

January 4, 2019

Hon. Rod J. Rosenstein
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Re: Possible Violation of the Conflict of Interest Law by Assistant to the President
Ivanka Trump

Dear Deputy Attorney General Rosenstein:

Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully requests that the Department of Justice investigate whether Assistant to the President Ivanka Trump violated the primary federal conflict of interest law, 18 U.S.C. § 208, when she participated personally and substantially in a particular matter directly and predictably affecting her financial interests. Specifically, Ms. Trump participated in the Trump administration’s implementation of a new tax law authorizing the Opportunity Zones program while her spouse, Senior Advisor and Assistant to the President Jared Kushner, held significant financial interests in an entity benefitting from that program.

The Opportunity Zones program seeks to stimulate economic activity in certain low-income communities by offering special tax treatment for the proceeds of sales that are rolled into qualified opportunity funds (“QOF”), which are investment vehicles tied to those locations. Over a period of months in 2018, the Trump administration worked to implement this newly authorized program. Ms. Trump participated personally and substantially in the implementation effort, actively participating in a February 2018 work session, an October 2018 presentation at the White House, a December 2018 White House event, and in behind-the-scenes work with relevant officials. She may have participated in other aspects of the implementation effort, such as the development of regulations by the Treasury Department and a revenue ruling by the Internal Revenue Service (“IRS”) that flesh out the requirements for QOFs.

At the time of Ms. Trump’s participation in the program, Mr. Kushner held significant financial interests in Cadre, an entity that offers QOFs under the Opportunity Zones program. Under the conflict of interest law, Mr. Kushner’s financial interests are imputed to Ms. Trump, and she was required to recuse from particular matters related to the program. By failing to do so, Ms. Trump may have violated the conflict of interest law.

The federal conflict of interest law – 18 U.S.C. § 208

The federal conflict of interest law, 18 U.S.C. § 208, prohibits an executive branch employee from participating “personally and substantially” in a “particular matter” that has a

direct and predictable effect on a financial interest of the employee or the employee's spouse.¹ For the law to apply the employee must know of the financial interest.² As the Office of Government Ethics ("OGE") has explained, the law "is intended to be prophylactic, and its scope is quite broad."³ An employee who violates the statute may be subject to a civil penalty of not more than \$50,000 for each violation, and imprisonment for up to one year, or five years if the violation was willful.⁴

Personal and substantial participation includes a wide range of activities that fall short of making decisions, such as engaging in deliberations or rendering advice.⁵ For example, the Department of Justice's Office of Legal Counsel ("OLC") has opined that the conflict of interest law covers participation in meetings of advisory committees, which have no authority to make decisions for the government.⁶ OGE regulations further clarify the nature of participation that is personal and substantial:

To participate "personally" means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate "substantially" means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter.⁷

The term "particular matter" refers to a matter that is focused on the interests of either (a) specific persons or (b) a discrete and identifiable class of persons.⁸ OGE has explained that, "It is clear . . . that particular matter may include matters that do not involve parties and is *not* 'limited to adversarial proceedings or formal legal relationships.'"⁹ An example of a particular matter is a matter that focuses on the interests of a specific industry, which is a discrete and identifiable class of persons.¹⁰ The term further includes legislation or a policy matter focused on the interests of a discrete and identifiable class of persons.¹¹ Even if a piece of legislation is not focused narrowly enough to qualify as particular matter, efforts to implement the legislation may nonetheless constitute particular matters.¹²

¹ 18 U.S.C. § 208(a).

² *Id.*

³ OGE Inf. Adv. Op. 07 x 4 (2007), <https://bit.ly/2Qkzzbp>.

⁴ 18 U.S.C. § 216(a)-(b).

⁵ See 18 U.S.C. § 208(a) ("participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise").

⁶ Office of Legal Counsel, Dep't. of Justice, Advisory Committees-Food & Drug Admin.-Conflicts of Interest (18 U.S.C. § 208), 2 U.S. Op. Off. Legal Counsel 151, 153 (1978) ("OLC FACA opinion"), <https://bit.ly/2E3S9go>.

⁷ 5 C.F.R. § 2640.103(a)(2).

⁸ See 5 C.F.R. § 2640.103(a)(1).

⁹ OGE Inf. Adv. Op. 06 x 9 (2006) (quoting *Van Ee v. E.P.A.*, 202 F.3d 296, 302 (D.C. Cir. 2000) (emphasis in original), <https://bit.ly/2ASzf9k>).

¹⁰ See 5 C.F.R. § 2635.402(b)(3), example 2; 5 C.F.R. § 2640.103(a)(1), example 3; see also OLC FACA opinion at 155 ("An example [of a particular matter] might be the drafting or review of environmental regulations which would require considerable expenditures by all firms in the particular industry of which the company is a part.").

¹¹ See 5 C.F.R. § 2635.402(b)(3) (particular matter "may include governmental action such as legislation or policy-making that is narrowly focused on the interests of such a discrete and identifiable class of persons"); see also OGE 06 x 9 at 7.

¹² See 5 C.F.R. § 2640.103(a)(1), example 8.

In one opinion, OLC considered whether participation in deliberations of federal advisory committees concerning a class of related products or an ingredient common to many products involves participation in a “particular matter” within the meaning of the conflict of interest law.¹³ OLC determined that it does, despite the fact that federal intervention in such products or ingredients would also affect the interests of consumers.¹⁴ Thus, notwithstanding a general effect on the public, a matter will qualify as a particular matter if it has a distinct effect on a discrete and identifiable class, whether they be drug manufacturers, a class of investment funds subject to federal regulation, or other classes of persons.¹⁵ OLC has also emphasized that even a very large class of persons can be a discrete and identifiable class of persons: “[T]he word ‘particular’ serves to limit the application of § 208(a) in terms of discrete areas of the employee’s activities, not the number of outside parties who may be affected.”¹⁶

The particular matter in question – implementation of the Opportunity Zones program

Congress created the Opportunity Zones program with its passage of the 2017 Tax Cuts and Jobs Act.¹⁷ While passage of this omnibus tax law was not itself a particular matter, aspects of the Trump administration’s implementation of its provisions authorizing the Opportunity Zones program constitute a particular matter.¹⁸

Relevant here, the law grants special tax treatment when capital gains are rolled into a QOF.¹⁹ The IRS has explained that under the new law, “the term ‘qualified opportunity fund’ (QOF) means any investment vehicle organized as a corporation or a partnership for the purpose of investing in qualified opportunity zone property (Zone Property) (other than another QOF) that holds at least 90 percent of its assets in Zone Property.”²⁰ An opportunity zone is a geographic area that meets the statutory definition of “low-income community” and has been designated as an opportunity zone by a state government or the District of Columbia.²¹

¹³ See OLC FACA opinion at 152-153.

¹⁴ See *id.* at 152-155.

¹⁵ See *id.*; see also 5 C.F.R. § 2640.201(d) (matters affecting mutual funds and unit investment trusts).

¹⁶ See OLC FACA opinion at 153.

¹⁷ See P.L. 115-97, 131 Stat 2054, 2183, § 13823 (Dec. 22, 2017).

¹⁸ See 5 C.F.R. § 2640.103(a)(1), example 8 (“consideration and implementation, through regulations, of a section of the health care bill limiting the amount that can be charged for prescription drugs is sufficiently focused on the interests of pharmaceutical companies that it would be a particular matter,” even if the bill itself was not a particular matter).

¹⁹ See 26 U.S.C. § 1400Z-2(a)-(c); see also Internal Revenue Service, Opportunity Zones Frequently Asked Questions (“First, investors can defer tax on any prior gains invested in a Qualified Opportunity Fund (QOF) until the earlier of the date on which the investment in a QOF is sold or exchanged, or December 31, 2026. If the QOF investment is held for longer than 5 years, there is a 10% exclusion of the deferred gain. If held for more than 7 years, the 10% becomes 15%. Second, if the investor holds the investment in the Opportunity Fund for at least ten years, the investor is eligible for an increase in basis of the QOF investment equal to its fair market value on the date that the QOF investment is sold or exchanged.”), <https://bit.ly/2JtrAAU>, (last viewed Dec. 6, 2018).

²⁰ IRS Rev. Rul. 2018-29 (Oct. 19, 2018) (citing 26 U.S.C. § 1400Z-2(d)(1)).

²¹ See 26 U.S.C. § 1400Z-1.

The 2017 Tax Cuts and Jobs Act tasked the executive branch with issuing regulations to establish rules for QOFs.²² Accordingly, the Treasury Department issued proposed regulations titled “Investing in Qualified Opportunity Funds” on October 19, 2018.²³ The department’s notice of proposed rulemaking provided the following summary of its proposed QOF regulations:

This document contains proposed regulations that provide guidance under new section 1400Z-2 of the Internal Revenue Code (Code) relating to gains that may be deferred as a result of a taxpayer’s investment in a qualified opportunity fund (QOF). Specifically, the proposed regulations address the type of gains that may be deferred by investors, the time by which corresponding amounts must be invested in QOFs, and the manner in which investors may elect to defer specified gains. This document also contains proposed regulations applicable to QOFs, including rules for self-certification, valuation of QOF assets, and guidance on qualified opportunity zone businesses. The proposed regulations affect QOFs and their investors.²⁴

Although the regulations also affect taxpayers, they are centered around the QOFs. The regulations establish procedures and requirements for an investment fund to qualify as a QOF.²⁵ They limit the deferral of gains to proceeds of sales that are rolled into QOFs.²⁶ They define the type of gains that can be rolled into QOFs and the minimum time thresholds for remaining invested in QOFs.²⁷ They define the type of property a QOF may hold and the requirement that the QOF improve the property.²⁸ In these ways, the regulations focus on the discrete and identifiable class of investment funds seeking to qualify as QOFs. Therefore, the development and issuance of these regulations was a particular matter.

The analysis of these regulations is analogous to the analysis of a regulation affecting the cost of ingredients used in the manufacture of a drug, a situation addressed by OLC and ethics regulations.²⁹ Such an action would be a particular matter because it would focus on the distinct interests of drug manufacturers even though it would also affect consumers generally.³⁰ Just as

²² See 26 U.S.C. § 1400Z-2(e)(4).

²³ See U.S. Dep’t of Treasury, Treasury, IRS issue proposed regulations on new Opportunity Zone tax incentive, IR-2018-206 (Oct. 19, 2018) (releasing regulations prior to publication in the Federal Register), <https://bit.ly/2ys9g87>; see also U.S. Dep’t of Treasury, Investing in Qualified Opportunity Funds, 83 Fed. Reg. 54279 (Oct. 29, 2018).

²⁴ See 83 Fed. Reg. at 54279.

²⁵ See 83 Fed. Reg. at 54293-96 (“§ 1.1400Z2(d)-1 Qualified Opportunity Funds.”).

²⁶ See 83 Fed. Reg. at 54289-90 (“Under section 1400Z-2(a) of the Internal Revenue Code (Code) and this section, an eligible taxpayer may elect to defer recognition of some or all of its eligible gains to the extent that the taxpayer timely invests (as provided for by section 1400Z-2(a)(1)(A)) in eligible interests of a qualified opportunity fund (QOF), as defined in section 1400Z-2(d)(1).”).

²⁷ See 83 Fed. Reg. at 54289-93 (“§ 1.1400Z2(a)-1 Deferring tax on capital gains by investing in opportunity zones” and “§ 1.1400Z2(c)-1 Investments held for at least 10 years”).

²⁸ See 83 Fed. Reg. at 54294-96.

²⁹ See OLC FACA opinion; 5 C.F.R. § 2641.201(h)(2), example 5.

³⁰ See OLC FACA opinion; see also 5 C.F.R. § 2641.201(h)(2), example 5 (suggesting that, though not a particular matter involving specific parties, a proposed rule requiring all manufacturers of a particular product to obtain pre-market approval was a particular matter of general applicability); Office of Gov’t Ethics, The Nettlesome Question

the drug regulation would be a particular matter, the Treasury Department's issuance of the QOF regulations was a particular matter.³¹ Although taxpayers generally are eligible for special tax treatment, they are eligible for that treatment only as to proceeds they roll into QOFs, and the regulations focus on the distinct interests of QOFs and entities that offer them.³²

This particular matter and the coverage of the conflict of interest law is not limited to final implementation decisions. One aspect of the particular matter in question involved a work session that the Trump administration held at the White House on February 14, 2018 regarding its implementation of the Opportunity Zones legislation.³³ With regard to this work session, it bears noting that the prohibition under the conflict of interest law applies to all aspects of a particular matter.³⁴ OLC has opined that the conflict of interest law is not limited to final decision-making but also covers participation in "intermediate steps in a larger proceeding."³⁵ OGE similarly explained that preliminary consultations regarding certain policy initiatives are covered by the conflict of interest law:

OGE disagrees with the view that section 208 does not apply to an employee who participates in informal, preliminary discussions about possible specific changes to agency standards governing a particular industry. As I understand it, the thrust of your argument is that there is no "particular matter" in such scenarios until there is some kind of formal proposal or regulatory package pending in the agency for action. This is not OGE's interpretation, nor do we believe this interpretation would be consistent with the language and purpose of section 208.

Section 208, by its very terms, covers participation in certain preliminary stages, such as participation through "investigation" and the "rendering of advice."³⁶

The development of an IRS revenue ruling on certain QOFs in real estate also is part of the particular matter in question. The ruling addresses questions regarding the purchase by a QOF of an existing building located on land that is wholly within a

of Particular Matters of General Applicability, at 3, Sept. 19, 2014, (describing the proposed regulation in example 5 to 5 C.F.R. § 2641.201(h)(2) as a particular matter of general applicability), <https://bit.ly/2zN1shV>.

³¹ In the same vein, OGE has released a summary of an unpublished OLC opinion illustrating that a matter affecting the public as a whole is, nonetheless, a particular matter if it has a distinct effect on a discrete and identifiable class of persons: "The activities of the Federal Open Market Committee regulating interest rate-sensitive securities by determining the amount and cost of reserves available to banks and thrifts are particular matters of general applicability because they focus on a discrete and identifiable class of banks and thrifts. (Unpubl. OP OLC (June 30, 1993))." Office of Gov't Ethics, The Nettlesome Question of Particular Matters of General Applicability, at 3, <https://bit.ly/2zN1shV> (last viewed Dec. 5, 2018).

³² See 26 U.S.C. § 1400Z-2(a)(1)(A); see also 83 Fed. Reg. at 54289 – 90 (§ 1.1400Z2(a)–1(a)).

³³ See Trump promotes 'opportunity zones' for investors to rebuild in distressed communities, *Wash. Times*, Feb. 14, 2018, <https://bit.ly/2E13JJe>.

³⁴ See 18 U.S.C. § 208(a) (covering participation in a "particular matter").

³⁵ Memorandum of Steven G. Bradbury, Acting Assistant Attorney General, to Marilyn L. Glynn, General Counsel, OGE, January 11, 2006, at 75, <https://bit.ly/2QHhfbE>.

³⁶ OGE Inf. Adv. Op. 06 x 8 (2006), <https://bit.ly/2Qgrt3x>.

designated opportunity zone.³⁷ Among other things, the ruling addresses how to measure whether the QOF has “substantially improved” the real estate.³⁸

Ms. Trump’s personal and substantial participation in the implementation of the Opportunity Zones program

Ms. Trump personally and substantially participated in the particular matter of the implementation of the Opportunity Zones program. While the full extent of her participation is not known, some of her activities in connection with this implementation effort have been public. She has also publicly acknowledged participating in it behind the scenes.

On February 14, 2018, President Trump convened a work session to kick off the work Congress had given the executive branch to do regarding the Opportunity Zones program.³⁹ Among those at the meeting with him were Ms. Trump and Treasury Secretary Mnuchin. The White House’s official transcript reveals that Ms. Trump actively participated in this meeting. During the work session, Senator Tim Scott (R-SC) noted that Secretary Mnuchin’s department was working on “guidance” for the Opportunity Zone programs, an effort that would later produce the QOF regulations and the IRS revenue ruling on opportunity zone property. Ms. Trump then recounted that she had participated in “robust” discussions with the other meeting participants about driving capital to targeted communities, an apparent reference to the QOFs that raise capital for opportunity zone properties:

Sen. Scott. I just think the important key point is to realize that Treasury is working very hard on getting the guidance out. We have investors in the room who are very interested and engaged in the process. . . .

I would love to see more opportunities, access to capital in South Carolina, starting on day one. And there have been some great ideas that I’m sure Ivanka and others will have an opportunity to discuss with you at a later time.

The President. Ivanka, would you like to say something? You’ve been pushing this very hard.

Assistant to the President Ivanka M. Trump. Yes, no, I’ve been tremendously pleased to be able to have such a robust discussion with so many in this room, today and prior to today. And, Senator Scott, your leadership on this has been incredible.

So, creating the incentive to bring capital into communities that are currently being overlooked is just a tremendous opportunity. And the fact that this was integrated into the tax bill—which is already proving to be so beneficial for

³⁷ IRS, Rev. Rul. 2018-29 (Oct. 19, 2018), <https://www.irs.gov/pub/irs-drop/rr-18-29.pdf>

³⁸ *Id.* at 1 (Question 2).

³⁹ See *Wash. Times*, Feb. 14, 2018, <https://bit.ly/2E13JJe>; YouTube (video), [President Trump Working Session Regarding the Opportunity Zones Provided by Tax Reform](https://www.youtube.com/watch?v=2E13JJe), White House, Feb. 14, 2018, <https://bit.ly/2Epnbnb>; see also 26 U.S.C. § 1400Z-2(e)(4).

people all over this country—is just another element as we start to rebuild those distressed communities, of which 60—or 53 million Americans live in them today. So this will target those areas and create a lot of investment opportunities.

So thank you all for your comments and your feedback. And, Senator, thank you for your leadership.⁴⁰

Later in the year, on October 31, 2018, Ms. Trump gave a presentation at the White House with President Trump and National Economic Council Director Larry Kudlow.⁴¹ Among other official items addressed by the presenters, Ms. Trump touted the Treasury Department's issuance of the QOF regulations:

MS. TRUMP: Plus, tax cuts have enabled this to really transpire as well. So all of the companies here — the cutting of the corporate rate; the cutting of the individual rates; repatriation of money back from overseas, back to our shores; 100 percent capital expensing — has been just a tremendous boon for the economy.

But one of the elements that we've talked about a lot in this room that's very exciting and that Treasury — Secretary Mnuchin just put out guidance on — in tax reform, there was also opportunity zones, and that was passed. And that's going to uplift. And the governors have designated over 3,900 opportunity zones to stressed, urban, and rural communities. And it incentivizes private sector investment into those communities, which is exactly what we want. So the private sector to go and be incentivized, to invest where otherwise they would have avoided.

So in addition to tax cuts, that's another element that will really help uplift the American economy and fuel the boom we've been experiencing.⁴²

In addition, on October 21, 2018, two days after the Treasury Department's issuance of the QOF regulations, Ms. Trump posted a message on Twitter regarding them. Her tweet linked to a *New York Times* article about the new QOF regulations and implied that she had personally worked on them with Treasury Secretary Mnuchin, saying: "Opportunity Zones, passed in tax reform last year, will incentivize investment in distressed urban + rural communities across America. It was an honor to work w/ @SenatorTimScott, @stevenmnuchin1 & so many others

⁴⁰ YouTube (video), [President Trump Working Session Regarding the Opportunity Zones Provided by Tax Reform](#), White House, Feb. 14, 2018; Government Printing Office, [Remarks at a Working Session on Opportunity Zones and Tax Reform and an Exchange With Reporters](#), DCPD No. DCPD-201800095, Feb. 14, 2018, <https://bit.ly/2QeuYHC>. One news outlet also reported that "[s]everal senior administration officials said Ivanka Trump played a major role in passing tax reform." [How the Trump tax law passed: The final stretch](#), *The Hill*, Sept. 30, 2018, <https://bit.ly/2DQ4zdg>.

⁴¹ Transcript, [Remarks by President Trump, Advisor to the President Ivanka Trump, and NEC Director Larry Kudlow at Our Pledge to America's Workers Event](#), White House website, Oct. 31, 2018, <https://bit.ly/2Pjj0ac>; Video, [President Trump Remarks at Pledge to America's Workers Event](#), *C-SPAN*, Oct. 31, 2018, <https://cs.pn/2SrOq0b>.

⁴² *Id.*

this important policy #TaxCutsandJobsAct.”⁴³ She later posted another tweet on November 9, 2018 regarding the Opportunity Zones program.⁴⁴

Simultaneously with the issuance of the QOF regulations, the IRS issued a revenue ruling regarding real estate investments in opportunity zones.⁴⁵ Among other things, the ruling addresses how to determine if a QOF has “substantially improved” a property so that it can qualify for the special tax treatment. It is not clear whether Ms. Trump participated specifically in deliberations that led to the issuance of this revenue ruling. However, the simultaneous release of the regulations and the revenue ruling suggest that the Trump administration’s deliberations over the two issuances overlapped.⁴⁶ Even if Ms. Trump did not participate directly in this aspect of the implementation, it bears emphasizing that when an employee participates in a particular matter, the conflict of interest prohibition extends to the entire particular matter – even aspects of the particular matter in which an employee is not involved.⁴⁷ Thus, if any aspect of a particular matter affects an employee’s financial interests, the employee must recuse from the entire particular matter.

Ms. Trump further participated in the implementation of the Opportunity Zones program in December 2018. On December 12, 2018, she participated in a “signing ceremony for a new executive-branch initiative designed to boost government investment in the designated [opportunity zone] areas, including federal spending on infrastructure improvements,”⁴⁸ standing behind the President as he announced the establishment of a new council on opportunity zone development, the Opportunity and Revitalization Council.⁴⁹ That same day, Ms. Trump posted three more messages on Twitter regarding the Opportunity Zones program.⁵⁰ Accordingly, Ms. Trump’s participation in the implementation of the program continued through most of 2018 and appears to be ongoing.

⁴³ See Ivanka Trump (@IvankaTrump), Twitter, Oct. 21, 2018, <https://bit.ly/2EiOpsy>.

⁴⁴ See Ivanka Trump (@IvankaTrump), Twitter, Nov. 9, 2018, <https://bit.ly/2ErBDr0> (“Opportunity Zones, passed in Tax Cuts legislation, will have a transformative effect on distressed urban and rural communities across America. Thank you @SenatorTimScott for your advocacy of this great policy. @WhiteHouseCEA @sparker”).

⁴⁵ IRS Rev. Rule 2018-29.

⁴⁶ See Press Release, Internal Revenue Service, [Treasury, IRS issue proposed regulations on new Opportunity Zone tax incentive](https://www.irs.gov/pressrel/20181019), Oct. 19, 2018, <https://bit.ly/2ys9g87> (“In addition to the proposed regulations, Treasury and the IRS issued an additional piece of guidance to aid taxpayers in participating in the qualified Opportunity Zone incentive. Rev. Rul. 2018-29 provides guidance for taxpayers on the ‘original use’ requirement for land purchased after 2017 in qualified opportunity zones.”).

⁴⁷ See 18 U.S.C. § 208(a); 5 C.F.R. § 2635.402(b)(2)(i).

⁴⁸ Helaine Olen, [How Ivanka Trump could benefit from a tax break she promoted](https://www.washingtonpost.com/news/energy-environment/wp/2018/12/13/how-ivanka-trump-could-benefit-from-a-tax-break-she-promoted/), *Washington Post*, Dec. 13, 2018, <https://wapo.st/2SHV6Yi>.

⁴⁹ See Video, [Trump signs order establishing ‘opportunity zones’](https://www.youtube.com/watch?v=2rBkp2w), YouTube, Dec. 12, 2018, <https://bit.ly/2rBkp2w>; see also Fact Sheet, [President Donald J. Trump Is Lifting Up American Communities that Have Been Left Behind](https://www.whitehouse.gov/the-press-office/2018/12/12/fact-sheet-president-donald-j-trump-is-lifting-up-american-communities-that-have-been-left-behind), *White House*, Dec. 12, 2018, <https://bit.ly/2QLJXsf>.

⁵⁰ See Ivanka Trump (@IvankaTrump), Twitter, Dec. 12, 2018, <https://bit.ly/2PK9ddG>, <https://bit.ly/2EvJDHy>, <https://bit.ly/2EANF2b>.

Ms. Trump has imputed financial interests through Mr. Kushner in Cadre, a company affected by the implementation of the Opportunity Zones program

The conflict of interest law treats the financial interests of an employee's spouse as though they are the employee's own interests.⁵¹ Therefore, the law imputes Mr. Kushner's financial interests to Ms. Trump, regardless of whether he holds those interests individually or jointly with her. Mr. Kushner has financial interests in an entity named Cadre which is developing QOFs affected by the administration's implementation of the Opportunity Zones program. These interests are imputed to Ms. Trump.

Mr. Kushner's amended 2017 new entrant financial disclosure report reveals that he entered government with financial interests in Cadre worth \$5,000,001 – \$25,000,000, and his uncertified 2018 annual financial disclosure report shows that the value of these interests has grown to \$25,000,001-\$50,000,000 during his time in government.⁵² Cadre has been described as a "real estate crowdfunding platform," but Cadre is more than just an e-commerce platform connecting investors with real estate investments.⁵³ Cadre's financial interests appear to be more actively tied to the investments it creates and sells than its description as an online platform suggests. Cadre's business models are not entirely clear, but one approach it appears to use is raising money for a project, creating an investment vehicle, and funding that vehicle for the acquisition of major real estate properties.⁵⁴ For example, Cadre General Counsel Alexander Labowitz⁵⁵ recently signed filings with the Securities and Exchange Commission ("SEC") regarding the exempt sale of securities by several investment funds.⁵⁶ The filings also show that these investment funds, which are headquartered at the same street address as Cadre, have paid

⁵¹ See 18 U.S.C. § 208(a).

⁵² See Jared Kushner, New Entrant Financial Disclosure Report, Mar. 9, 2017 (as amended 39 times through July 20, 2017) ("Kushner New Entrant Report") at Part 6, Line 19.3, <https://bit.ly/2zGRleF>; Jared Kushner, Annual Financial Disclosure Report, May 15, 2018, endnote to Part 6, Line 18.3 (uncertified and without amendment), <https://bit.ly/2ECzhGD>, ("Kushner Annual Report"); see also Jean Eaglesham, Juliet Chung, and Lisa Schwartz, Trump Adviser Kushner's Undisclosed Partners Include Goldman and Soros, *Wall Street Journal*, May 3, 2017, <https://on.wsj.com/2qzrpue>.

⁵³ David Jeans, Kushner brothers-backed Cadre looks to cash in on Opportunity Zones, *The Real Deal*, Nov. 30, 2018, <https://bit.ly/2KUFD4m>.

⁵⁴ See Connie Loizos, Goldman clients are giving Cadre \$250 million to pour into commercial real estate, *TechCrunch*, Jan. 10, 2018 (explaining that Cadre "invests directly in real estate assets, then passes its investment on to its clients for an upfront fee and a recurring subscription rate"), <https://tcrn.ch/2EA3GRP>.

⁵⁵ See Linked-In Account of Alexander Labowitz, <https://bit.ly/2E8huG1> (last viewed Dec. 7, 2018).

⁵⁶ See Copperfield TX Investors LP, Notice of Exempt Offering of Securities, Nov. 28, 2018, <https://bit.ly/2Plbzyy> (paid Cadre \$376,457); Springs CO Investors I LP, Notice of Exempt Offering of Securities, Nov. 26, 2018, <https://bit.ly/2SsqUOO> (paid Cadre \$960,918); Solis FL Investors I LP, Notice of Exempt Offering of Securities, Sept. 18, 2018, <https://bit.ly/2G1kjeN> (paid Cadre \$779,211); Lincoln CA Investors I LP, Notice of Exempt Offering of Securities, July 16, 2018, <https://bit.ly/2zKRzkS> (paid Cadre \$342,855); FrankfordTX Investors I LP, Notice of Exempt Offering of Securities, May 22, 2018, <https://bit.ly/2L176kZ> (paid Cadre \$674,117); Stonecrest CA Investors I LP, Notice of Exempt Offering of Securities, May 9, 2018, <https://bit.ly/2G3YGKX> (paid Cadre \$965,975); Trails TX Investors I LP, Notice of Exempt Offering of Securities, Jan. 11, 2018, <https://bit.ly/2L1hbyn> (paid Cadre \$467,171); Versailles MD Investors I LP, Notice of Exempt Offering of Securities, Dec. 8, 2017, <https://bit.ly/2SAVsQt> (paid Cadre \$405,518); Orange Center Tower Investors I LP, Notice of Exempt Offering of Securities, Nov. 20, 2017, <https://bit.ly/2zL8iEP> (paid Cadre \$909,377).

Cadre significant compensation tied to exempt securities offerings by the investment funds.⁵⁷ In addition to creating and selling investment vehicles, Cadre's website indicates that it is engaged in "underwriting and ultimately investing in opportunities" and declares: "We invest alongside our clients and assume ongoing oversight and asset management responsibilities on behalf of our investors."⁵⁸

Cadre is now selling QOFs that it has developed, and likely using these same business models for its QOFs.⁵⁹ Cadre's website now actively promotes its participation in the opportunity zones program.⁶⁰ In November, for example, Cadre's Twitter account announced, "We are excited to announce the launch of Cadre Opportunity Zones, a specialized investment program providing significant tax benefits for real estate investments in underserved communities throughout the country."⁶¹ Cadre's business interests in QOFs have also been widely reported in the press. The *Associated Press* recently reported that "CEO Ryan Williams announced late last month that Cadre was starting up an Opportunity Zone fund that would aim to build major development projects in designated areas of Los Angeles, San Francisco, Seattle, Portland, Phoenix, Houston, Atlanta, Philadelphia and Miami."⁶² A trade journal similarly reported that "Cadre was also a major sponsor of an Opportunity Zones conference in New York City on Thursday, though it didn't announce what cities it would target."⁶³ Cadre further signaled its involvement with QOFs by commenting on the new QOF regulations. Appearing to indicate that the regulations favorably affect its financial interests, Cadre wrote: "After reviewing the Proposed Regulations, we are similarly encouraged that the IRS seems intent on increasing the program's flexibility for investors and managers."⁶⁴

It is not clear when Cadre began seeking to participate in the Opportunity Zones program, but the exact timing is irrelevant because Ms. Trump's participation in the implementation of that program is ongoing and Cadre is now participating in it. In addition, while Cadre announced in November 2018 that it was launching its opportunity zones investment program, the company almost certainly had been planning and working on the program for some time before that. Ms. Trump participated in the implementation of the program in October and December 2018. As a result, her participation in the implementation clearly overlaps with Cadre's participation in the program.

⁵⁷ See *id.*; see also Company Overview of RealCadre LLC, Bloomberg (providing address as 295 Lafayette Street 7th Floor, New York, NY 10012), <https://bloom.bg/2QdPIzi> (last viewed Dec. 6, 2018).

⁵⁸ Cadre website, "Who we are" page, <https://cadre.com/our-team> (last viewed Dec. 6, 2018). Cadre, which goes by the legal name RealCadre LLC, also filed notice of an exempt offering of its own securities with the SEC under a prior name. See Real Cadre Company, Notice of Exempt Offering of Securities, Mar. 25, 2015, <https://bit.ly/2FZeBtZ>; RealCadre LLC Annual Audit Report, Feb. 28, 2018, <https://bit.ly/2RNONT7> (recounting the history of the name change).

⁵⁹ Jeans, *The Real Deal*, Nov. 30, 2018.

⁶⁰ Cadre website, Cadre Opportunity Zones, <https://cadre.com/investing-with-us/opportunity-zones/> (last viewed Dec. 6, 2018).

⁶¹ See Cadre (@CadreRE), Twitter, Nov. 29, 2018, <https://bit.ly/2RBrEmr>.

⁶² Stephen Braun, Jeff Horwitz, and Bernard Condon, An Associated Press investigation finds President Donald Trump's daughter and son-in law could benefit from a tax program they pushed, *Associated Press*, Dec. 12, 2018, <https://bit.ly/2LbX2FV>.

⁶³ Jeans, *The Real Deal*, Nov. 30, 2018.

⁶⁴ Charlie Anastasi, Opportunity Zones: Moving from Reaction to Action, Cadre website, Nov. 28, 2018, <https://bit.ly/2KSNn75>

By failing to recuse from the implementation of the Opportunity Zones program, Ms. Trump may have violated the conflict of interest law

If, as it appears, Cadre has financial interests in QOFs under the Opportunity Zones program, then Mr. Kushner also has financial interests in QOFs through his interests in the company.⁶⁵ In turn, the conflict of interest law imputes his interests in those QOFs to Ms. Trump.⁶⁶ As a result, Ms. Trump was required to recuse from participating in the implementation of the opportunity zones program.⁶⁷ She clearly did not. Thus, Ms. Trump appears to have participated in a particular matter that affects her imputed financial interests, and may have violated the conflict of interest law.

In addition, for the conflict of interest law to apply, the employee must have knowledge of his or her financial interest.⁶⁸ In this case, Ms. Trump certainly was and is aware of Mr. Kushner's financial interests in Cadre – she disclosed them in her own financial disclosure reports, which she personally signed.⁶⁹ Moreover, Cadre's interest in QOFs became public, through press coverage and the company's own announcements, no later than November 2018, and Ms. Trump's involvement in the Opportunity Zones program clearly continued after that point, as explained above. It therefore appears likely that she was aware that Mr. Kushner's interest in Cadre was affected by the Opportunity Zones program.

Although the conflict of interest law requires knowledge of the financial interest, it does not require knowledge of the prohibition against participating in a particular matter affecting that financial interest.⁷⁰ Nevertheless, it bears emphasizing that Ms. Trump was aware of the prohibition, both in general and as it applied to Cadre. Government ethics regulations required her to complete training on conflicts of interest within 3 months of entering government,⁷¹ and to complete conflicts of interest training again in 2018.⁷² Furthermore, Ms. Trump indicated in her

⁶⁵ Employees have financial interests in the holdings of entities in which they have invested. *See, e.g.*, OGE Inf. Adv. Op. 00 x 8 (2000) (“The prohibition has been interpreted as applying to financial interests in official matters affecting the underlying holdings of a mutual fund.”), <https://bit.ly/2LvJLZ7>.

⁶⁶ *See* 18 U.S.C. § 208(a).

⁶⁷ *See* OGE Inf. Adv. Op. 93 x 38 (1993) (“[A] criminal statute, 18 U.S.C. § 208, as well as the standards of conduct regulation, prohibits Government employees from participating in official matters where they or their spouse or minor children have a financial interest.”), <https://bit.ly/2USAy0Z>.

⁶⁸ 18 U.S.C. § 208(a).

⁶⁹ *See* Ivanka Trump, New Entrant Financial Disclosure Report, June 12, 2017 (as amended 13 times through December 21, 2017), Parts 5 and 6 (especially Part 6, Line 19.3), <https://politi.co/2AO57Mc> (“Ivanka Trump New Entrant Report”); *see also* Ivanka Trump, Annual Financial Disclosure Report, May 15, 2018, (uncertified and as amended once on June 4, 2018), Parts 5 and 6 (especially endnote to Part 6, Line 18.9), <https://bit.ly/2QE9RyH> (“Ivanka Trump Annual Report”). Note, too, that Mr. Kushner was a co-founder of Cadre. Samantha Sharf, [How A 28-Year-Old Plans To Upend The \\$81 Trillion Global Real Estate Investment Market](https://bit.ly/2E1YetL), *Forbes*, Nov. 7, 2016, <https://bit.ly/2E1YetL>. The *Associated Press* called Cadre one of his “biggest holdings.” Stephen Braun and Bernard Condon, [New disclosure shows growing Kushner wealth, debt](https://bit.ly/2rpJjC7), *Associated Press*, June 11, 2018, <https://bit.ly/2rpJjC7>.

⁷⁰ *See* 18 U.S.C. § 208(a).

⁷¹ *See* 5 C.F.R. § 2638.304(b), (e)(1)(iii); *see also* Email from Stefan Passantino, Deputy Counsel to the President for Compliance and Ethics, to John Laster, Director, Presidential Materials Division, National Archives & Records Admin., Oct. 2, 2017, <https://bit.ly/2QbQhJO> (discussing schedule for staff ethics training offered by the White House).

⁷² *See* 5 C.F.R. § 2638.308(f)(1)(iii).

annual financial disclosure report that she was specifically aware of the need to recuse from particular matters affecting Cadre, writing in an endnote: “Filer has been and will continue to be recused from particular matters in the broker-dealer, real estate, and online financial services sectors to the extent they would have a direct and predictable effect on Cadre.”⁷³

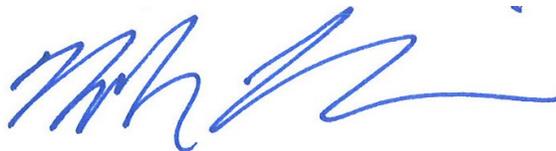
Conclusion

The decision by Ms. Trump and her spouse, Mr. Kushner, to retain a sprawling portfolio of investments after entering government created significant conflict of interest risks.⁷⁴ In making that decision, they assumed responsibility for exercising due diligence to avoid participating in any particular matter that directly and predictably affects the interests of the companies they retained. The burden is on them to avoid conflicts of interest. It appears, however, that Ms. Trump may have failed to live up to this responsibility.

Ms. Trump has personally and substantially participated in the Trump administration’s implementation of the Opportunity Zones program, which is a particular matter affecting her imputed financial interests in Cadre. Cadre has developed qualified opportunity funds under that program. Ms. Trump is aware of her imputed financial interests in Cadre because she disclosed them in her financial disclosure reports, which she personally signed. She also specifically acknowledged in her annual financial disclosure report that she was aware of her obligation to recuse from particular matters directly and predictably affecting Cadre’s financial interests.

Therefore, CREW urges the Department of Justice to conduct an investigation to determine whether Ms. Trump’s participation in the Opportunity Zones program violated the conflict of interest law.

Sincerely,



Noah Bookbinder
Executive Director

⁷³ Ivanka Trump Annual Report, endnote to Part 6, Line 18.9.

⁷⁴ See Jesse Drucker, Eric Lipton, and Maggie Haberman, Ivanka Trump and Jared Kushner Still Benefiting From Business Empire, Filings Show, *New York Times*, Mar. 31, 2017, <https://nyti.ms/2notGqf>.