

Trump's Records Likely Shielded Under Accounting Ethics (1)

By Amanda Iacone

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1. Congress asks Mazars to give it confidential records and documents related to client
2. Compilations and accountant disclaimers in the spotlight

Accounting firm Mazars USA LLP has left the House Oversight Committee empty-handed in its pursuit of the Trump Organization's financial records, missing a deadline to turn over confidential documents and setting up the likelihood of a subpoena.

April 3 was the deadline for Mazars to respond to a written request from Committee Chairman Elijah Cummings (D-Md.), who wants the firm to release audit and financial reports, contracts, and communications for its client, President Donald Trump and his real estate empire.

"Mazars believes strongly in the ethical and professional rules and regulations that govern our industry, our work and our client interactions," the firm told Bloomberg Tax. "As a matter of firm policy and professional rules, we do not comment on the work we conduct for our clients."

Cummings told Bloomberg Tax April 3 that he has heard from Mazars. "The accounting firm has told us that they will respond and they just want a subpoena," he said. "We've just got to figure out how we want to accommodate them."

Short of a subpoena, however, the firm is unlikely to comply with a simple request from the committee, said Robert Cox, of counsel for Briglia Hundley, P.C. who specializes in accountant liability issues.

State statutes and regulations set out an accountant's responsibilities, and many states adopt the American Institute of CPAs' ethics rules. Under those rules, accountants have a duty to maintain the confidentiality of their client's records and otherwise private information obtained in the course of their work and would require the client's consent to waive that confidentiality, Cox said.

A CPA would run the risk of losing his or her license for disclosing a client's information without that consent, Cox said.

An exception allowed by AICPA ethics rules might permit Mazars to provide copies of documents already publicly available. It also could produce confidential documents to the committee under a subpoena, he said.

Cummings' March 20 letter stems from financial statements the oversight committee received from Michael Cohen, the president's former attorney.

In the letter, Cummings states that the financial documents raise questions about how Trump and his business represented debts and assets to lenders and insurers. Those reports, which accountants call compilations, were prepared by Mazars. At least one includes a disclaimer that the report was not providing “any assurance that there are no material modifications that should be made.”

Among the records requested are annual statements, periodic financial reports, and independent auditor’s reports; contracts and communications or notes related to that work; supporting and source documents and records used to prepare, compile or audit those financial reports.

Compilations, Disclaimers and Accounting

A compilation presents financial information provided by a company into a report that can be used by the company or provided to outside parties like lenders and insurers, said Nemit Shroff, an associate professor of accounting at MIT Sloan School of Management.

Unlike an audit, a compilation provides no assurance that the figures presented are accurate, he said.

Lenders and creditors understand the differences. And they commonly rely on the less extensive compilation, even when considering loans for large private companies, in lieu of requiring an audited financial statement, Shroff said.

It would be appropriate for Mazars to include a disclaimer so that any user of the compilation would know the accountants weren’t attesting to the reliability of the report, he said.

Shroff cautioned against reading too much into how the Trump documents are presented or the business’ accounting practices.

“They are a private organization so they don’t have to disclose, or publicly report, any of their financial statements. They don’t even have to get an audit done,” Shroff said.

The financial reporting of privately held companies is unregulated in the U.S. That means there is no standard reporting framework, unlike public for companies, which register with the Securities and Exchange Commission, are subject to auditing under the 2002 Sarbanes-Oxley Act, and adhere to strict accounting rules.

—With assistance from Allyson Versprille

(Updates with comment from Rep. Elijah Cummings in paragraph four.)

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