

From: [Walter M. Shaub](#)
To: [Sean E. Doocey](#)
Cc: [Shelley K. Finlayson](#)
Subject: Re: time-sensitive issue
Date: Friday, November 18, 2016 9:49:14 AM

Re-sending with some potentially confusing typos corrected (below) in case you need to forward the message to anyone. (Sorry for that. It's hard to proof read on a blackberry.)

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

From: Walter M. Shaub
Sent: Friday, November 18, 2016 9:15 AM
To: Sean Doocey
Cc: Shelley K. Finlayson
Subject: time-sensitive issue

Sean,

I'm just dropping another quick note to remind you that OGE is here to help. We seem to have lost contact with the Trump-Pence transition team since the election.

As we discussed prior to the election, announcing cabinet picks without taking OGE up on the offer to take an early look at their financial disclosure reports poses the risk of embarrassment for the President-elect (and the individual candidate for nomination) in the event that the individual walks away from the nomination after learning what he or she will have to do with his or her financial interests. This is true even in the case of Senators, as Senators are not subject to conflicts of interest laws and may not fully appreciate how different life is in the executive branch. We would genuinely like to help you prevent that undesirable outcome.

As we also previously discussed, the same offer applies to possible White House appointees. The risk is even higher for them because OGE would not normally receive their financial disclosure reports until after they have been in office for weeks or even months. By that time, they run the risk of having inadvertently violated the criminal conflicts of interest restriction at 18 USC 208. If we don't get involved early to prevent problems, we won't be able to help them after the fact.

In addition, please remind people that, as we discussed, OGE needs to be involved before anyone seeks to set up a blind trust. Conversations with potential trustees before consulting with OGE could disqualify the potential trustees. Also, please be sure that people realize that no asset placed in a blind trust is considered blind, and thus continues to pose conflicts of interest, until the asset has been sold off and the government official receives a letter (approved in advance by OGE) indicating that an asset has been sold down to \$1,000 or less.

I will be talking to Don McGahn as soon as I can pin him down to a time for a call, which is proving to be difficult. However, I don't have confirmation from anyone on the transition team

or from OMB that he is serving in any official capacity. It would help to have confirmation that he is authorized to speak for the transition team.

As you know, our goal is to help you by preventing problems before they arise. I will consider OGE successful if we get the new administration off to a great start, wholly free of conflicts of interest.

Walt

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

From: Walter M. Shaub
Sent: Thursday, November 17, 2016 2:52 PM
To: Sean Doocey
Subject: semi time-sensitive issue

Sean,

Is there a phone number where I can call you for a quick phone call today. A somewhat time sensitive issue has arisen.

Walt

Walter M. Shaub, Jr.
Director
U.S. Office of Government Ethics
1201 New York Avenue, NW, Suite 500
Washington, DC 20005-3917

Telephone: 202.482.9292
Email: walter.shaub@oge.gov

From: [Walter M. Shaub](#)
To: [Sean Doocey](#)
Cc: [Shelley K. Finlayson](#)
Subject: time-sensitive issue
Date: Friday, November 18, 2016 9:15:10 AM

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1201 New York Avenue, NW, Suite 500
Washington, DC 20005-3917

Telephone: 202.482.9292
Email: walter.shaub@oge.gov

From: Walter M. Shaub
Sent: Saturday, November 19, 2016 6:32 PM
To: (b) (6) Don McGahn
Subject: RE: contact with Office of Government Ethics

Don,

My staff and one of your associates tried several times this week to schedule a telephone call or a meeting to discuss your work as counsel to the Presidential transition team. I still think you would benefit from such a discussion --all the more so in light of news reports today that additional cabinet announcements are imminent. I am not sure whether you are aware that announcing the cabinet without first coordinating with OGE is unprecedented and creates unnecessary risk for both the President-elect and the prospective nominees. The same is true for prospective White House appointees. As of today, however, OGE has not been involved in the process as to any of these individuals.

In this regard, it is important to understand that OGE is not the enforcement mechanism; OGE is the prevention mechanism. OGE's role in this process protects both the President-elect and the prospective nominees. In the past, prospective nominees have quietly walked away from nominations after learning what effect the ethics rules will have on their personal finances. Candidates with illiquid investments, capital commitments, carried interests, leveraged interests, contractual arrangements, trusts, unvested interests, or entanglements with employers or businesses are particularly at risk. In addition, transition teams have quietly walked away from well-regarded prospective nominees after reviewing the FBI's background investigation report and completing extensive supplemental vetting activities.

OGE stands ready to help you with the ethics part of the process, and my staff can put you in touch with those responsible for the other parts of the process. Prior to the election, we worked with the non-partisan Partnership for Public Service and several other agency service providers to train members of the campaign's transition team. The first of many formal and informal sessions began in April and continued through October. With the reported departure of those in leadership positions, the process we put in place has broken down. At present, we have no reliable lines of communication with the transition team --a circumstance that is also unprecedented. During past transitions, OGE provided extensive support through daily

communications regarding reviews, including some blind reviews, of draft financial disclosure reports of prospective nominees prior to announcement. My recommendation would be to follow this tradition by making no further announcements of intended cabinet nominees and White House appointees prior to coordinating with OGE.

This transition team is under no obligation to follow the tradition, but I would be remiss if I failed to emphasize that the tradition evolved as a result of hard lessons. Again, my goal here is to protect the President-elect, the prospective nominees, and the executive branch ethics program by preventing real and apparent ethics issues.

If you contact me (Blackberry number: (b) (6)), we can set up plans for bringing you and your team up to speed on the process and establishing reliable lines of communication. You might also want to review OGE's Transition Guide, the Nominee Ethics Guide, and the Appendix to our Nominee Ethics Guide for more background. We delivered additional hard copies to your office this week, and they are available online on OGE's website: <https://www.oge.gov/web/oge.nsf/Resources/PRESIDENTIAL+TRANSITION>.

Please let me help you accomplish the goals of the President-elect's transition team with regard to nominations and appointments.

Walt

Walter M. Shaub, Jr.

Director

U.S. Office of Government Ethics

1201 New York Avenue, NW, Suite 500

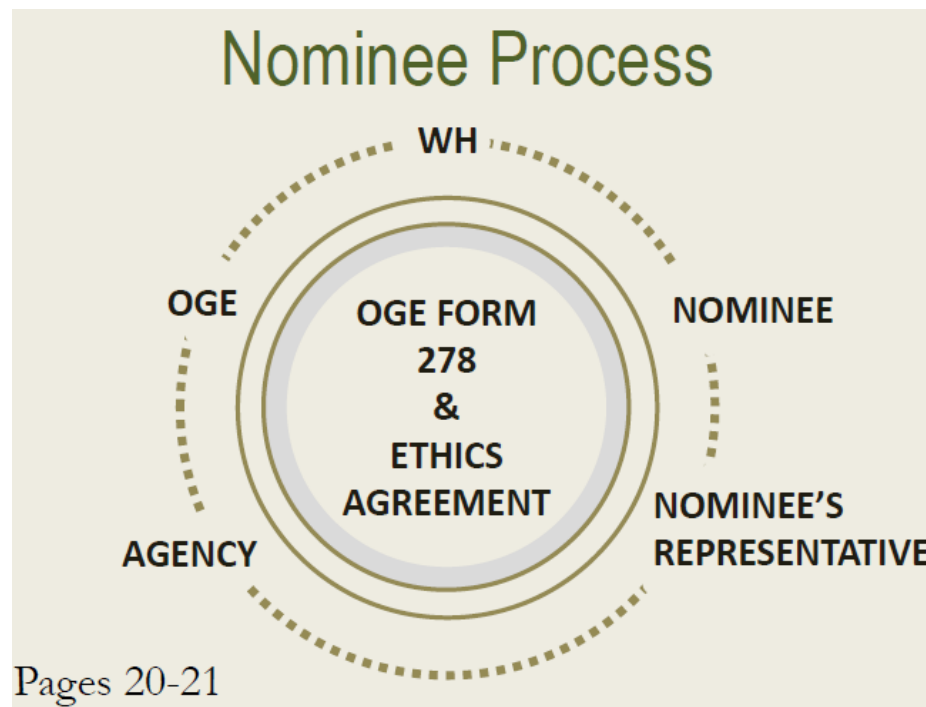
Washington, DC 20005-3917

Telephone: 202.482.9292

Email: walter.shaub@oge.gov

INFORMAL DISCUSSION POINTS (11/21/16)


- nominee process
 - financial disclosure report
 - collection by WH (transition team)
 - release to OGE/agency
 - multiple rounds of revision and information collection, conflicts analysis, ethics agreement (9-year average = ~40 days)



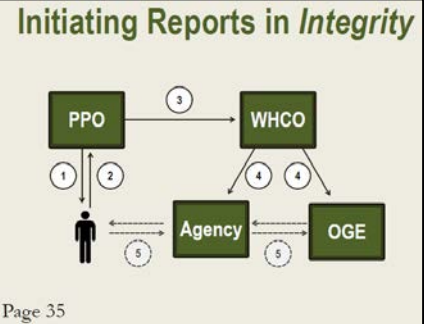
- preclearance
- review by WH (transition team)
- national security form
 - initiation by WH (transition team) through OPM's e-QIP
 - processed by OPM
 - FBI background investigation
 - FBI report drafted & issued
 - review by WH (transition team)
- public records search by WH (transition team)
- review of tax filings by WH (transition team)

- supplemental information collected by WH (transition team)
- Senate questionnaire collection, review, editing in consultation with agency and WH (transition team)
- reconciling inconsistent information in different forms
- interview of nominee by WH (transition team) vetting attorney
- meeting by WH (transition team) personnel office and counsel to formulate recommendation to President (President-elect)
- decision by President (President-elect)
- WH (transition team) communications team recommends best approach to announcing intent to nominate
- WH (transition team) legislative team prepares nominee
- Senate typically holds some cabinet hearings before January 20
- process in detail (pages 20-21)
- received v. preclear chart (pp. 24-25)
- critical milestones (pp. 22-23)
- blind reviews (page 13)
- *blind review v. OGE-only review v. risk management consultation*
- working with nominees (pp. 26-27)
 - nominee responsiveness is the primary driver of speed/delay
 - to speed up process:
 - deliver hard copy of Nominee Ethics Guide
 - communicate that it will be a lengthy process (multiple rounds) and that prompt responses are critical
 - communicate that they (and their spouses) may need to make changes to finances
- assignee
- *assignee v. detailee*
- additional expertise: in-house or outside counsel

- transition team personnel are running an instance of *Integrity* (page 29)



Initiating Reports in Integrity



Page 35

Each source of your annual and other non-investment income... (text continues)

| Source | Income Type | Amount | Frequency | Reporting Period |
|--|-------------|----------|-----------|---------------------|
| 1. ABC Corp. (stock option exercise - not readily ascertainable) | Div | \$10,000 | One-time | 2/1/2021 - 2/1/2022 |
| 2. XYZ Corp. (stock option exercise - not readily ascertainable) | Div | \$10,000 | One-time | 2/1/2021 - 2/1/2022 |
| 3. ABC Corp. (stock option exercise - not readily ascertainable) | Div | \$10,000 | One-time | 2/1/2021 - 2/1/2022 |
| 4. ABC Corp. (stock option exercise - not readily ascertainable) | Div | \$10,000 | One-time | 2/1/2021 - 2/1/2022 |
| 5. ABC Corp. (stock option exercise - not readily ascertainable) | Div | \$10,000 | One-time | 2/1/2021 - 2/1/2022 |
| 6. ABC Corp. (stock option exercise - not readily ascertainable) | Div | \$10,000 | One-time | 2/1/2021 - 2/1/2022 |

You indicated that you hold (or held) stock options. Answer the questions below regarding the stock options.

VALUE

Are you able to provide a value of these stock options?

☐ Yes

☒ No, a value is not readily ascertainable

DESCRIPTION IN LIEU OF A VALUE

You have indicated that a value is not readily ascertainable. In lieu of providing a value, provide the following information: (1) the number of shares of the stock for which the option was issued; (2) the strike price (e.g., "\$16.53/share"); (3) the expiration date; (4) an indication as to whether the options are vested or unvested; and (5) the date on which the options will vest (if the options are unvested).

1,000 unvested shares, \$11.75, exp. 2/1/27, vest 2/1/17

1,000 vested shares, \$11.50, exp. 2/1/26

Characters Left: 403

INCOME

Provide the amount of income produced by these options during the reporting period. ?

Note: We do not treat the receipt of stock options as income, even when taxable as ordinary income. For this reason, most filers select the "none or less than \$201" category.

ARRANGEMENT DESCRIPTION

Describe what will happen to your stock options.

Please Select

Please Select
None (or less than \$201)
\$201 - \$1,000
\$1,001 - \$2,500
\$2,501 - \$5,000
\$5,001 - \$15,000
\$15,001 - \$50,000
\$50,001 - \$100,000
\$100,001 - \$1,000,000
\$1,000,001 - \$5,000,000
Over \$5,000,000

Please enter your Answer

- setting up lines of communication
- typical show stoppers for nominees (Nominee Appendix checklists)

- OGE resources:



OGE TRANSITION MATERIALS

OGE's Role in the Presidential Transition

The law requires OGE to review the financial disclosure reports of most Presidential nominees for civilian positions requiring Senate confirmation. OGE reviews these reports for potential conflicts of interest and for compliance with disclosure requirements. OGE's efforts to resolve potential conflicts help ensure that nominees will be able to perform the duties of their positions.

OGE's Guide for the Presidential Transition Team

The work of a Presidential transition is a monumental undertaking. OGE developed this Guide as a resource for the Presidential Transition Team to prepare for the upcoming transition so that top leadership positions can be filled quickly and free from conflicts of interest. This guide explains the nominee ethics process, provides strategies for establishing a strong ethical culture in the new Presidential administration, and includes useful reference materials.

OGE's Guide for Nominees

OGE developed this Guide as a resource for potential Presidentially-appointed, Senate-confirmed (PAS) nominees during the upcoming transition. The Guide contains helpful guidance for incoming PAS nominees including an introduction to the nominee process, guidance on financial disclosure, and an overview of key ethics rules and regulations.

OGE's Appendix to the Guide for Nominees

The Appendix to the Guide for Nominees contains detailed reference content, such as financial disclosure checklists, criteria for identifying excepted investment funds, and information on ongoing financial disclosure obligations.

(Unofficial) Excel workbook listing positions for which OGE reviews nominees

The official source for identifying political positions in the executive branch is the publication titled, "United States Government Policy and Supporting Positions." This publication, commonly known as the Plum Book, is published alternately by the Senate and the House committees after each Presidential election. However, the Presidential Transition Team will need to begin identifying possible nominees well before the election. To assist in this process, OGE has compiled an unofficial Excel workbook listing the civilian Presidentially appointed, Senate-confirmed positions traditionally subject to OGE's review in the nomination process.

Ways OGE Can Help in the Presidential Transition (1-page graphic)

OGE is ready to assist the Presidential Transition Team in navigating the transition and laying the groundwork for a strong ethical culture in the new administration. OGE is also ready to assist in establishing a strong White House ethics program.

OGE's Public Financial Disclosure Guide

The Public Financial Disclosure Guide is an interactive tool to assist individuals who file or review public financial disclosure reports (OGE Form 278e or OGE Form 278-T). The Guide offers helpful instructions, illustrations of sample language, definitions of terms, and plain language answers to frequently asked questions.

OGE's Nominee Ethics Agreement Guide

The ethics agreement outlines specific steps a nominee will take to avoid conflicts of interest. OGE's staff and agency ethics officials draft each ethics agreement using standardized language from this Guide that will be modified as needed to tailor the agreement to the nominee's unique circumstances.

Nominee Public Financial Disclosure Review Checklists

OGE developed this collection of public financial disclosure checklists for incoming Presidential nominees who file public financial disclosure reports, as well as for agency reviewers. The collection includes a general checklist applicable to all nominees and supplemental checklists that target incoming attorneys; corporate officers, employees, and directors; university professors and deans; and investment fund managers.

OGE's Electronic Public Financial Disclosure Filing System, *Integrity*

Presidential nominees in the executive branch file public financial disclosure reports through Integrity, the executive branch electronic financial disclosure system. The online user manual for Integrity provides useful explanations of the system's features. A user name and password is required to access both Integrity and its user manual.

Presidential Appointee & Nominee Records

Follow this link for access to public financial disclosure reports and ethics agreements, executive branch agency Ethics Pledge waivers, and the annual report on Executive Order 13490 (Ethics Pledge).

The theme of OGE's 2016 National Government Ethics Summit: Presidential Transition

The National Government Ethics Summit held this spring kicked off OGE's efforts to ensure that the more than 4,500 ethics officials throughout the executive branch are prepared to help facilitate a smooth transition between Presidential administrations. Follow this link and the links below for more information on OGE's 2016 National Government Ethics Summit and other Presidential Transition readiness efforts.

- Materials from the 2016 National Government Ethics Summit on the Presidential Transition (March 8-10, 2016)
- Agenda for the full-day Symposium on Nominee Financial Disclosure in a Presidential Transition (March 7, 2016)
- Video: Replay of selected session from the 2016 National Government Ethics Summit
- OGE and Agency Ethics Officials Train for Post-Election Readiness
- Video: Transition Readiness Series

OGE Form 278 (Public Financial Disclosure Report) and OGE Form 450 (Confidential Financial Disclosure Report)

Follow this link for access to OGE's financial disclosure forms and instructions for downloading the forms.

OGE Senior Leadership

Follow this link to learn more about OGE's Senior Leadership.

OGE Staff Contact Information

Follow this link for an OGE staff listing and contact information.

• Partnership for Public Service – Center for Presidential Transition

Incoming Administration: X

presidentialtransition.org/timeline/appointments/index.php

PARTNERSHIP FOR PUBLIC SERVICE
CENTER for PRESIDENTIAL TRANSITION

READY TO GOVERN RESOURCES BLOG ABOUT DON

TRANSITION WORKSTREAMS

INCOMING ADMINISTRATION

- Agency Review
- Appointments
- Operations
- Policy

OUTGOING ADMINISTRATION

- Federal Agencies

TASKS AND RESOURCES BY MONTH

Select Month ▼

Transition Guide
Download PDF

PRESIDENTIAL TRANSITION TIMELINE

Incoming Administration: Appointments

Overview

The goal of a presidential transition team is not only to help the president-elect prepare to take office, but to fill roughly 4,000 politically appointed positions, including more than 1,000 jobs requiring Senate confirmation.

Identifying, selecting and securing Senate confirmation of presidential appointees requires a thorough understanding of the number and types of presidential appointments that will need to be made, the skills that are needed in various positions, the importance of diversity among appointees and how the leadership team that is chosen will drive the new administration's agenda for the next four years.

Filling such a large number of presidential appointments, including members of the Cabinet, the White House staff and top policy and management positions at each federal agency, requires immense capacity, organization and discretion within the transition team's presidential personnel office. The appointments team is often among the largest within a presidential transition organization. The Clinton transition team's appointments office had close to 100 members and the Romney Readiness Project had 124 people working or volunteering on the presidential appointments by Election Day.

- o **Max Stier, President and CEO**

(b)(6)

• recommendation

QUALIFIED BLIND & DIVERSIFIED TRUSTS (a few key points)

Applicable to qualified blind trusts only

- Trustee prepares and files the trust's taxes, including the taxes of any businesses in the trust (and Settlor does not receive information other than the limited information contained in the annual statement)
- Any initial asset placed in the trust is not "blind" and continues to pose conflicts of interest until it is sold down to a value of \$1,000 or less
- After obtaining OGE's approval of the written communication, Trustee will send Settlor written notice that the asset has been sold down to a value of \$1,000 or less (note: this notice is publicly available)

Applicable to qualified diversified trusts only

- Only readily marketable assets can be placed in a diversified trust (i.e., cannot place closely held businesses in the trust)
- Trustee prepares and files not only the trust's taxes but also the Settlor's personal income taxes
- With respect to initial assets placed in the trust, no more than 5% can be in any asset and no more than 20% can be in any sector
- Assets placed in the trust immediately cease to pose conflicts
- Cannot place any asset in trust that poses a significant conflict

Applicable to both:

- OGE must oversee establishment of trust from start to finish (no prior communications with prospective trustees)
- Must use OGE's model trust documents
- Trustee must be an institution and fully independent (cannot be a relative)
- A relative cannot be employed by the trust (i.e., in any businesses owned by the trust)
- Trustee must provide OGE with a relationship letter describing any relationships the trustee (including its officers, directors and principals) has with the interested parties
- Settlor must relinquish all control of assets
- Settlor must publicly disclose all assets placed in the trust

- Trustee must be provided with all information regarding businesses, including liabilities, assets and agreements
- Title must be transferred to Trustee
- Trust assets cannot be encumbered
- Liabilities, agreements, arrangements and all other entanglements with the Settlor and all interested parties must be transferred to the trustee
- There can be no restrictions as to actions the trust can take with regard to assets or liabilities (e.g., sale, liquidation, operation, destruction, settlement of lawsuits, etc.)
- Settlor cannot provide instructions, or even communicate specific preferences, as to the nature of the assets to acquire, retain, etc.
- All communications from the Settlor (and Settlor's representatives) to the trustee must be in writing
- All communications from the Trustee to the Settlor (and Settlor's representatives) must be in writing
- OGE must approve all written communications before they are transmitted
- OGE must receive another copy of the written communications after they are transmitted
- Trustee and agents of the trustee may not communicate any information about holdings, trades, etc.
- A quarterly statement is provided, but the only information in the statement is the total value of the trust
- An annual statement is provided with general tax information, but it cannot include any tax information that would reveal the nature of the assets
- When the trust is eventually dissolved (even if after the Settlor leaves government service) the holdings of the trust must be publicly disclosed
- OGE typically receives (and fulfills) requests from the public for all trust documents