



U.S. Department of Justice

NOV 19 2021

Washington, D.C. 20530

Emory A. Rounds, III
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Mr. Rounds:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Mark A. Totten. President Biden has nominated Mr. Totten to serve as the United States Attorney for the Western District of Michigan. We have conducted a thorough review of the nominee's report and have counseled him on the government ethics rules. The purpose of this letter is to describe the steps that Mr. Totten will take to avoid any actual or apparent conflict of interest in the event that he is confirmed for the aforementioned position. Mr. Totten understands that it is his responsibility to understand and comply with commitments outlined in this agreement.

Although it is not possible to provide for all of the specific circumstances which might give rise to a financial conflict of interest because the work of United States Attorneys involves a wide variety of matters involving specific parties, and it is not possible to predict where conflicts will arise until specific parties are identified, we have counseled Mr. Totten on the applicable conflict of interest laws and regulations and, in particular, on the application of the criminal conflicts of interest law at 18 U.S.C. § 208.

SECTION 1 – GENERAL COMMITMENTS

As required by the criminal conflicts of interest law at 18 U.S.C. § 208(a), Mr. Totten will not participate personally and substantially in any particular matter in which he knows that he has a financial interest directly and predictably affected by the matter, or in which he knows that a person whose interests are imputed to him has a financial interest directly and predictably affected by the particular matter, unless he first obtains a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualifies for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). He understands that the interests of the following persons are imputed to him:

- His spouse or any minor child of his;
- Any general partner of a partnership in which he is a limited or general partner;
- Any organization in which he serves as officer, director, trustee, general partner or employee; and

- Any person or organization with which he is negotiating or has an arrangement concerning prospective employment.

In determining whether a particular matter has a direct and predictable effect on his financial interests or on those of any other person whose interests are imputed to him, Mr. Totten will consult with the Executive Office for United States Attorneys (EOUSA), General Counsel's Office, and will follow the procedures outlined in the United States Attorneys' Procedures, (USAP) 3-2.170.001, et seq. As stated in the attachment to this Ethics Agreement, Mr. Totten understands and agrees to comply with the conflict of interest laws and regulations, and to follow the procedures set forth in this agreement.

If Mr. Totten has a managed account or otherwise uses the services of an investment professional during his appointment, he will ensure that the account manager or investment professional obtains his prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the regulatory exemption for diversified mutual funds and unit investment trusts at 5 C.F.R. § 2640.201(a), obligations of the United States, or municipal bonds.

Mr. Totten will receive a live ethics briefing from the United States Attorney's Office ethics advisor in connection with his appointment to the position of United States Attorney for the Western District of Michigan after his confirmation but not later than 15 days after his appointment pursuant to the ethics program regulation at 5 C.F.R. § 2638.305. Within 90 days of his confirmation, Mr. Totten will submit his Certification of Ethics Agreement Compliance to the EOUSA, General Counsel's Office, which documents his compliance with this ethics agreement.

Mr. Totten understands that as an appointee he will be required to sign the Ethics Pledge (Exec. Order No. 13989) and that he will be bound by it. Among other obligations, he will be required to recuse from particular matters involving specific parties involving his former employer or former clients for a period of two years after he is appointed, with the exception of Federal, state and local government.

He will not modify this ethics agreement without my approval and the approval of the U.S. Office of Government Ethics pursuant to the ethics agreement requirements contained in the financial disclosure regulation at 5 C.F.R. § 2634.803(a)(4).

SECTION 2 – RESIGNATION

Upon confirmation, Mr. Totten will resign from his position as Chief Legal Counsel for the Executive Office of the Governor for the State of Michigan. For a period of one year after his resignation, he will have a "covered relationship" under the impartiality regulation at 5 C.F.R. § 2635.502 with the State of Michigan. Pursuant to 5 C.F.R. § 2635.502(d), he will seek written authorization to participate personally and substantially in particular matters involving specific parties in which he knows the State of Michigan is a party or represents a party. However, during his appointment to the position of United States Attorney, he understands that any authorization will not allow him to participate personally and substantially in any particular matter involving specific parties in which he previously participated as Chief Legal Counsel for the Executive Office of the Governor for the State of Michigan.

SECTION 3 – MICHIGAN STATE UNIVERSITY COLLEGE OF LAW

Upon confirmation, Mr. Totten will resign from his position with Michigan State University College of Law. Pursuant to the impartiality regulation at 5 C.F.R. § 2635.502, for a period of one year after his resignation, he will not participate personally and substantially in any particular matter involving specific parties in which he knows Michigan State University is a party or represents a party, unless he is first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

SECTION 4 – CONFLICTS OF INTEREST REVIEW AND COUNSELING

Mr. Totten has been advised that the duties of the position of United States Attorney may involve particular confidential matters identified by the United States Attorney's Office (USAO) that may affect his financial interests. EOUSA has determined that it is not necessary at this time for Mr. Totten to divest his financial interests because his recusal from particular matters in which these interests pose a conflict of interest will not substantially limit his ability to perform the essential duties of the position of United States Attorney. Immediately upon confirmation, EOUSA will prepare recusals for all particular matters in which Mr. Totten will not be granted a waiver or will not qualify for a regulatory exemption.

The USAO has conducted a conflict review, and has found no additional conflicts of interest. Should additional conflicts arise, the USAO will seek the necessary waiver(s) or recusal(s) of the nominee immediately upon his confirmation. An appropriate screening mechanism will be identified and immediately upon appointment of the new United States Attorney, all necessary USAO personnel will be advised in writing of all matters in which the new United States Attorney may not participate. The notification will specifically list the matters and identify the Acting United States Attorney for those matters.

SECTION 5 – FAMILY TRUSTS

Mr. Totten will retain his position as a trustee of Family Revocable Trust #1 and Family Revocable Trust #2. He will not receive any fees for the services that he provides as a trustee during his appointment to the position of United States Attorney. He will not participate personally and substantially in any particular matter that to his knowledge has a direct and predictable effect on the financial interests of either trust, unless he first obtains a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualifies for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

SECTION 6 – SPOUSE EMPLOYMENT

Mr. Totten's spouse is employed by Disability Rights Michigan, in a position for which she receives a fixed annual salary. Pursuant to the impartiality regulation at 5 C.F.R. § 2635.502, for as long as his spouse continues to work for Disability Rights Michigan, he will not participate personally and substantially in any particular matter involving specific parties in which he knows Disability Rights Michigan is a party or represents a party, unless he is first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

SECTION 7 – PUBLIC POSTING

Mr. Totten has been advised that this ethics agreement and the Certification of Ethics Agreement Compliance will be posted publicly, consistent with the public information law at 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Based on the above agreements and counseling, I am satisfied that the enclosed report presents no conflicts of interest under applicable laws and regulations and that you may so certify to the Senate Judiciary Committee.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lee Lofthus", with a stylized, cursive script.

Lee J. Lofthus
Assistant Attorney General
for Administration and
Designated Agency Ethics Official

Enclosure

NOMINEE STATEMENT

I have read the Ethics Agreement signed by Lee J. Lofthus, Assistant Attorney General for Administration and Designated Agency Ethics Official on 11/19/2021 and I agree to comply with the commitments outlined in this agreement. In addition, in the event that an actual or potential conflict of interest arises during my appointment, I will consult with the Executive Office for United States Attorneys (EOUSA), General Counsel's Office and take the measures necessary to resolve the conflict, such as recusal from the particular matter or divestiture of an asset. I will not modify this ethics agreement without your approval and the approval of the U.S. Office of Government Ethics pursuant to the ethics agreement requirements contained in the financial disclosure regulation at 5 C.F.R. § 2634.803(a)(4). I (including my spouse and dependent children if applicable) also will not repurchase any asset I was required to divest without my consultation with the EOUSA, General Counsel's Office and the U.S. Office of Government Ethics. Finally, I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order No. 13989) and that I will be bound by it. Among other obligations, I will be required to recuse from particular matters involving specific parties involving my former employer or former clients for a period of two years after I am appointed, with the exception of Federal, state and local government.



Mark A. Totten

Date: 11/19/2021