ACCOUNTABILITY

August 30, 2016

BY EMAIL

Raymond Hulser Chief, Public Integrity Section U.S. Department of Justice 950 Pennsylvania Avenue, N.W. Washington, D.C. 20530-2001

Re: Request for Investigation of Donald J. Trump

Dear Mr. Hulser:

Campaign for Accountability (CfA) respectfully requests that the Public Integrity Section investigate presidential candidate Donald J. Trump to determine if he violated 18 U.S.C. § 1001 and § 104 of the Ethics in Government Act, 5 U.S.C. App. § 104, by knowingly making material false statements in two financial disclosure forms he submitted in July 2015 and May 2016. Publicly available information indicates that, on both forms, Mr. Trump may have falsely represented the value of certain of his assets and the income some of those assets generated, suggesting a pattern of misreporting.

Background

On July 15, 2015, Mr. Trump submitted to the Federal Election Commission his Executive Branch Personnel Public Disclosure Report (OGE Form 278e) pursuant to 5 U.S.C. App. § 101(c) and 5 C.F.R. § 2634.201(d). Those provisions require all candidates for the office of President to file financial disclosure forms within 30 days of becoming a candidate, and by May 15 of every year thereafter in which they continue to be a candidate. On May 16, 2016, Mr. Trump submitted a second financial disclosure form. After the FEC completed its review of these forms for "apparent compliance with the Federal Election Campaign Act," they were sent to the Office of Government Ethics, where they are now publicly available upon request.¹

Mr. Trump's 2015 financial disclosure form contains 19 pages of employment assets and income that include 16 golf courses he has valued collectively at more than \$550 million.² Similarly, his 2016 financial disclosure form lists assets that also include 16 golf courses valued collectively at more than \$550 million. Numerous news articles have revealed that

² Of note, the form requests valuation in categories, with the top category being more than \$50 million, making it impossible to derive an exact valuation of the worth of his 16 golf courses from this form alone.



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¹ The Office of Government Ethics provided CfA with copies of both of Mr. Trump's financial disclosure forms, which are available at https://www.documentcloud.org/documents/3035802-Donald-Trump-2016-Financial-Disclosure.html.

Disclosure.html.

Mr. Trump's financial disclosure forms appear to vastly overstate the value of these golf courses and the revenue they have generated. A comparison of the apparently hyper-inflated valuations of Mr. Trump's assets in his FEC filings with the valuations submitted to local and state authorities for tax purposes reveals that many of his courses appear to be worth tens of millions of dollars less than the valuations listed on his financial disclosure forms.

For example, on both his 2015 and 2016 financial disclosure forms, Mr. Trump valued the Trump National Golf Club Jupiter in Jupiter, Florida, at more than \$50 million. But shortly before he submitted his 2016 filing, Mr. Trump's attorney argued to the Palm Beach County the property was "'worth no more than \$5 million,'" a claim Mr. Trump's lawyers had made three years in a row in court challenges to the county's assessment.³

Similarly, on both his 2015 and 2016 filings, Mr. Trump valued the Trump National Golf Club-Los Angeles at over \$50 million. Although Mr. Trump initially claimed he purchased the course for \$264 million in 2006, two years later his representatives claimed before the Los Angeles County Assessor it was worth only \$10 million. Reportedly the current appraisal is \$15 million, not the more than \$50 million Mr. Trump claimed on his financial disclosure forms.

Mr. Trump followed this same playbook with respect to Trump National-Westchester, which he valued at over \$50 million on his financial disclosure forms. But the Town of Ossining, where the course is located, appraised it at \$14.3 million for tax purposes, and Mr. Trump is claiming for tax purposes its actual worth is a much lower \$1.4 million.⁶

Beyond these examples, there are differences in valuation with respect to golf courses Mr. Trump owns abroad. In both his 2015 and 2016 financial disclosure forms, Mr. Trump placed a value of over \$50 million on his Trump International Golf Links-Scotland in Aberdeen and claimed income of \$4,349,651 in his 2015 filing and \$4,880,743 in his 2016

³ Drew Harwell, <u>Trump Claims His Golf Courses Are Worth Tens of Millions. Until the Tax Bill Arrives, Washington Post</u>, August 21, 2016 (quoting unnamed attorney), <u>available at https://www.washingtonpost.com/politics/how-much-does-trump-claim-his-golf-courses-are-worth-it-depends-who-needs-to-know/2016/08/21/71828f3a-5f3c-11e6-9d2f-b1a3564181a1 story.html.</u>

⁴ Gene Maddaus, <u>Donald Trump's Palos Verdes Golf Course Has Holes in It</u>, <u>Variety</u>, June 9, 2016, <u>available at http://variety.com/2016/biz/news/donald-trump-national-golf-club-palos-verdes-golf-course-value-1201791482/.

⁵ Id.</u>

⁶ Peter Bukowski, How Donald Trump's Golf Game Leaves Local Governments in the Rough, Fortune, May 17, 2016, available at http://fortune.com/2016/05/17donald-trump-golf-taxes-mar-a-lago-national-golf-day/. In a graphic, this same article also highlights the gaps between the tax assessed value and the value as reported to the FEC for, inter alia, Trump National Golf Club-Colts Neck (between \$30 million and \$35 million versus over \$50 million); Trump National Golf Club-Washington, D.C. (between \$20 million and \$25 million versus over \$50 million); and Trump International Golf Club-Florida (between \$5 million and \$10 million versus over \$50 million). Id. The tax-assessed values were drawn from the Town of Ossining, the Palm Beach County property appraiser, and the counties of Miami-Dade, Florida, Loudon, Virginia (outside of Washington, D.C.), and Monmouth, New Jersey. Id.

filing. Sarah Malone, the executive vice president for the course, told *Vanity Fair* the club operated at a loss in 2014,⁷ the period largely covered by Mr. Trump's 2015 financial disclosure form.⁸ According to the official accounts the company filed with the Companies House, the British equivalent of the SEC, in 2014 Trump International Golf Club Scotland Limited claimed a net loss on the course of \$1.8 million, with revenues of \$4.4 million.⁹

Similar discrepancies exist for Trump Turnberry in Turnberry, Scotland. Mr. Trump valued this course at over \$50 million on both financial disclosure forms, and claimed it generated income of \$20,395,000 in the 2015 reporting period and \$18,186,951 in the 2016 reporting period. Once again, however, a very different financial picture was presented to the Companies House, where in 2014 Mr. Trump reported a loss of \$5.6 million on revenues of \$14.6 million. This same pattern was repeated with the Trump International Golf Links-Doonbeg in Doonbeg, Ireland, for which Mr. Trump claimed income of \$10,755,683 on his 2015 financial disclosure form, while at the same time he reported a loss of \$3.3 million on revenues of \$4.7 million. When pressed about these discrepancies, Mr. Trump has offered various explanations from characterizing the figure listed in the income column of the financial disclosure form as "a revenue number," to claiming it represents "projected future income."

Beyond providing valuation and revenue numbers for specific courses that contrast sharply with those he provided local authorities for tax purposes, Mr. Trump has vastly overestimated the total value of his golf courses. Golf course appraisers generally value a golf course at 1 to 1.5 times the revenue it produces annually. Applying either the 1 or 1.5 formula, Mr. Trump's 2015 golf empire, which he reported had generated combined revenue of less than \$160 million, was worth between \$160 million and \$250 million, id., much less than the more than \$550 million he claimed.

Sales numbers bear this out. According to the Society of Golf Appraisers, "[i]n 2014, the average multiple of golf course sales was 1.4 times revenue[.]" Further, as reported by

⁷ Nicholas Shaxson, <u>The Great Trump Tax Mysteries</u>: <u>Is He Hiding Loopholes, Errors, or Something More Serious?</u>, *Vanity Fair*, August 2016, *available at* http://www.vanityfair.com/news/2016/06/the-great-trump-tax-mysteries.

The reporting period for first-time candidates for President is the previous calendar year together with the current calendar year up to the filing date. See Instructions for Completing OGE Form 278, available at https://www.usaid.gov/sites/default/files/documents/1869/OGE-278%20(Public%20Financial%20Disclosure%20Report).pdf. As the Vanity Fair article notes, the period in 2015 covered by Mr. Trump's 2015 filing included three months when the course was closed for the winter. Shaxson, Vanity Fair, Aug. 2016.

⁹ *Id*. ¹⁰ *Id*.

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¹² Shaxson, Vanity Fair, Aug. 2016 (quoting Donald Trump).

¹³ Tim Mullaney, <u>Trump's \$550 M Golf Empire May Be in the Weeds: Experts, cnbc.com</u>, July 23, 2015, available at http://www.cnbc.com/2015/07/23/trumps-550m-golf-empire-may-be-in-the-weeds-experts.html; see also <a href="Donald Trump's Financial Disclosure Report Values Golf Courses at a Minimum of \$500 Million, Golf Digest, July 24, 2015, available at http://www.golfdigest.com/story/donald-trumps-financial-disclo (same).

¹⁴ Mullaney, cnbc.com, Jul. 23, 2015.

CNBC, in 2013, according to the Society of Golf Appraisers, "[n]o golf course in America sold for as much as \$50 million[.]" In 2015, CNL Lifestyle Properties sold a portfolio of 48 golf courses, which had generated revenues of \$158 million in 2013, for \$320 million. Two months later another company paid \$265 million for a portfolio of 50 golf courses that had generated annual revenues of around \$100 million.

Violations

Under a provision of the Ethics in Government Act, 5 U.S.C. App. § 101(c), every candidate for the office of President must file with the FEC a report containing information prescribed by 5 U.S.C. App. § 102 within 30 days of becoming a candidate, and thereafter by May 15 of the successive years in which the individual remains a candidate. Section 102 requires a "full and complete statement" of specified categories of assets, income, gifts, and liabilities for the candidate, the candidate's spouse, and each dependent child, using certain dollar figure categories ranging from a minimum of not more than \$1,000 to a maximum of greater than \$50 million for certain types of assets. 5 U.S.C. App. §§ 102(a)-(d).

It is unlawful to either fail to file the required disclosures or knowingly and willfully file any false information that section 102 requires. 5 U.S.C. App. § 104(a). Section 104 authorizes the attorney general to bring a civil action for penalties, not to exceed \$50,000, for a knowing and willful falsification of the required information. Further, as the implementing regulation, 5 C.F.R. § 2634.701(c) notes, "[a]n individual may be prosecuted under criminal statutes for supplying false information on any financial disclosure report."

The applicable criminal statute, 18 U.S.C. § 1001(a), makes it a criminal offense to "knowingly and willfully . . . make[] or use[] any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry." Violations are subject to fines or imprisonment of not more than five years. *Id.* The purpose of this provision is "to protect the authorized functions of government departments and agencies from the perversion which might result from" material false representations. *United States v. Gilliland*, 312 U.S. 86, 93-94 (1941). Consistent with these requirements, the financial disclosure form requires the following certification from the filer: "I certify that the statements I have made in this report are true, complete and correct to the best of my knowledge."

¹⁵ Id

¹⁶ Patrick Clark, <u>In Defense of Donald Trump</u>, *Bloomberg.com*, July 28, 2015, *available at http://www.bloomberg.com/news/articles/2015-07-28/in-defense-of-donald-trump-as-a-golf-course-owner-.*

¹⁷ Id. Based on the information publicly available, it is difficult to determine whether the valuation differences may be due to company assessed real estate values or a valuation of the businesses as ongoing concerns. DOJ, with subpoena power, is in a position to demand the documentation necessary to determine whether or not Mr. Trump made false representations regarding the value of the golf courses.

The Office of Government Ethics has issued detailed instructions for completing the required financial disclosure forms. The OGE explains,

it is important that you carefully complete the attached form. This report is a safeguard for you as well as the Government, in that it provides a mechanism for determining actual or potential conflicts between our public responsibilities and your private interests and activities and allows you... to fashion appropriate protections against such conflicts when they first appear.

Instructions for Completing OGE Form 278, Scope of Disclosure, at 1.

Those instructions also lay out eight acceptable methods for determining fair market value. As relevant here they include: (1) a good faith estimate "if the exact value is unknown or not easily obtainable"; (2) "value based upon a recent appraisal of the property interest"; (3) the purchase price; or (4) the assessed tax value "adjusted to reflect current market value if the tax assessment is computed at less than 100% of current value." *Id.*, Definition of Terms, Value.

The OGE instructions also warn all filers:

Knowing and willful falsification of information, or failure to report information required by section 102 of the Act, may subject you to a civil monetary penalty . . . or other appropriate authority under section 104 of the Act. Knowing and willful falsification of information required to be filed by section 102 of the Act may also subject you to criminal prosecution.

Id., Privacy Act Statement.

Mr. Trump Appears to Have Made Material False Statements

Applying any of the valuation methods OGE has prescribed, based on public information, it appears that Mr. Trump's financial disclosure forms significantly overstate the value of his golf courses and, in at least some cases the revenues they have generated. First, even if their value is "unknown or not easily obtainable," *id.*, a valuation that is tens of millions of dollars in excess of the tax-appraised value cannot reasonably be construed as "a good faith estimate." *Id.* In any event, Mr. Trump cannot claim credibly the value of his courses cannot easily be ascertained, as demonstrated by an examination of comparable courses. For example, while Mr. Trump has claimed his Bedminster course is worth more

than \$50 million – a figure "about twice its tax-assessment value of \$27.8 million" – another course 14 miles away was on the market in 2015 for \$2.5 million. 18

Second, there is no indication that any of Mr. Trump's golf courses have been appraised at more than \$50 million. Indeed, if such appraisals had been made, they likely would have surfaced during Mr. Trump's battles with state tax assessors. Third, Mr. Trump's valuations do not square with the purchase prices of his courses. For example, Mr. Trump reportedly paid \$13 million for Trump National-Washington, D.C., ¹⁹ well below the more than \$50 million value listed on his financial disclosure forms.

Finally, had Mr. Trump used the assessed tax value he would have reported golf course holdings valued at significantly less than the more then \$550 million he has claimed. As outlined above, in many states Mr. Trump has argued with state officials, insisting the tax value of his courses is a mere fraction of their assessed value, and certainly well below \$50 million. In Palm Beach, for example, he has argued his golf course is "worth no more then \$5 million" for tax purposes, while assigning a value of over \$50 million on his 2015 and 2016 financial disclosure forms. This pattern is repeated with most of his courses. A review by the Washington Post of his golf course holdings revealed eight of 10 courses Mr. Trump owns in the United States have actual assessed values that are "far lower" than what he claimed in his financial disclosure forms.

Mr. Trump Appears to Have Knowingly and Willfully Made False Statements

In two separate filings, Mr. Trump appears to have repeatedly and significantly overstated the values of his golf courses and, in some instances, the revenues they produced, despite a plethora of news articles pointing out how far afield his valuations are. Given Mr. Trump's claims of exceptional business prowess and savvy, he certainly cannot claim ignorance.

In a similar vein, as the *Washington Post* has reported, Mr. Trump appears to have vastly misrepresented the amounts he has given to charity; of the 4,844 donations (totaling \$102 million) he claims to have made, none, it seems, were made with his own money.²²

That Mr. Trump may play fast and loose with the truth in the political arena and uses every available loophole to avoid paying his fair share of taxes, all in an apparent effort to project an image of a far more successful businessman than he may really be, does not give him a license to deliberately overstate the value of his golf courses in forms submitted to the federal government in which accuracy is legally required. Allowing Mr. Trump to so flagrantly flout the requirements of 5 U.S.C. App. § 101(c) would undermine the process

¹⁸ Mullaney, *cnbc.com*, Jul. 23, 2015.

¹⁹ Id

²⁰ Harwell, Washington Post, Aug. 21, 2016.

²¹ Id

²² *Id*.

Congress put in place to "to protect the authorized functions of governmental departments and agencies[.]" *United States v. Gilliland*, 312 U.S. at 93-94. Nor can his conduct be excused or ignored as "no harm, no foul" because he overstated, rather than understated, the value of his golf portfolio. Nowhere does the Ethics in Government Act, its implementing regulations, or OGE guidance even suggest, much less permit, false statements of any kind.

Conclusion

For the foregoing reasons, CfA respectfully requests that you commence an investigation of Donald Trump for apparent violations of 18 U.S.C. § 1001 and § 104 of the Ethics in Government Act, 5 U.S.C. App. § 104. We understand the sensitivity of undertaking such an investigation in the middle of a presidential campaign, but the integrity of the financial disclosure system and the interests it serves are at risk if Mr. Trump is not held accountable for his actions.

Sincerely,

Anne L. Weismann Executive Director