

# Breach of a Lease: The Tale of the Old Post Office in the Swamp



*Prepared for  
The Honorable Peter A. DeFazio  
Ranking Member  
Committee on Transportation and Infrastructure*

*By the Committee on Transportation and Infrastructure Democratic Staff*

## EXECUTIVE SUMMARY

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On August 5, 2013, Donald J. Trump, via a subsidiary of the Trump Organization, signed a lease agreement with the United States General Services Administration (GSA) to develop and operate a luxury hotel in the Old Post Office (OPO) building in Washington, DC. The Trump Organization redeveloped the OPO building, a Federal building owned and controlled by GSA, into a 263-key, luxury hotel that includes a grand ballroom and meeting facilities. The term of the lease is 60 years and the Federal Government collects rental payments over that time.

The Trump Organization subsidiary, Trump Old Post Office LLC, is a Delaware limited liability company principally owned by Mr. Trump and three of his adult children, Ms. Ivanka Trump, Mr. Donald Trump Jr., and Mr. Eric Trump.<sup>1</sup>

The lease agreement between the Government and the Trump Old Post Office LLC explicitly prohibits any elected official of the U.S. Government from serving as a lessee or from obtaining any benefit that may arise from the lease. Article 37.19 of the lease states:

No member or delegate to Congress, or ***elected official of the Government of the United States*** or the Government of the District of Columbia, shall be admitted to any share or part of this Lease, ***or to any benefit that may arise therefrom; . . .***<sup>2</sup>

Pursuant to Article 37.19, Donald J. Trump was in breach of the lease when he became the 45<sup>th</sup> President of the United States on January 20, 2017.

Nevertheless, on March 23, 2017, the GSA contracting officer reviewing the matter, who is not an attorney, released a letter asserting that the Trump Old Post Office LLC was in full compliance with Article 37.19 of the lease agreement. In the letter, the contracting officer provided no justification or legal analysis to support this conclusion. Instead, he appeared to rely solely on a cosmetic change in the operating agreement of the corporate entity in the lease agreement to justify his decision. Specifically, President Trump's interest in the Trump Old Post Office LLC has been shifted to a revocable trust, of which he is the sole beneficiary. Under the revised operating agreement, President Trump continues to directly benefit from the Trump International Hotel, in violation of the lease agreement. For instance, President Trump can use his profits from the Trump International Hotel to pay back loans for which he is personally liable, such as an existing Deutsche Bank loan with a balance of more than \$50 million. These profits would also be directly credited to the President if the Trump Old Post Office LLC sold its interest in the hotel.

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<sup>1</sup> General Services Administration, *Ground Lease, By and Between The United States of America (as "Landlord") and Trump Old Post Office LLC (as "Tenant")* (GS-LS-11-1307) (Aug. 5, 2013) Retrieved from [www.gsa.gov/portal/content/305477](http://www.gsa.gov/portal/content/305477) and [www.buzzfeed.com/aramroston/trump-gave-his-kids-a-big-stake-in-huge-government-deal-docu?utm\\_term=.qrG9Jlokr#.bv7Xop1LZ](http://www.buzzfeed.com/aramroston/trump-gave-his-kids-a-big-stake-in-huge-government-deal-docu?utm_term=.qrG9Jlokr#.bv7Xop1LZ)).

<sup>2</sup> General Services Administration, *Ground Lease, By and Between The United States of America (as "Landlord") and Trump Old Post Office LLC (as "Tenant")* (GS-LS-11-1307) (Aug. 5, 2013) Retrieved from [www.gsa.gov/portal/content/305477](http://www.gsa.gov/portal/content/305477) (emphasis added).

Moreover, in making his decision, the GSA contracting officer appears to rely on a provision in the revised operating agreement that the Trump Old Post Office LLC would not make any distribution to any other entity in which President Trump had a beneficial interest. However, in his most recent financial disclosure, President Trump has reported that he has received \$20 million in income from the Trump Old Post Office LLC. In addition, there is evidence that the contracting officer prejudged this case, claiming the conflict-of-interest issues “nonsense”, and was predisposed to rule in favor of the Trump Old Post Office LLC, regardless of the facts.

This structure, in which President Trump is both landlord and tenant of the OPO building, raises numerous constitutional, legal, and ethical issues. There are inherent conflicts of interest and significant risks to American taxpayers if President Trump remains both landlord and tenant of the OPO building. First, the officials directly responsible for oversight and enforcement of all GSA real estate leases, including both the interpretation and administration of the terms of the OPO lease agreement, are directly beholden to the President. The Trump Administration has been responsible for appointing both the Acting Administrator of GSA and the Acting Commissioner of the Public Building Service (PBS). Moreover, the Acting PBS Commissioner was appointed after the former PBS Commissioner was transferred from the agency in the middle of GSA discussions on whether the Trump Post Office LLC was in breach of the OPO lease agreement.

Second, the OPO lease provision prohibiting elected officials from benefiting from GSA leases is rooted in the outsized influence that the President and Members of Congress have over the funding, management, and execution of GSA’s mission to provide real estate services for the Government. Taxpayers depend on GSA to administer leases and their terms in a way that provides maximum value on real estate assets and protects against adverse actions by private tenants to diminish the value of assets. When the President is a party to the lease agreement, it is unclear if GSA will administer the lease to the benefit of the President, or the taxpayer.

Third, there is evidence that foreign diplomats are steering business to the Trump International Hotel to benefit their relationship with President Trump. Payments by foreign governments to the Trump International Hotel violate the Emoluments Clause of the U.S. Constitution, which prohibits the President from receiving things of value from foreign governments without the consent of Congress.

To resolve some of the many issues surrounding the lease, the Democratic Leadership of the Committee on Transportation and Infrastructure has attempted to oversee this controversial transaction. However, GSA has repeatedly refused to provide the necessary documents to ensure that terms of the OPO lease are being enforced. On July 12, 2017, Ranking Member Peter DeFazio introduced H. Res. \_\_\_\_, a Resolution of Inquiry requesting the President provide GSA documents that are required to be produced under the lease agreement.

***Given the myriad constitutional, legal, and ethical issues raised by President Trump serving as both landlord and tenant of the OPO building, together with GSA’s repeated refusal to provide requested documents, we recommend that President Trump be divested of ownership of the Trump Old Post Office LLC. We also recommend that other Federal employees who directly benefit from the OPO building lease agreement, Ms. Ivanka Trump and her husband, Mr. Jared Kushner, be recused from any official actions involving GSA or the Old Post Office building.***

## BACKGROUND

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The Committee on Transportation and Infrastructure has jurisdiction over all of GSA's real property activities under the Property Act of 1949, the Public Buildings Act of 1959, and the Cooperative Use Act of 1976. GSA's Public Buildings Service is responsible for the construction, repair, maintenance, alteration, and operation of Federal buildings and United States courthouses. In addition, GSA leases privately owned space for Federal use. GSA owns or leases 9,600 assets and maintains an inventory of more than 362 million square feet of workspace. GSA acts as the "landlord" for the Federal Government, obtaining and managing space to meet the space needs of Federal agencies.

For years, the Committee on Transportation and Infrastructure expressed concern about the neglect and underutilization of the OPO building and pressed GSA to develop and use this building to its full potential. In 2008, Congress enacted the Old Post Office Building Redevelopment Act of 2008 (P.L. 110-359), which directed GSA to redevelop the OPO Building. After a solicitation under section 111 of the National Historic Preservation Act (NHPA), GSA selected the Trump Organization as the preferred developer of the Old Post Office. Subsequently, on August 5, 2013, GSA signed a lease with the Trump Old Post Office LLC for the redevelopment of the Old Post Office into a luxury hotel in downtown Washington, DC.

## ORIGINAL CORPORATE STRUCTURE OF THE TRUMP OLD POST OFFICE LLC

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Although the Trump Organization won the award for the redevelopment of the Old Post Office, the Trump Organization created the Trump Old Post Office LLC to administer and manage the lease agreement with GSA and to serve as the tenant. The Trump Old Post Office LLC was controlled by President Trump and three of his adult children (Ivanka Trump, Donald Trump, Jr., and Eric Trump), and the Trump Old Post Office Member Corporation. *See* Figure 1.

### Original Corporate Structure of Trump Old Post Office LLC

Figure 1

<b>Name</b>	<b>Status</b>	<b>Membership Interest</b>	<b>Equity Contribution</b>
DJT Holdings LLC	Member	76.725%	\$2,369,650
Ivanka OPO LLC	Member	7.425%	\$0
Don OPO LLC	Member	7.425%	\$0
Eric OPO LLC	Member	7.425%	\$0
Trump Old Post Office Member Corp	Managing Member	1.000%	\$23,936

Figure 2 outlines the owners of the Trump Old Post Office Member Corporation.

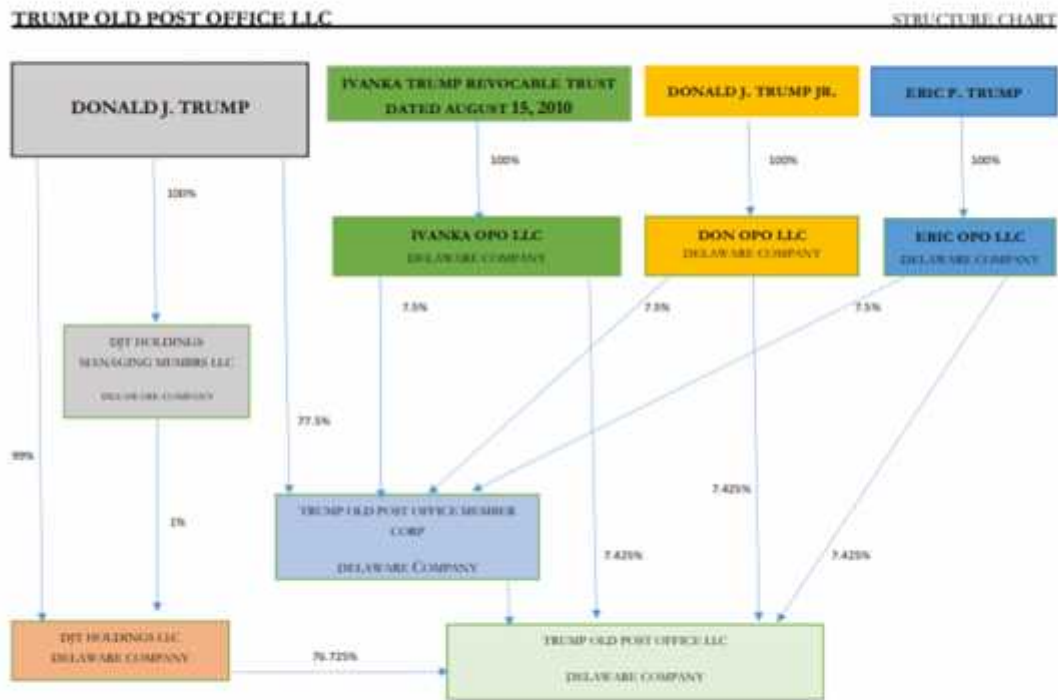
### Trump Old Post Office Member Corporation

Figure 2

<b>Name</b>	<b>Status</b>	<b>Membership Interest</b>	<b>Equity Contribution</b>
Donald J. Trump	Member	77.5%	\$23,936
Ivanka OPO LLC	Member	7.5%	\$0
Don OPO LLC	Member	7.5%	\$0
Eric OPO LLC	Member	7.5%	\$0

Figure 3 depicts the overall structure of the relationship between President Trump and the original corporate structure of the Trump Old Post Office LLC.

Figure 3



Ivanka Trump served as a Vice President of the Trump Organization and was the chief contact to GSA and the Committee on Transportation and Infrastructure through the construction phase of the project until its grand opening on October 26, 2016. In that role, Ms. Trump was responsible for overseeing construction, negotiating lease terms, and testifying before the Committee on the details and value of the transformation of the OPO building into the Trump International Hotel. On January 11, 2017, Ms. Trump announced her resignation from her role in the Trump Organization and her brothers, Donald Trump, Jr. and Eric Trump, became the chief liaisons between the Trump Organization and GSA for the operation of the Trump International Hotel in Washington, DC.



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## PRESIDENTIAL TRANSITION TEAM AND PERSONNEL ACTIONS

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Further complicating this matter, President Trump named three of his adult children (Ivanka Trump, Donald Trump Jr., and Eric Trump)—all equity members of Trump Old Post Office LLC—to the Presidential Transition Team Executive Committee. There are news reports that transition team leaders met weekly with the Executive Committee composed of President Trump’s three children and son-in-law, Jared Kushner.<sup>3</sup> In this capacity, his children had the opportunity to engage in the process of selecting the Acting Administrator of General Services as well as a permanent Administrator.

Shortly after noon on January 20, 2017, PBS Commissioner Norman Dong, a career government employee, became Acting Administrator of GSA, replacing the Obama Administration political appointee, the Honorable Denise Turner Roth. Within hours of the inauguration, President Trump replaced the initial Acting Administrator of GSA with a new Acting Administrator, Mr.

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<sup>3</sup> Balz, Dan (2017, April 4). *It went off the rails almost immediately: How Trump’s messy transition led to a chaotic presidency.* Retrieved from [https://www.washingtonpost.com/politics/it-went-off-the-rails-almost-immediately-how-trumps-messy-transition-led-to-a-chaotic-presidency/2017/04/03/170ec2e8-0a96-11e7-b77c-0047d15a24e0\\_story.html?utm\\_term=.b8d7fc43ee7a](https://www.washingtonpost.com/politics/it-went-off-the-rails-almost-immediately-how-trumps-messy-transition-led-to-a-chaotic-presidency/2017/04/03/170ec2e8-0a96-11e7-b77c-0047d15a24e0_story.html?utm_term=.b8d7fc43ee7a)

Timothy Horne. Mr. Horne had previously worked as GSA Federal Transition Coordinator and chief liaison with the Trump Transition Team. On March 8, 2017, Commissioner Dong, who had direct responsibility for managing all of GSA leases, including the OPO lease, was detailed to a local Washington, DC non-profit organization. He has now announced that he has left the agency.<sup>4</sup>

The Trump Administration subsequently selected the Acting Public Building Service Commissioner. The Acting PBS Commissioner has direct responsibility for managing and administering the lease between the Trump Old Post Office LLC and the General Services Administration. The Acting Commissioner has been the top GSA official defending the handling of GSA's administration of the Old Post Office lease agreement to the Committee.

Committee staff has learned that while these GSA officials, who are responsible for administering and managing GSA's real estate activities, were in the process of being appointed, President Trump's two adult sons, Donald Trump, Jr. and Eric Trump, who served on the Presidential Transition Team Executive Committee, were actively negotiating with GSA regarding the OPO lease. At that time, it is clear that GSA officials were debating whether the Trump Old Post Office LLC was in violation of Article 37.19 of the lease that bans elected officials from benefitting from the OPO building lease and GSA and the Trumps were exchanging ideas about how President Trump might come into compliance with the lease agreement.

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|-------------------|--|
| November 8, 2016  | Donald J. Trump was elected President of the United States.  |
| December 16, 2016 | Donald J. Trump sent the GSA contracting officer a letter indicating he "intends to assign all of his interests in Trump Old Post Office Member Corp to DJT Holdings Managing Member LLC."   |
| January 11, 2017  | Trump Old Post Office LLC sent a letter to GSA stating that then President-elect Trump plans to transfer his interest to DJT Holdings Managing Member LLC and that the transfer would be consummated on Jan. 19, 2017.               |
| January 20, 2017  | Trump was sworn into office as the 45th President at 12:00 p.m.  |
| January 20, 2017  | At 12:15 p.m., PBS Commissioner Norman Dong is named Acting Administrator of GSA. At 7:45 p.m., Acting Administrator Dong is replaced by Timothy Horne, GSA Transition Coordinator and chief liaison with the Trump Transition Team. |
| January 23, 2017  | Trump Old Post Office LLC notified GSA that the transfer of Donald Trump's interests in the OPO was completed on Jan. 19, 2017.  |
| January 31, 2017  | Donald Trump Jr. and Eric Trump, on behalf of Trump Old Post Office LLC meet with Mr. Kevin Terry, the GSA contracting officer.  |

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<sup>4</sup> O'Connell, Jonathon (2017, March 8). *Top official overseeing Trump's D.C. hotel is out at GSA as Democrats call for investigation of lease*. Retrieved from [https://www.washingtonpost.com/news/digger/wp/2017/03/08/top-official-overseeing-trumps-d-c-hotel-is-out-at-gsa-as-democrats-call-for-investigation-of-lease/?utm\\_term=.52c0f811fad5](https://www.washingtonpost.com/news/digger/wp/2017/03/08/top-official-overseeing-trumps-d-c-hotel-is-out-at-gsa-as-democrats-call-for-investigation-of-lease/?utm_term=.52c0f811fad5). Sernovitz, Daniel (2017, June 7). *Norman Dong to shift to the private sector, but his focus remains federal*. Retrieved from <http://www.bizjournals.com/washington/news/2017/06/07/norman-dong-to-shift-to-the-private-sector-but-his.html>



March 7, 2017           GSA officials and the Trump Old Post Office LLC meet in person.

March 8, 2017           PBS Commissioner Dong is transferred to a private non-profit organization.

March 23, 2017         GSA announces that the Trump Old Post Office LLC is in compliance with the lease agreement.

## **BREACH OF THE OLD POST OFFICE BUILDING LEASE AGREEMENT**

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The lease agreement between GSA and Trump Old Post Office LLC has a term of 60 years from the opening date of the Trump International Hotel. Trump Old Post Office LLC is required to pay a minimum annual base rent of \$3 million plus a percentage of profits, escalated on an annual basis at the Consumer Price Index (CPI). The lease agreement contains two 20-year options to extend the term of the lease agreement if certain financial benchmarks are achieved over the last eight years of the original lease agreement.

The lease agreement explicitly prohibits any elected official of the U.S. Government from serving as a lessee or from obtaining any benefit that may arise from the lease. Article 37.19 of the lease states:

No member or delegate to Congress, or ***elected official of the Government of the United States*** or the Government of the District of Columbia, shall be admitted to any share or part of this Lease, ***or to any benefit that may arise therefrom; provided, however, that this provision shall not be construed as extending to any Person who may be a shareholder or other beneficial owner of any publicly held corporation or other entity, if this Lease is for the general benefit of such corporation or entity;***<sup>5</sup>

Donald J. Trump became an “an elected official of the Government of the United States” when he was sworn into office as President on January 20, 2017, and benefits from the lease agreement as the sole beneficiary of the Donald J. Trump Revocable Trust, which holds a controlling financial interest in the Trump Old Post Office LLC. The prohibition in the lease agreement is a strict and categorical ban. In a December 8, 2016 meeting with Democratic staff of the Committee Transportation and Infrastructure and the Committee on Oversight and Government Reform, the Deputy Public Building Service Commissioner said that GSA’s initial assessment was that Mr. Trump would be in breach of the lease agreement when he became President unless he fully divested himself of all financial interests in the OPO lease.

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<sup>5</sup> General Services Administration, *Ground Lease, By and Between The United States of America (as “Landlord”) and Trump Old Post Office LLC (as “Tenant”)* (GS-LS-11-1307) (Aug. 5, 2013) (online at [www.gsa.gov/portal/content/305477](http://www.gsa.gov/portal/content/305477)) (emphasis added).

Article 37.19 of the lease is a material term of the lease agreement. This standard lease term is included to protect the public interest. Federal elected officials specifically authorize GSA leases of Federal office space and site acquisition, design, repair, alteration, and construction of Federal buildings. Pursuant to 40 U.S.C. 3307, the Committee and the Senate Committee on Environment and Public Works authorize individual leases and construction projects that cost more than \$2.85 million. Each year, the Administration, through GSA, submits more than 50 individual lease and construction projects for congressional approval. The Administration's project prospectuses include specific information on the space requirements, delineated area of the project, and other technical aspects of each procurement. The committees approve individual committee resolutions adopting the Administration prospectuses for each project. Given that the Administration and Members of Congress have such an outsized influence on how project requirements are developed and ultimately executed, GSA bans federally elected officials from being admitted to or benefitting from lease agreements.

### **GSA Decision: President Trump Did Not Breach the Lease Agreement**

On March 24, 2017, the GSA contracting officer for the Trump International Hotel in Washington, DC released a [letter](#) declaring that the Trump Old Post Office LLC was in full compliance with Section 37.19 of the lease agreement.<sup>6</sup> Subsequently, GSA issued an Estoppel Certificate, which serves as a certified statement by GSA that Trump Old Post Office LLC is not in breach of the lease and that the lease agreement is valid.

The GSA contracting officer decision does not provide a rationale or legal justification for his decision that President Trump was not violation of the lease term prohibiting elected officials from benefitting from the lease agreement. Instead, the GSA contracting officer included exhibits with legal arguments provided by the personal lawyers to President Trump. The GSA contracting officer's letter never directly addresses the concern that President Trump is an elected official and is benefitting from the lease agreement. The eight-page letter issued by the GSA contracting officer also does not include any reference to the legal opinion provided by the GSA Regional General Counsel to the GSA contracting officer.

Moreover, it appears that GSA's contracting officer prejudged these complex constitutional, legal, and ethical issues before gathering any of the necessary information to make an informed decision. In an email<sup>7</sup> to two other GSA officials and a representative of the Trump Organization on November 11, 2016, three days after the Presidential election, the GSA contracting officer described a news article cataloging the numerous conflict-of-interest issues associated with Trump Old Post Office LLC as "a fair amount of nonsense".<sup>8</sup> The contracting officer made this declaration with no apparent understanding of these complex issues, and it clearly indicates that he was predisposed to rule in favor of the Trump Old Post Office LLC, regardless of the facts.

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<sup>6</sup> Letter from GSA Contracting Officer Kevin M. Terry to Trump Old Post Office LLC, March 23, 2017. Retrieved from <https://www.gsa.gov/portal/getMediaData?mediaId=157798>

<sup>7</sup> The correspondence was produced in response to a FOIA request for emails between GSA and Ivanka Trump or Donald Trump, Jr. regarding the Trump International Hotel

<sup>8</sup> E-mail from Kevin Terry, GSA Contracting Officer, to [REDACTED]@trumporg.com (Nov. 11, 2016, 21:27:30 EST) on file with the Committee; Ben Brody, *Ethics Issue 'Nonsense,' Said Official Who Cleared Trump Hotel*, Bloomberg, July 3, 2017 retrieved from <https://www.bloomberg.com/news/articles/2017-07-03/ethics-issue-nonsense-says-official-who-cleared-trump-hotel>

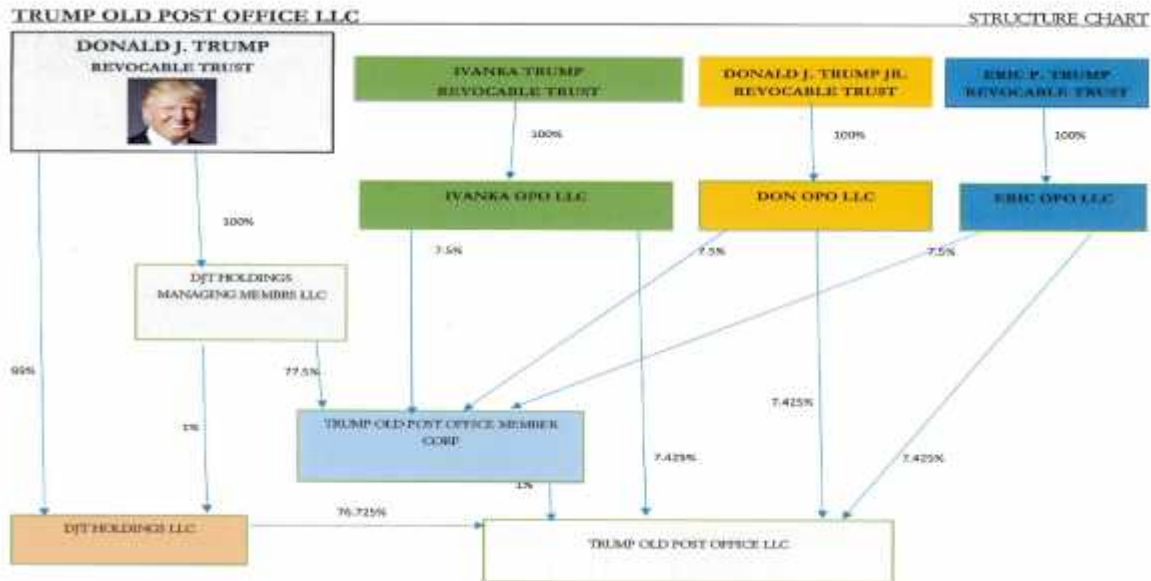
In a March 31, 2017 meeting with Committee staff, GSA confirmed that both Donald Trump, Jr. and Eric Trump led the negotiations with GSA on how the Trump Old Post Office LLC could come into compliance with the lease and met with the GSA contracting officer for the OPO building lease agreement. The initial meeting took place on January 31, 2017. GSA also conceded that the contracting officer’s letter provided no legal justification for his decision.

The Trump Old Post Office LLC made cosmetic changes to its structure in an attempt to bring it into compliance with the lease terms banning elected officials from benefiting from the lease.

These changes shifted President Trump’s share of the Trump Old Post Office LLC to his holding company, DJT Holdings LLC. DJT Holdings LLC is now controlled by The Donald J. Trump Revocable Trust (“Trump Revocable Trust”), which is in turn controlled by Donald Trump, Jr., Eric Trump, and a Trump Organization official. See Figure 4.

### Revised Corporate Structure of Trump Old Post Office LLC

Figure 4



### Financial Benefits to President Trump

GSA urged the Trump Old Post Office LLC to change its corporate structure to create the appearance of a distance between President Trump and the benefits of being the majority owner of the Trump Old Post Office LLC. Under the original structure, President Trump was able to receive profits directly from the Trump Old Post Office LLC. Under the revised corporate structure, during his term as President of the United States, President Trump’s profits will be deposited into a capital account of the Trump Old Post Office LLC. This capital account is dedicated to the repayment of

debt (including loans for which President Trump is personally liable), capital improvements, and operating expenses for the Trump International Hotel in Washington, DC. The new corporate structure also allows corporate entities owned by President Trump to receive “credit” for funds expended from the capital account in the event that the rights to the Trump International Hotel are sold. Thus, if the Trump Old Post Office LLC dissolves or sells its assets, President Trump is entitled to receive credit for his contributions to the capital account.

In the March 31 meeting with Committee staff, GSA confirmed that directing funds to the capital account of the Trump Old Post Office LLC, with a broad mandate to pay expenses associated with the Hotel, merely **delays** the benefit that accrues to President Trump and does not **deny** the benefit.

President Trump maintains his 77.5 percent interest in the Trump Old Post Office LLC through the transfer of his interest into the Trump Revocable Trust. The Trump Revocable Trust holds assets for the exclusive benefit of President Trump. Moreover, President Trump is entitled to distributions from the Trump Revocable Trust upon request and has the power to revoke the Trust at any point.

In addition, in making his decision to uphold the lease agreement for the OPO building, the GSA contracting officer appears to rely upon a January 20, 2017 amendment to the Trump Old Post Office LLC operating agreement. The amendment provides that for the duration of President Trump’s term in elected office that the Trump Old Post Office LLC would not make any distribution to any other entity in which President Trump had a beneficial interest.<sup>9</sup> The contracting officer goes further to cite that profits that would have been distributed previously to DJT Holdings LLC would now be deposited in the capital account of the Trump Old Post Office LLC.

However, in his most recent financial disclosure, President Trump has reported that he has received \$20 million in income from the Trump Old Post Office LLC.<sup>10</sup> The income reported represents income from January 1, 2016, to April 15, 2017. The Trump International Hotel opened on October 26, 2016, and neither GSA nor the Trump Old Post Office LLC has offered any clarification as to when President received this profit. In his financial disclosure, President Trump also reported that he owed more than \$50 million to Deutsche Bank Trust Company Americas (“Deutsche Bank”). President Trump used the Deutsche Bank loan to finance the renovation of the OPO building into the Trump International Hotel.<sup>11</sup> Although President Trump lists this Deutsche Bank loan as a personal liability in his official financial disclosure, he simultaneously argues (with GSA’s apparent concurrence) that allowing his profit distribution to be used to pay back that same loan is not a “benefit” to him.

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<sup>9</sup> Exhibit 1.C, Letter from Kevin Terry to Donald Trump Jr., March 23, 2017, Lease Number GS-LS-116-1307 (Old Post Office, Washington, DC) at page 4. Retrieved from <https://www.gsa.gov/portal/getMediaData?mediaId=157798>

<sup>10</sup> Donald J. Trump, 2017 *Executive Branch Personnel Public Financial Disclosure Report*, June 16, 2017, at 21. Retrieved from [https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/12DAC79CC95F849085258142002703CA/\\$FILE/Trump,Donald.J.final278.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/12DAC79CC95F849085258142002703CA/$FILE/Trump,Donald.J.final278.pdf)

<sup>11</sup> *Id.* at 50.

## **Public Liens**

In addition to the breach of the lease agreement ban on elected officials, Committee Democratic staff is concerned about whether other sections of the lease are being enforced. There were several public reports of mechanic's liens being filed against the Trump International Hotel with the Washington, DC government because of non-payment to contractors who renovated the Trump International Hotel. These liens, totaling more than \$5 million, include:

- A lien for \$2,982,821 for plumbing, mechanical and HVAC work along with site sewer, water, and storm and water services (filed by John J. Magnolia, Inc. of Washington, DC, on December 21, 2016);
- A lien for \$2,075,731 for electrical work, pursuant to a subcontract with the general contractor (filed by AES Electrical of Laurel, MD, on December 22, 2016); and
- A lien for \$79,700 for labor and architectural millwork and woodwork (filed by A&D Construction of Virginia LLC on November 9, 2016).

The contractors filed their liens with the Washington, DC Office of Tax and Revenue Recorder of Deeds. These liens alleged that the Trump Old Post Office LLC, through its general contractor, Lend Lease, had failed to pay the contractors who worked to renovate the OPO building into the Trump International Hotel.

Pursuant to Article 10.1 of the OPO lease agreement, the Trump Old Post Office LLC has an obligation to provide written notification to GSA about the existence and cause of any lien on the property within 10 days. Further, the Trump Old Post Office LLC had 30 days to resolve the lien. This lease provision also authorizes GSA to resolve the lien against the OPO building and be reimbursed by the Trump Old Post Office LLC for reasonable costs and expenses (including interest) associated with resolving the lien.<sup>12</sup> Although all the liens were eventually released, GSA refused to respond to multiple congressional inquiries on whether and how these liens were being resolved. GSA also refused to provide any evidence of steps the agency had taken to ensure that the Trump Old Post Office LLC complied with the terms of the lease regarding liens.

## **GSA Fails to Follow Guide to Remedy Breach of Trump Lease**

Many of the leases that GSA executes are long-term leases of up to 20 years. Lease agreements are living documents that evolve over time and require a working partnership between the lessor and lessee. GSA is a party to more than 10,000 leases across the United States. A breach of a lease term is a not an unusual occurrence. However, how GSA has chosen to deal with the breach of the lease agreement between GSA and Trump Old Post Office LLC is a significant departure from the way that GSA has previously addressed the vast majority of disputes related to lease agreements.

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<sup>12</sup> General Services Administration, *Ground Lease, By and Between The United States of America (as "Landlord") and Trump Old Post Office LLC (as "Tenant")* (GS-LS-11-1307) (Aug. 5, 2013) Retrieved from [www.gsa.gov/portal/content/305477](http://www.gsa.gov/portal/content/305477)

The GSA Public Building Service Leasing Desk Guide (“Leasing Desk Guide”) outlines best practices as well as technical and procedural guides for the administration of real property lease agreements. Specifically, it governs how GSA leases should be managed and lease terms enforced. In situations like the breach of the lease agreement between GSA and the Trump Old Post Office LLC, the Leasing Desk Guide offers guidance on how to resolve the breach. The best practices outlined in the Leasing Desk Guide call for a contracting officer, when he identifies a breach of the lease, to send the tenant a “Notice to Cure” letter that documents deficiencies and issues.<sup>13</sup> The Notice to Cure letter must outline the deficiencies and give a reasonable timeframe, dependent upon the urgency, to cure the deficiencies related to the lease agreement. If a deficiency remains uncured or the lessee does not submit a corrective action plan within the time allotted, the lessee is in default of the terms and conditions of the lease. At no point did the GSA contracting official ever issue a Notice to Cure letter or proactively contact the Trump Old Post Office LLC to make changes to its corporate structure to comply with the OPO lease agreement.

After a determination of default, Article 27.1 of the OPO building lease agreement clearly spells out remedies available to GSA in the event of a non-monetary breach of the lease agreement between GSA and the Trump Old Post Office LLC. Potential remedies for breach of the lease include to recover possession; expel and remove the Trump Old Post Office LLC; re-let the premises and seek unpaid rent in an amount equal to the difference in rent that would have been paid by Trump Old Post Office LLC and the amount paid by the new tenant; and seek damages in the amount of the net present value of the unpaid rent. The remedies also include a provision to accelerate total rent owed. GSA has not taken any of these actions.

## **ALLEGATIONS OF WRONGDOING, UNDUE INFLUENCE**

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### **Violating the Constitution’s Foreign Emoluments Clause**

As the sole beneficiary of the Trump Revocable Trust, the President is entitled to and receives revenue and other benefits from the lease of the OPO building, which is home to the Trump International Hotel. Since January 20, 2017, customers of the Hotel have included foreign dignitaries.<sup>14</sup> It has been reported that, on at least one occasion, a public affairs and lobbying firm representing the Royal Embassy of Saudi Arabia<sup>15</sup> paid the Hotel bill on behalf of Saudi Arabia.<sup>16</sup> Other foreign governments may also have paid for the Hotel’s services as well, including Kuwait and Georgia.<sup>17</sup>

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<sup>13</sup> General Services Administration, GSA PBS Leasing Desk Guide, Chapter 17: Lease Administration. Retrieved from <https://www.gsa.gov/portal/content/163635>

<sup>14</sup> Julie Bykowicz, *Trump hotel may be political capital of the nation's capital*, ASSOCIATED PRESS, Mar. 5, 2017, <https://apnews.com/cc2e2c2b6b4d4417aff3aa5f768be10>

<sup>15</sup> Registration Statement of Qorvis Communications LLC, pursuant to the Foreign Agents Registration Act, as amended, Jan. 15, 2002, <https://www.fara.gov/docs/5483-Exhibit-AB-20020306-GTEC2001.pdf>.

<sup>16</sup> Isaac Arnsdorf, *Saudis foot tab at Trump hotel*, POLITICO, Feb. 9, 2017, <http://www.politico.com/story/2017/02/trump-hotel-saudi-arabia-234878>.

<sup>17</sup> Bykowicz, *supra* note 1; Complaint at 41-42, Blumenthal v. Trump, No. 17-cv-01154 (D.D.C. filed June 14, 2017).

President Trump’s beneficial ownership of a hotel where foreign governments have paid for and received services constitutes a violation of the Foreign Emoluments Clause of the United States Constitution.

The Constitution expressly forbids a Federal officeholder from receiving things of value from foreign governments without the consent of Congress. Article I, Section 9, Clause 8 states:

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.<sup>18</sup>

At the drafting of the Constitution, the Foreign Emoluments Clause was included as a protection against “foreign influence of every sort.”<sup>19</sup> Though largely untested in Federal court, the Attorney General, through the Office of Legal Counsel (OLC) of the U.S. Department of Justice, has routinely held that the Clause “must be read broadly in order to fulfill that purpose.”<sup>20</sup> The OLC provides authoritative, but not binding, advice on questions of law to the President and agencies in the executive branch.<sup>21</sup>

The OLC has expressly advised that the President of the United States is subject to the Foreign Emoluments Clause. In considering whether President Barack Obama could accept the Nobel Peace Prize awarded to him in 2009, OLC reiterated its long standing position that “[t]he President surely ‘hold[s] an[] Office of Profit or Trust’” of the United States within the meaning of the clause.<sup>22</sup> Although the 2009 opinion is the first to find expressly that the President is covered by the clause, the OLC has assumed as much at least as far back as 1963.<sup>23</sup> Before the creation of the Office of Legal Counsel, which formalized the review of potential Foreign Emolument clause violations and since the early days of the Republic, Congress and the Executive have both agreed that the Foreign Emoluments Clause applies to the President.<sup>24</sup>

The Constitution forbids the receipt of both “present[s]” and “Emolument[s]” of “any kind whatever.”<sup>25</sup> Because the Constitution distinguishes between presents and emoluments, the drafters clearly thought of them as having a separate meaning. In fact, legal opinions reaching back decades have come to the same conclusion.

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<sup>18</sup> U.S. CONST. art. 1, § 9, cl. 8.

<sup>19</sup> See 3 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES 216-16 (1833).

<sup>20</sup> Authority of Foreign Law Enforcement Agents to Carry Weapons in the United States, 12 Op. O.L.C. 67, 68 (April 12, 1988).

<sup>21</sup> 28 U.S.C. §§ 510-13.

<sup>22</sup> Applicability of the Emoluments Clause and the Foreign Gifts and Decorations Act to the President’s Receipt of the Nobel Peace Prize, 33 Op. O.L.C., slip op. at 4 (Dec. 7, 2009).

<sup>23</sup> Proposal that the President Accept Honorary Irish Citizenship, 1 Op. O.L.C. Supp. 278 (May 10, 1963).

<sup>24</sup> During the administration of Andrew Jackson, for example, the House of Representatives passed a resolution of inquiry demanding the President submit a schedule of presents received by United States office holders from foreign governments. 6 REG. DEB. 556 (1830). Among the items reported was a gold medal presented to President Jackson by Simón Bolívar. S. Doc. No. 49, at 3 (1834).

<sup>25</sup> U.S. CONST. art. 1, § 9, cl. 8.

An emolument, for purposes of the Clause, is at minimum “compensation for services performed for a foreign government” and was expressly promulgated by the Framers to preserve the independence of officers of the United States from “corruption and foreign influence.”<sup>26</sup> This payment may include salary, pension benefits, or any in a range of similar compensation.<sup>27</sup> <sup>28</sup> Read properly and expansively, the “Emoluments Clause by its terms erects a prohibition against the receipt of benefits from foreign governments[.]”<sup>29</sup>

By this standard, payment from a foreign government to a United States officeholder for services performed is forbidden without consent from Congress. Congress is granted the exclusive and plenary authority to permit officeholders to accept emoluments (as well as presents, offices, and titles) which would otherwise violate the Clause. Congress clearly agrees that the President is covered by the Foreign Emoluments Clause, and has either granted or denied its consent, through both public and private legislation, as far back as the early 19<sup>th</sup> century.<sup>30</sup>

To come into compliance with the Foreign Emoluments Clause, the President must either divest himself of his beneficial ownership stake in the Trump International Hotel (and any other business he may own which receives payment from foreign governments), or Congress must sanction his receipt of foreign emoluments. So far, the President has not sought, and Congress has given no such consent allowing the President to accept payments from foreign governments for services provided by the Hotel (of which he owns a substantial portion and from which he benefits directly).

To date, plaintiffs have filed three civil cases against the President seeking injunctive and declaratory relief from his violation of the Foreign Emoluments Clause.<sup>31</sup> The plaintiffs in these cases include an array of private, nonprofit, and government parties, and all allege substantially the same set of facts and seek the same result—full divestment. The ethics watchdog group, the Citizens for Responsibility and Ethics in Washington, filed the first of these actions days after the President was sworn into office. In its motion to dismiss, the Federal Government took the extraordinary step of contradicting the Office of Legal Counsel’s longstanding position that an emolument is any “compensation for services performed”, insisting that the trial court limit the application only to services performed “as President . . . or in a capacity akin to an employee of a foreign state.”<sup>32</sup> Of course, the Government ignores that it is precisely *because* Donald J. Trump is President that some foreign governments patronize his businesses. Further, the Federal Government effectively asserts that the President is above the law, and the court has no jurisdiction to enforce the Foreign Emoluments Clause against him.<sup>33</sup>

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<sup>26</sup> Authority of Foreign Law Enforcement Agents to Carry Weapons in the United States, 12 Op. O.L.C. 67, 69 (1988).

<sup>27</sup> *Id.*

<sup>28</sup> Black’s Law Dictionary defines an emolument as any advantage, profit, or gain received as a result of one’s employment or one’s holding of office.

<sup>29</sup> *Id.* at 69 n.7 (citing Letter for James A. Fitzgerald, Assistant General Counsel, United States Nuclear Regulatory Commission, from Charles J. Cooper, Assistant Attorney General, Office of Legal Counsel 3-5 (June 3, 1986)).

<sup>30</sup> *See e.g.* H.R. 520, 28<sup>th</sup> Cong. (as passed by the House of Representatives, January 13, 1845).

<sup>31</sup> *Citizens for Responsibility and Ethics in Washington v. Trump*, No. 17-cv-00458-RA (D.D.C. filed Jan. 23, 2017); *District of Columbia v. Trump*, No. 17-cv-01596 (D. Md. filed June 12, 2017); *Blumenthal v. Trump*, No. 17-cv-01154 (D.D.C. filed June 14, 2017).

<sup>32</sup> Memorandum of Law in support of Defendant’s Motion to Dismiss at 29, *Citizens for Responsibility and Ethics in Washington v. Trump*, No. 17-cv-00458-RA (D.D.C.).

<sup>33</sup> *Id.* at 49-50.



Whether the court has jurisdiction to force the President to divest his beneficial ownership of the Trump International Hotel or other properties that receive payments from foreign governments will be answered through the legal process. However, unless and until Congress acts, the President remains in violation of the Foreign Emoluments Clause of the Constitution.

### **Hotel Profits from Foreign Governments**

On January 11, 2017, then President-elect Trump held a press conference to announce his plan to divest himself from his private businesses. In this press conference, President Trump's personal attorney, Ms. Sheri Dillon stated:

So, President-elect Trump has decided, and we are announcing today, that he is going to voluntarily donate all profits from foreign government payments made to his hotel to the United States Treasury. This way, it is the American people who will profit. In sum, I and president-elect's other advisers at Morgan Lewis have determined the approach we've outlined today will avoid potential conflicts of interests or concerns regarding exploitation of the office of the presidency without imposing unnecessary and unreasonable losses on the president-elect and his family. We believe this structure and these steps will serve to accomplish the president-elect's desire to be isolated from his business interests and give the American people confidence that his sole business and interest is in making America great again, bringing back jobs to this country, securing our borders and rebuilding our infrastructure."

Since the opening of the Trump International Hotel, President Trump has been dogged by allegations of influence peddling. The charges have included the allegation that several foreign governments including Qatar, Kuwait, and the Embassy of Azerbaijan have held large events at the Trump International Hotel to curry favor with President Trump. President Trump has personally visited the Trump International Hotel numerous times since being sworn in to office highlighting its prominence as a hub of activity in Washington, DC.<sup>34</sup>

Although there have been several public reports about events sponsored by foreign governments at the Trump International Hotel, there are no indications that President Trump has donated any profits from the Hotel. In response to an inquiry from the Committee on Oversight and Government Reform on how the Trump Organization identified, calculated, tracked and reported foreign profits the Trump Organization said that affirmatively identifying foreign payments was "impractical" and considered their efforts "voluntary".<sup>35</sup>

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<sup>34</sup> Jonathon O'Connell. *Conservative groups, foreign leaders flock to Trump's D.C. hotel*. WASHINGTON POST. December 7, 2016. Retrieved from [https://www.washingtonpost.com/news/digger/wp/2016/12/07/conservative-groups-foreign-leaders-flock-to-trumps-d-c-hotel/?utm\\_term=.3592963acbce](https://www.washingtonpost.com/news/digger/wp/2016/12/07/conservative-groups-foreign-leaders-flock-to-trumps-d-c-hotel/?utm_term=.3592963acbce)

<sup>35</sup> Trump Organization – Donation of Profits from Foreign Government Patronage. Retrieved from <https://democrats-oversight.house.gov/sites/democrats.oversight.house.gov/files/documents/Trump%20Org%20Pamphlet%20on%20Foreign%20Profits.pdf>.

## **Influence Peddling**

The [Associated Press has reported](#) that the Trump International Hotel has “become the place to see, be seen, drink, network, ...for the still emerging Trump set.” The Trump International Hotel continues to be perceived by lobbyists and foreign dignitaries as a place where they can curry favor with President Trump and his senior staff on a policy issue or political decision. Ethics experts have expressly stated the danger of pay to play is enhanced with President Trump’s ownership in the Hotel because spending money at the Hotel will personally enrich the President. Multiple political appointees have been reported to socialize there regularly, and some have reportedly been living at the Hotel,<sup>36</sup> highlighting the prominence of the Trump International Hotel.

## **U.S. Government Payments**

There are also reports that various Federal entities may have made several significant payments to the Trump International Hotel. When then-presidential candidate Trump stayed at the Hotel during the election, the Secret Service, per its protocol, purchased all of the rooms in the immediate vicinity. There are also reports that cabinet members and other high-ranking officials of the Trump Administration may have lived at the Hotel. These officials include Secretary of the Treasury Steven Mnuchin, Administrator of the U.S. Small Business Administration Linda McMahon, and Director of the National Economic Council Gary Cohn.<sup>37</sup> GSA’s refusal to share financial documents have made it unclear how often and to what extent that the Secret Service or other government officials may have made payments to the Trump International Hotel, whether those rates reflected government hotel rates, and whether these officials were being reimbursed by their agencies for living expenses.

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<sup>36</sup> Bykowicz, Julie. (2017, March 5). *Donald Trump’s hotel may be political capital of the nation’s capital*. Retrieved from <https://www.bostonglobe.com/news/nation/2017/03/05/donald-trump-hotel-may-political-capital-nation-capital/4qXAB8GFkMRkl0w9aIYRcL/story.html>

<sup>37</sup> *Id.*

## FINANCIAL CONFLICTS OF INTEREST

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### Hotel Revenues

Documents produced by GSA indicate that the Trump Organization, through its subsidiary Trump Old Post Office LLC, has reported receiving millions of dollars less in revenue than its own officials projected in the first months operating the Hotel. In fact, Trump Old Post Office LLC reported losses totaling more than \$1.1 million in the first two months alone.

<b>Trump International Hotel—Monthly Financial Reports to GSA</b>			
	<b>September</b>	<b>October</b>	<b>Total</b>
Estimated Revenue	\$2,087,000	\$4,276,000	\$6,364,000
Actual Revenue	\$1,301,000	\$2,771,000	\$4,072,000
Net Estimated Income	-\$84,000	\$481,000	397,000
Net Actual Income	-\$334,000	-\$825,000	-1,160,000

The documents explain that the Hotel opening on September 12, 2016, was a “soft opening”, but they do not explain why income levels were so far below the company’s own projections. The documents do state that the “average daily rate” the hotel commanded during this period was “below budgeted expectations”.

The financial documents only include monthly reports for September and October. The possibility that President Trump will profit from large increases in Hotel revenues because he was elected President highlight the serious concerns the Committee has raised for months about his conflicts of interest and potential violations of the Emoluments Clause of the Constitution.<sup>38</sup> The Committee has requested that GSA provided additional documentation of its estimated income and actual income since October 2016. To date, GSA has refused to provide additional documents showing either the income or budget for the Trump International Hotel.

### Profit Sharing with GSA

The lease agreement requires transparency. Article 5.3 of the lease agreement includes requirements for annual audited financial statements and monthly reports on budget and income for the Hotel. Transparency on these financial documents is important because, under the lease agreement, the Government is entitled to a share of all profits from the Trump International Hotel. GSA is entitled to 3 percent of the profits for the first 10 years of the lease with a ½ percent increase every decade for the next 50 years. In addition, Trump Old Post Office LLC has solicited and signed several lease agreements for restaurants and retail entities within the Hotel.

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<sup>38</sup> See, e.g., *Donald Trump’s New York Times Interview: Full Transcript*, New York Times (Nov. 23, 2017) (online at [www.nytimes.com/2016/11/23/us/politics/trump-new-york-times-interview-transcript.html?\\_r=1](http://www.nytimes.com/2016/11/23/us/politics/trump-new-york-times-interview-transcript.html?_r=1)) (stating that “occupancy at that hotel will be probably a more valuable asset now than it was before, O.K.? The brand is certainly a hotter brand than it was before.”).

GSA's refusal to provide monthly budgets and lease agreements denies the Committee the ability to ensure that the Government (and thus taxpayers) receives its fair share of profits under the lease agreement. The Committee, in its oversight role, needs these documents to ensure that profits are calculated properly and that all sub-leases are arm's-length transactions (e.g., ensuring that the Trump Old Post Office LLC is not artificially inflating lease rates with related companies to depress profit margins).

Public reports show that President Trump's daughter, Ivanka Trump, a White House employee, has received between \$1 million and \$5 million for her work on the Hotel.<sup>39</sup> This income is either based on payments that Ms. Trump received from her 7.5 percent share of the Trump Old Post Office LLC or her work as a project executive. It is unclear whether GSA was entitled to a portion of this payment or whether Ms. Trump's compensation for her work on the Hotel is excessive and undermined GSA's claim to a portion of any profits. In addition, neither Ms. Trump nor her husband, Jared Kushner, both high-ranking White House officials, have formally recused themselves from matters related to GSA or the OPO lease agreement.

### **Deutsche Bank Construction Loan**

Donald Trump, in his capacity as President of the Trump Old Post Office LLC, borrowed \$170 million from Deutsche Bank on August 12, 2014, to fund the renovation of the OPO building into the Trump International Hotel. The loan was made in exchange for the rights granted by the lease agreement for the OPO building. Trump Old Post Office LLC is required to make regular installment payments on its construction loan to Deutsche Bank.<sup>40</sup>

On large construction projects, a lender typically will offer two loans to complete a large renovation project. An initial construction loan funds construction and the time necessary to fully lease the building, which is typically for five years or less. Subsequently, the project seeks long-term permanent financing by refinancing the project after it achieves stabilization and is fully leased and profitable. The Trump Old Post Office LLC's initial loan from the Deutsche Bank is due in 2024.<sup>41</sup>

The Trump Old Post Office LLC's ongoing loan from Deutsche Bank, together with a likely refinancing in the near future, present significant conflicts of interest with President Trump. In addition, there are no requirements for Trump Old Post Office LLC to disclose the terms and the status of refinancing with Deutsche Bank to the Committee.

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<sup>39</sup> Drucker, Jesse, Haberman, Maggie, and Eric Lipton. (2017, March 31) *Ivanka Trump and Jared Kushner Still Benefitting From Business Empire, Filings Show*. Retrieved from [https://www.nytimes.com/2017/03/31/us/politics/ivanka-trump-and-jared-kushner-still-benefitting-from-business-empire-filings-show.html?\\_r=2](https://www.nytimes.com/2017/03/31/us/politics/ivanka-trump-and-jared-kushner-still-benefitting-from-business-empire-filings-show.html?_r=2)

<sup>40</sup> The revised operating agreement for the Trump Old Post Office LLC allows for the repayment of loans associated with the Old Post Office using the funds that President is entitled to receive.

<sup>41</sup> Donald J. Trump, 2016 *Executive Branch Personnel Public Financial Disclosure Report, May 16, 2016*, at 57. Retrieved from <https://assets.documentcloud.org/documents/2838696/Trump-2016-Financial-Disclosure.pdf>

## COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE OVERSIGHT

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Since November 2016, Ranking Member DeFazio has written **five letters** to GSA requesting information regarding the Trump Old Post Office LLC lease of the OPO building. GSA has generally been non-responsiveness to these requests and has refused to answer a myriad of questions regarding the lease agreement.

### **First Letter to GSA** **(November 30, 2016)**

On November 30, 2016, [Ranking Member DeFazio, together with Committee on Oversight and Government Reform Ranking Member Elijah Cummings, wrote](#) to GSA Administrator Denise Turner Roth and requested a briefing on the status of GSA's lease agreement with the Trump Old Post Office LLC. On December 8, 2016, the Deputy Commissioner of the Public Building Service briefed the Democratic staff of the Committee on Transportation and Infrastructure and the Committee on Oversight and Government Reform on the steps that GSA contracting officials would take if a breach occurred. The PBS Deputy Commissioner confirmed that Article 37.19 is a categorical ban on any elected official being a party to this lease or recovering any financial benefit from it. He explained that this provision is a standard clause that is included in GSA leases to create a "level playing field" and protect the interests of the American people.

The Deputy Commissioner also explained that GSA disagreed with an alternative interpretation by a former procurement official who suggested that this provision theoretically could be interpreted to ban only officials who were elected at the time the lease was signed, but not those who are elected afterwards.<sup>42</sup> The Deputy Commissioner confirmed that GSA's position is that this provision applies to all elected officials, regardless of when they are elected. The Deputy Commissioner explained that when a GSA contracting official determines that a breach has occurred, he or she would send a letter to the tenant providing the tenant 30 days to remedy the breach. This process is outlined in Article 27.1(b)(ii) of the lease, which provides that the tenant must cure the breach within 30 days after being notified.<sup>43</sup> According to the Deputy Commissioner, if the breach is not resolved satisfactorily within this timeframe, the GSA contracting official would normally bring the matter before the U.S. Civilian Board of Contract Appeals.

The Deputy Commissioner asserted that GSA contracting officials are independent, base their decisions on the laws and regulations governing the contracts they oversee, and would not change their positions based on political influence. However, he did not address the broader conflicts of interest that this issue poses, stating that GSA relies on the Office of Government Ethics and the Department of Justice for guidance on these questions.

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<sup>42</sup> *To Move Into White House, Trump May Have to Dump DC Hotel*, Associated Press (Dec. 1, 2016) (online at [www.seattletimes.com/business/lawyers-trump-has-to-sell-dc-hotel-before-taking-office/](http://www.seattletimes.com/business/lawyers-trump-has-to-sell-dc-hotel-before-taking-office/)).

<sup>43</sup> General Services Administration, *Ground Lease, By and Between The United States of America (as "Landlord") and Trump Old Post Office LLC (as "Tenant")* (GS-LS-11-1307) (Aug. 5, 2013) (online at [www.gsa.gov/portal/content/305477](http://www.gsa.gov/portal/content/305477)).

**Second Letter to GSA**  
**(December 14, 2016)**

[On December 14, 2016, Ranking Member DeFazio, together with Oversight Committee Ranking Member Cummings, wrote](#) to GSA Administrator Denise Turner Roth. The Ranking Members requested information on how GSA was planning to address the imminent breach of lease and conflict-of-interest issues created by then President-elect Donald Trump's lease with the U.S. Government for the Trump International Hotel. Specifically, they requested a list of unleased space within the Hotel, copies of any amendments to the lease, documents showing the ownership structure of the Trump Organization, monthly expenses and profit projections, any legal memos written by GSA that address conflicts of interest, and an analysis of the bankruptcy of the previous tenant leasing the Old Post Office.

Although the Committee on Transportation and Infrastructure is the committee of jurisdiction, GSA has not provided the requested information to Ranking Member DeFazio in response to this letter.

**Third Letter to GSA**  
**(January 23, 2017)**

[On January 23, 2017, Ranking Member DeFazio, together with Oversight Committee Ranking Member Cummings, wrote](#) to GSA Acting Administrator Horne and asked him to re-evaluate the lease agreement. Specifically, they asked the Acting Administrator to evaluate the Old Post Office lease in light of then President-elect Trump's January 11 announcement that he refused to divest his ownership interests in his companies and that he became President on January 20, 2017.

The Ranking Members asked the Acting Administrator to explain the steps that GSA had taken or planned to take to address President Trump's apparent breach of the lease agreement barring any elected official from being a lessee. Members also asked for copies of any notices that the agency sent to Trump Old Post Office LLC concerning the breach of lease or notices sent in response to the public reports of construction liens filed against the OPO building. The Ranking Members also requested monthly reports of both the revenues and expenses for the Trump International Hotel and any correspondence that GSA had with Trump Old Post Office LLC or the Trump transition team regarding the Trump International Hotel disposition. The Committee requested this information by February 6, 2017.

In its February 6, 2017 reply letter, GSA refused to answer the overwhelming majority of questions asked. The agency's answers were either non-responsive or insubstantial. GSA refused to answer questions about how it administers this lease, and whether President Trump breached the lease upon becoming an elected official. GSA indicated that it had received information from the Trump Old Post Office LLC concerning the potential breach and that the agency was evaluating the information provided by Trump Old Post Office LLC and had met with Trump's representatives. GSA did not provide any information on whether the mechanic' liens filed against the Trump Old Post Office LLC had been resolved and any steps the agency may have taken.

**Committee Staff Meeting with GSA Officials**  
**(March 31, 2017)**

On March 31, 2017, Committee staff met with officials of the GSA Office of General Counsel and Public Building Service. In the meeting, GSA officials conceded that its contracting officer's letter to the Trump Old Post Office LLC did not provide the reasoning that he used to determine that the Trump Old Post Office LLC complied with the lease agreement. Although the GSA contracting officer made general references to arguments made by Trump Old Post Office LLC attorneys, the letter did not include any references to legal opinions provided by the GSA Office of General Counsel and no legal justification for the decision to find the Trump Old Post Office LLC in compliance with the lease agreement.

GSA officials also stated that there has been no analysis of potential conflicts of interest regarding the President, nor of the application of the Foreign Emoluments Clause (Art. I Sec. 9) of the Constitution. Although there have been multiple reports of foreign governments holding events at the Trump International Hotel, GSA stated that it had not consulted with any other Federal agency to determine whether any violations have taken place.

Finally, in a shocking reversal of existing policy, GSA made clear that GSA's policy on responding to Ranking Members changed on January 20, 2017. GSA's new policy is that only requests by the Chairman require GSA to provide information and that requests by Ranking Members are considered on a discretionary basis. GSA officials admitted that, prior to January 20, its policy was to respond to requests from committee Ranking Members. As previously mentioned, GSA has consistently refused to provide documents to the Committee as we have attempted to investigate the management and administration of this lease agreement.

**Fourth Letter to GSA**  
**(April 6, 2017)**

On April 6, 2017, Ranking Member DeFazio, together with Subcommittee on Economic Development, Public Buildings, and Emergency Management Ranking Member Henry C. "Hank" Johnson, Jr., and Senate Committee on Environment and Public Works Ranking Member Thomas R. Carper and Subcommittee on Transportation and Infrastructure Ranking Member Benjamin L. Cardin, wrote to GSA Acting Administrator Horne and requested an explanation of why information requests from Ranking Members have not been provided by GSA. The letter requested an explanation for this partisan change in policy, which officials provided this guidance, and whether the White House or any other Federal agency provided instruction on this matter.

On June 29, 2017, GSA responded to this request with a Letter Opinion for the Counsel to the President. In this Letter Opinion, dated May 1, 2017, the OLC determined that "ranking minority members, do not have the authority to conduct oversight in the absence of a specified delegation by a full house, committee, or subcommittee." The Committee on Transportation and Infrastructure Ranking Members reject this view, which exempts efforts by Members of the Committee to fulfill their constitutional duty to conduct oversight of the Executive Branch.

**Fifth Letter to GSA**  
**(June 13, 2017)**

On June 13, 2017, Ranking Member DeFazio, together with Economic Development Subcommittee Ranking Member Johnson, wrote to GSA Acting Administrator Horne and detailed each of the previous requests for information from GSA since January 20, 2017, highlighted the agency's lack of responsiveness on requests for OPO lease documents, and requested more information on the partisan policy of denying documents to Ranking Members.

On June 29, 2017, GSA responded to this request for information. GSA acknowledged the request for financial documents regarding the lease agreement for the OPO but failed to provide any of the relevant documents. The Committee remains unable to determine whether all of the financial terms and other requirements for the lease agreement are being enforced.

**Letter to Speaker of the House Paul Ryan**  
**(January 12, 2017)**

In addition to the Committee on Transportation and Infrastructure letters, Ranking Member DeFazio, together with 20 other committee ranking members, sent a letter to Speaker of the House Paul Ryan requesting that Speaker Ryan join the Ranking Members in seeking and obtaining copies of then-President-elect Trump's corporate balance sheets, including for the Trump Old Post Office LLC. Speaker Ryan never responded to this request.

**Letter to GSA Inspector General**  
**(March 7, 2017)**

On March 7, 2017, [Ranking Member DeFazio, together with Economic Development Subcommittee Ranking Member Johnson, wrote](#) to GSA Inspector General Carol Ochoa requesting that the Inspector General investigate the management and administration of the OPO building lease agreement and the associated conflicts of interest. Citing GSA's repeated refusal to respond to the requests of the Democratic Leadership of the Committee to provide documents and substantive answers on this matter, the Ranking Members requested that the Inspector General review the management and administration of the OPO lease agreement, including any breach of the lease agreement, the associated conflicts of interest, and any actions that the GSA Administrator must take to address the issues.

On March 17, 2017, the Inspector General replied to the Ranking Members stating that GSA was considering whether President Trump was in violation of the lease agreement. Inspector General Ochoa indicated that, after GSA made its determination, she would consider whether to review the decision and the other issues raised by the Democratic Leadership of the Committee. It has become clear that there may be no independent review of President Trump's alleged breach of the lease agreement.



## CONCLUSION

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The President is currently both landlord and tenant of the Old Post Office building. This structure raises numerous constitutional, legal, and ethical issues. There are inherent conflicts of interest in this arrangement and it is explicitly prohibited by the lease agreement. The lease agreement is not ambiguous on this point. The GSA contracting official's determination, with no legal justification, that President Trump may benefit from the lease agreement shows unjustifiable favoritism for President Trump's personal financial interests over and above the interests of the American people in the business dealings of our Government.

President Trump continues to directly benefit from the Trump International Hotel, in violation of the lease agreement. He can use his profits from the Hotel to pay back loans for which he is personally liable, such as an existing Deutsche Bank loan with a balance of more than \$50 million. He is also credited with these profits if the Trump Old Post Office LLC sells its interest in the Hotel. These conflicts are compounded by the fact that President Trump's daughter, Ivanka Trump, and son-in-law, Jared Kushner, who are senior White House advisors, also financially benefit from the OPO building lease agreement for the Trump International Hotel.

Given the myriad constitutional, legal, and ethical issues raised by President Trump serving as both landlord and tenant of the OPO building, together with GSA's repeated refusal to provide requested documents, we recommend that President Trump be divested of ownership of the Trump Old Post Office LLC. We also recommend that other Federal employees who directly benefit from the OPO building lease agreement, Ivanka Trump and Jared Kushner, be recused from any official actions involving GSA or the Old Post Office building.