses to those potential violations by President Trump and others demonstrate a lack of regard for the importance of following ethics rules and avoiding conflicts of interest. CREW has also notified you about apparent violations of the Federal Advisory Committee Act because outside advisors, often connected with major corporations, have participated in organized efforts to advise the president without complying with transparency and accountability rules. The White House also has weakened key ethics rules in its ethics executive order, and the administration has exploited loopholes to bring lobbyists in to work in official positions on issues on which they have previously lobbied. This pattern dictates that any new potential ethics violations be taken very seriously and thoroughly investigated. Accordingly, CREW requests that the White House Counsel's Office confirm that Mr. Liddell held stock in the companies that participated in the White House meetings, ascertain whether he divested those holdings or received a waiver before the meetings, and determine whether the matter should be referred to the Department of Justice for investigation into possible violations of 18 U.S.C. §208.

Sincerely,



Noah Bookbinder  
Executive Director  
Citizens for Responsibility and Ethics in Washington

Encl.

cc: Walter M. Shaub, Jr.  
Director, U.S. Office of Government Ethics