



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

**JAN - 9 2015**

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Chairman:

Under the Ethics in Government Act of 1978, Presidential nominees requiring Senate confirmation who are not expected to serve in their Government positions for more than 60 days in a calendar year are not required to file public financial disclosure reports. The Act, as amended, however, contains a provision in section 101(b) that allows the committee with jurisdiction to request any financial information it deems appropriate from the nominee.

We understand that your committee desires to receive a financial disclosure report from any Presidential nominee for a position on the Federal Retirement Thrift Investment Board, along with a written opinion from this Office regarding any possible conflicts of interest. Therefore, I am forwarding a copy of the confidential financial disclosure report (OGE Form 450) of David A. Jones, who has been nominated by President Obama for the position of Member, Federal Retirement Thrift Investment Board.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement. Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

The Honorable Ron Johnson  
Page 2

Please note that only the top five underlying assets of the Palo Alto Healthcare Fund II (page 3, line 17) have been broken out because the fund does not provide a complete list of assets to investors.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Apol". The signature is fluid and cursive, with the first name "David" being the most prominent.

David J. Apol  
General Counsel

Enclosures

(RJ)  
Jones 450  
Read File





United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

**JAN - 9 2015**

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Chairman:

Under the Ethics in Government Act of 1978, Presidential nominees requiring Senate confirmation who are not expected to serve in their Government positions for more than 60 days in a calendar year are not required to file public financial disclosure reports. The Act, as amended, however, contains a provision in section 101(b) that allows the committee with jurisdiction to request any financial information it deems appropriate from the nominee.

We understand that your committee desires to receive a financial disclosure report (OGE Form 278) from any Presidential nominee for a position on the Board of Governors of the United States Postal Service, along with a written opinion from this Office regarding any possible conflicts of interest.

Therefore, I am forwarding a copy of the financial disclosure report of David S. Shapira, who has been nominated by President Obama for the position of a Governor on the Board of Governors, United States Postal Service. Because the nominee is not expected to serve more than 60 days in any calendar year, the enclosed report and this letter are submitted to you in accordance with your committee's confirmation procedures and will be available for public inspection only to the extent provided by your practices. There is no authority under the Act for public release of this material by the executive branch.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.


The Honorable Ron Johnson

Page 2

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Please note that the underlying assets of the following private equity fund have not been broken out: Greycourt Partners Fund, LP, page 12, line 7, because they are not provided to investors.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Apol", written in a cursive style.

David J. Apol  
General Counsel

Enclosures

(RJ)  
Shapira 450  
Read File



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

**JAN - 9 2015**

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Earl L. Gay, who has been nominated by President Obama for the position of Deputy Director, Office of Personnel Management.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

A handwritten signature in black ink, which appears to read "David J. Apol", is written over a horizontal line.

David J. Apol  
General Counsel

Enclosures

(RJ)  
Gay 278  
Read File





United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

**JAN - 9 2015**

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Chairman:

Under the Ethics in Government Act of 1978, Presidential nominees requiring Senate confirmation who are not expected to serve in their Government positions for more than 60 days in a calendar year are not required to file public financial disclosure reports. The Act, as amended, however, contains a provision in section 101(b) that allows the committee with jurisdiction to request any financial information it deems appropriate from the nominee.

We understand that your committee desires to receive a financial disclosure report from any Presidential nominee for a position on the Federal Retirement Thrift Investment Board, along with a written opinion from this Office regarding any possible conflicts of interest. Therefore, I am forwarding a copy of the confidential financial disclosure report (OGE Form 450) of Michael D. Kennedy, who has been nominated by President Obama for the position of Member, Federal Retirement Thrift Investment Board.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement. Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

A handwritten signature in cursive script, reading "David J. Apol", is written over a horizontal line.

David J. Apol  
General Counsel

(RJ)  
Kennedy 450  
Read File

Enclosures





United States  
**Office of Government Ethics**  
1201 New York Avenue, NW, Suite 500  
Washington, DC 20005-3917

**JAN - 9 2015**

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Russell C. Deyo, who has been nominated by President Obama for the position of Under Secretary for Management, Department of Homeland Security.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

A handwritten signature in black ink, which appears to read "David J. Apol", is written over a horizontal line.

David J. Apol  
General Counsel

Enclosures

(RJ)  
Deyo 278  
Read File

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



MAR 4 2015

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Under the Ethics in Government Act of 1978, Presidential nominees requiring Senate confirmation who are not expected to serve in their Government positions for more than 60 days in a calendar year are not required to file public financial disclosure reports. The Act, as amended, however, contains a provision in section 101(b) that allows the committee with jurisdiction to request any financial information it deems appropriate from the nominee.

We understand that your committee desires to receive a financial disclosure report (OGE Form 278) from any Presidential nominee for a position on the Board of Governors of the United States Postal Service, along with a written opinion from this Office regarding any possible conflicts of interest.

Therefore, I am forwarding a copy of the financial disclosure report of David M. Bennett, who has been nominated by President Obama for the position of a Governor on the Board of Governors, United States Postal Service. Because the nominee is not expected to serve more than 60 days in any calendar year, the enclosed report and this letter are submitted to you in accordance with your committee's confirmation procedures and will be available for public inspection only to the extent provided by your practices. There is no authority under the Act for public release of this material by the executive branch.

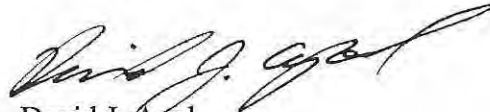
We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

The Honorable Ron Johnson

Page 2

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Apol". The signature is fluid and cursive, with a long horizontal stroke at the end.

David J. Apol  
General Counsel

Enclosures

(RJ)  
Bennett 450  
Read File

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



MAR - 4 2015

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Under the Ethics in Government Act of 1978, Presidential nominees requiring Senate confirmation who are not expected to serve in their Government positions for more than 60 days in a calendar year are not required to file public financial disclosure reports. The Act, as amended, however, contains a provision in section 101(b) that allows the committee with jurisdiction to request any financial information it deems appropriate from the nominee.

We understand that your committee desires to receive a financial disclosure report (OGE Form 278) from any Presidential nominee for a position on the Board of Governors of the United States Postal Service, along with a written opinion from this Office regarding any possible conflicts of interest.

Therefore, I am forwarding a copy of the financial disclosure report of Mickey D. Barnett, who has been nominated by President Obama for the position of a Governor on the Board of Governors, United States Postal Service. Because the nominee is not expected to serve more than 60 days in any calendar year, the enclosed report and this letter are submitted to you in accordance with your committee's confirmation procedures and will be available for public inspection only to the extent provided by your practices. There is no authority under the Act for public release of this material by the executive branch.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.



The Honorable Ron Johnson  
Page 2

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Apol", written in a cursive style.

David J. Apol  
General Counsel

Enclosures

(RJ)  
Barnett 450  
Read File

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



MAR 18 2015

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Under the Ethics in Government Act of 1978, Presidential nominees requiring Senate confirmation who are not expected to serve in their Government positions for more than 60 days in a calendar year are not required to file public financial disclosure reports. The Act, as amended, however, contains a provision in section 101(b) that allows the committee with jurisdiction to request any financial information it deems appropriate from the nominee.

We understand that your committee desires to receive a financial disclosure report (OGE Form 278) from any Presidential nominee for a position on the Board of Governors of the United States Postal Service, along with a written opinion from this Office regarding any possible conflicts of interest.

Therefore, I am forwarding a copy of the financial disclosure report of Stephen Crawford, who has been nominated by President Obama for the position of a Governor on the Board of Governors, United States Postal Service. Because the nominee is not expected to serve more than 60 days in any calendar year, the enclosed report and this letter are submitted to you in accordance with your committee's confirmation procedures and will be available for public inspection only to the extent provided by your practices. There is no authority under the Act for public release of this material by the executive branch.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

The Honorable Ron Johnson

Page 2

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Apol". The signature is fluid and cursive, with the first name "David" and last name "Apol" clearly distinguishable.

David J. Apol  
General Counsel

Enclosures

(RJ)  
Crawford 278C  
Read File

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



MAR 19 2015

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Under the Ethics in Government Act of 1978, Presidential nominees requiring Senate confirmation who are not expected to serve in their Government positions for more than 60 days in a calendar year are not required to file public financial disclosure reports. The Act, as amended, however, contains a provision in section 101(b) that allows the committee with jurisdiction to request any financial information it deems appropriate from the nominee.

We understand that your committee desires to receive a financial disclosure report (OGE Form 278) from any Presidential nominee for a position on the Board of Governors of the United States Postal Service, along with a written opinion from this Office regarding any possible conflicts of interest.

Therefore, I am forwarding a copy of the financial disclosure report of James C. Miller, III, who has been nominated by President Obama for the position of a Governor on the Board of Governors, United States Postal Service. Because the nominee is not expected to serve more than 60 days in any calendar year, the enclosed report and this letter are submitted to you in accordance with your committee's confirmation procedures and will be available for public inspection only to the extent provided by your practices. There is no authority under the Act for public release of this material by the executive branch.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.



The Honorable Ron Johnson

Page 2

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Apol", written in a cursive style.

David J. Apol  
General Counsel

Enclosures

(RJ)  
Miller III 278C  
Read File

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



MAR 20 2015

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Carol Fortine Ochoa, who has been nominated by President Obama for the position of Inspector General, General Services Administration.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David J. Apol  
General Counsel

Enclosures

(RJ)  
Ochoa 278  
Read File

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



APR 28 2015

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security and  
Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Carol Waller Pope, who has been nominated by President Obama for the position of Member, Federal Labor Relations Authority.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David J. Apol  
General Counsel

Enclosures

(RJ)  
Pope 278  
Read File

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



JUN - 2 2015

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Denise Turner Roth, who has been nominated by President Obama for the position of Administrator, General Services Administration.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David J. Apol  
General Counsel

Enclosures

(RJ)  
Roth 278  
Read File



JOHN MCCAIN, ARIZONA  
ROB PORTMAN, OHIO  
RAND PAUL, KENTUCKY  
JAMES LANKFORD, OKLAHOMA  
MICHAEL B. ENZI, WYOMING  
KELLY AYOTTE, NEW HAMPSHIRE  
JONI ERNST, IOWA  
BEN SASSE, NEBRASKA

THOMAS H. CARPER, DELAWARE  
CLAIRE McCASKILL, MISSOURI  
JON TESTER, MONTANA  
TAMMY BALDWIN, WISCONSIN  
HEIDI HEITKAMP, NORTH DAKOTA  
CORY A. BOOKER, NEW JERSEY  
GARY C. PETERS, MICHIGAN

## United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS  
WASHINGTON, DC 20510-6250

KEITH B. ASHDOWN, STAFF DIRECTOR  
GABRIELLE A. RATKIN, MINORITY STAFF DIRECTOR

June 23, 2015

The Honorable Walter M. Shaub, Jr.  
Director  
Office of Government Ethics  
1201 New York Avenue NW  
Suite 500  
Washington, D.C. 20005

Dear Director Shaub:

The Committee on Homeland Security and Governmental Affairs is examining vacancies in the Inspector General (IG) community. The Office of Government Ethics (OGE) plays an important role in assisting the nomination process of qualified Executive Branch candidates.<sup>1</sup> Given this unique role, I write to request information about whether OGE is reviewing prospective candidates for vacant Inspector General (IG) positions.

The Inspector General Act of 1978 established IGs to “promote economy, efficiency, and effectiveness in the administration of, and . . . to prevent and detect fraud and abuse in” government programs and operations.<sup>2</sup> Not only does the absence of permanent IGs impede the ability of the Offices of Inspector General to carry out these important tasks, but acting IGs present a greater risk for conflicts of interest with the agency, may have diminished independence, and can cause instability within the office. For this reason, every member of the Committee wrote to President Obama in March 2015 urging him to nominate permanent IGs for the vacant positions.<sup>3</sup>

On June 3, 2015, the Committee held a hearing to examine vacancies in the IG community.<sup>4</sup> In particular, this hearing identified and highlighted numerous problems with the the Department of Veterans Affairs (VA) Office of Inspector General (OIG), which has been without a permanent IG since December 2013. While the witnesses at the hearing could discuss the need for permanent IGs across the Executive Branch, they were not in a position to discuss current efforts to identify prospective candidates for these IG vacancies, including candidates for the VA IG position. I invited Valerie Green, the Director of the White House Office of

---

<sup>1</sup> See U.S. Off. of Gov’t Ethics, OGE Contributes to the Continuity of Senior Leadership in the Executive Branch, <http://www.oge.gov/About/Mission-and-Responsibilities/OGE-Contributes-to-the-Continuity-of-Senior-Leadership-in-the-Executive-Branch/> (last visited June 16, 2015); Cong. Research Serv., Presidential Appointments to Full-Time Positions in Independent and Other Agencies During the 111th Congress (2014).

<sup>2</sup> 5 app. U.S.C § 2.

<sup>3</sup> See Letter from Ron Johnson et al., S. Comm. on Homeland Sec. & Gov’t Affairs, to President Barack Obama (Mar. 24, 2015).

<sup>4</sup> “Watchdogs Needed: Top Government Investigator Positions Left Unfilled for Years”: Hearing before the S. Comm. on Homeland Sec. & Gov’t Affairs, 114th Cong. (2015).

Presidential Personnel, to address these questions, but the White House declined to make Ms. Green available.<sup>5</sup>

OGE plays a unique role in assisting the President in nominating officers to senior leadership roles in the Executive Branch.<sup>6</sup> Before the President sends the formal nomination to the Senate, OGE participates in the clearance process alongside the Federal Bureau of Investigation and the ethics official of the agency to which the nominee will be appointed.<sup>7</sup> OGE's Presidential Nominations Branch "works closely with the White House and agency ethics officials to help prospective Presidential nominees to Senate-confirmed positions comply with the extensive financial disclosure requirements of the Ethics in Government Act."<sup>8</sup> OGE also helps prospective nominees mitigate potential conflicts of interest.<sup>9</sup>

To assist the Committee in understanding what efforts, if any, have been taken to identify and evaluate prospective nominees for critical IG vacancies, I ask that you please provide a list of individuals for whom OGE has assisted with financial disclosure requirements, pursuant to the individual's consideration for nomination to one the following positions:

1. Inspector General for the Department of the Interior for the period December 2011 to the present;
2. Inspector General for the Agency for International Development for the period October 2011 to the present;
3. Inspector General for the Federal Deposit Insurance Corporation for the period September 2013 to the present;
4. Inspector General for the Department of Veterans Affairs for the period December 2013 to the present;
5. Inspector General for the General Services Administration for the period April 2014 to the present;
6. Inspector General for the Export-Import Bank of the United States for the period June 2014 to the present;
7. Inspector General for the Central Intelligence Agency for the period January 2015 to the present; and
8. Inspector General for the Department of Commerce for the period June 2015 to the present.

Please provide this information as soon as possible but no later than 5:00 p.m. on July 7, 2015.

---

<sup>5</sup> Letter from W. Neil Eggleston, Counsel to the President, to Ron Johnson, S. Comm. on Homeland Sec. & Gov't Affairs (May 27, 2015).

<sup>6</sup> See U.S. Off. of Gov't Ethics, OGE Contributes to the Continuity of Senior Leadership in the Executive Branch, *supra* note 1.

<sup>7</sup> Cong. Research Serv., *supra* note 1.

<sup>8</sup> U.S. Off. of Gov't Ethics, General Counsel & Legal Policy Division, <http://www.oge.gov/About/Organization/General-Counsel---Legal-Policy-Division/> (last visited June 16, 2015).

<sup>9</sup> *Id.*; Cong. Research Serv., *supra* note 1.

The Honorable Walter M. Schaub, Jr.  
June 23, 2015  
Page 3

The Committee on Homeland Security and Governmental Affairs is authorized by Rule XXV of the Standing Rules of the Senate to investigate "the efficiency and economy of operations of all branches of the Government."<sup>10</sup> Additionally, S. Res. 73 (114th Congress) authorizes the Committee to examine "the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption, or unethical practices . . . ."<sup>11</sup> For the purposes of responding to this request, please refer to the definitions and instructions in the enclosure to this letter.

If you have any questions about this request, please contact David Brewer at (b) (6) (b) (6). Thank you for your attention to this important matter.

Sincerely,



Ron Johnson  
Chairman

cc: The Honorable Thomas R. Carper  
Ranking Member

Enclosure

---

<sup>10</sup> S. Rule XXV(K).

<sup>11</sup> S. Res. 73 § 12, 114th (2015).

**Instructions for Responding to a Committee Request**  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
114th Congress

**A. Responding to a Request for Documents**

1. In complying with the Committee's request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data, or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request should be read also to include the alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e. CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic form should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - a. The production should consist of single page Tagged Image Files (".tif"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - b. Document numbers in the load file should match document Bates numbers and .tif file names.
  - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - d. All electronic documents produced should include the following fields of metadata specific to each document:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

## **Instructions for Responding to a Committee Request**

- e. Alternatively, if the production cannot be made in .tif format, all documents derived from word processing programs, email applications, instant message logs, spreadsheets, and wherever else practicable should be produced in text searchable Portable Document Format (“.pdf”) format. Spreadsheets should also be provided in their native form. Audio and video files should be produced in their native format, although picture files associated with email or word processing programs should be produced in .pdf format along with the document it is contained in or to which it is attached.
  - f. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), consult with the Committee staff to determine the appropriate format in which to produce the information.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to the request should be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When producing documents, identify the paragraph in the Committee’s schedule to which the documents respond.
9. Do not refuse to produce documents on the basis that any other person or entity also possesses non-identical or identical copies of the same documents.
10. This request is continuing in nature and applies to any newly discovered information. Any record, document, compilation of data or information not produced because it has not been located or discovered by the return date, should be produced immediately upon subsequent location or discovery.
11. All documents should be Bates-stamped sequentially and produced sequentially. Each page should bear a unique Bates number.
12. Two sets of documents should be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets should be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 346 of the Dirksen Senate Office Building.
13. If compliance with the request cannot be made in full by the date specified in the request, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date specified in the request, and provide an explanation for why full compliance is not possible by that date.

## **Instructions for Responding to a Committee Request**

14. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
15. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
16. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents which would be responsive as if the date or other descriptive detail were correct.
17. In the event a complete response requires the production of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
18. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### **B. Responding to Interrogatories or a Request for Information**

1. In complying with the Committee's request, answer truthfully and completely. Persons that knowingly provide false testimony could be subject to criminal prosecution for perjury (when under oath) or for making false statements. Persons that knowingly withhold subpoenaed information could be subject to proceedings for contempt of Congress. If you are unable to answer an interrogatory or information request fully, provide as much information as possible and explain why your answer is incomplete.
2. In the event that any entity, organization, or person denoted in the request has been or is also known by any other name or alias than herein denoted, the request should be read also to include the alternative identification.
3. Your response to the Committee's interrogatories or information requests should be made in writing and should be signed by you, your counsel, or a duly authorized designee.



## **Instructions for Responding to a Committee Request**

4. When responding to interrogatories or information requests, respond to each paragraph in the Committee's schedule separately. Clearly identify the paragraph in the Committee's schedule to which the information responds.
5. Where knowledge, information, or facts are requested, the request encompasses knowledge, information or facts in your possession, custody, or control, or in the possession, custody, or control of your staff, agents, employees, representatives, and any other person who has possession, custody, or control of your proprietary knowledge, information, or facts.
6. Do not refuse to provide knowledge, information, or facts on the basis that any other person or entity also possesses the same knowledge, information, or facts.
7. The request is continuing in nature and applies to any newly discovered knowledge, information, or facts. Any knowledge, information, or facts not provided because it was not known by the return date, should be provided immediately upon subsequent discovery.
8. Two sets of responses should be delivered, one set to the Majority Staff and one set to the Minority Staff. When responses are provided to the Committee, copies should be delivered to the Majority Staff in Room 340 of the Dirksen Senate Office Building and the Minority Staff in Room 346 of the Dirksen Senate Office Building.
9. If compliance with the request cannot be made in full by the date specified in the request, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date specified in the request, and provide an explanation for why full compliance is not possible by that date.
10. In the event that knowledge, information, or facts are withheld on the basis of privilege, provide a privilege log containing the following information: (a) the privilege asserted; (b) the general subject matter of the knowledge, information, or facts withheld; (c) the source of the knowledge, information, or facts withheld; (d) the paragraph in the Committee's request to which the knowledge, information, or facts are responsive; and (e) each individual to whom the knowledge, information, or facts have been disclosed.
11. If a date or other descriptive detail set forth in this request is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, provide the information that would be responsive as if the date or other descriptive detail was correct.
12. In the event a complete response requires the transmission of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
13. Unless otherwise specified, the period covered by this request is from January 1, 2009 to the present.

## **Instructions for Responding to a Committee Request**

### **C. Definitions**

1. The term “document” in the request or the instructions means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra- office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” in the request or the instructions means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face to face, in meetings, by telephone, mail, telex, facsimile, email (desktop or mobile device), computer, text message, instant message, MMS or SMS message, regular mail, telexes, discussions, releases, delivery, or otherwise.
3. The terms “and” and “or” in the request or the instructions should be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” in the request or the instructions mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, businesses or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify” in the request or the instructions, when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; and (b) the individual’s business address and phone number.

## **Instructions for Responding to a Committee Request**

6. The terms “referring” or “relating” in the request or the instructions, when used separately or collectively, with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” in the request or the instructions means agent, borrowed employee, casual employee, consultant, contractor, de fact employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee or subcontractor.
8. The terms “you” and “your” in the request or the instructions refer to yourself; your firm, corporation, partnership, association, department, or other legal or government entity, including all subsidiaries, divisions, branches, or other units thereof; and all members, officers, employees, agents, contractors, and all other individuals acting or purporting to act on your behalf, including all present and former members, officers, employees, agents, contractors, and all other individuals exercising or purporting to exercise discretion, make policy, and/or decisions.

# # #







UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



JUL 20 2015

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Mark P. Cohen who has been nominated by President Obama for the position of Member, Merit Systems Protection Board.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David J. Apol  
General Counsel

Enclosures

UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**



The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
340 Dirksen Senate Office Building  
Washington, D.C. 20510

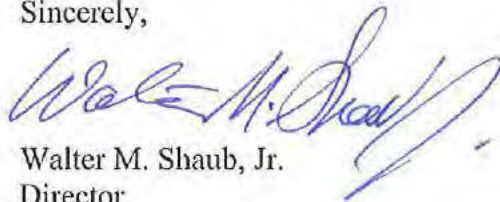
Dear Mr. Chairman:

Please find attached a copy of the Annual Financial Report (AFR) for the U.S. Office of Government Ethics (OGE) for fiscal year 2015, as submitted to the Office of Management and Budget.

The AFR includes OGE's Management Discussion and Analysis of Results and OGE's Management Assurances and Audited Financial Statements.

If you need additional information with regard to this submission please contact Shelley Finlayson, OGE's Chief of Staff and Program Counsel, at 202-482-9314.

Sincerely,



Walter M. Shaub, Jr.  
Director

UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**



The Honorable Thomas Carper  
Ranking Member  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
344 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senator Carper:

Please find attached a copy of the Annual Financial Report (AFR) for the U.S. Office of Government Ethics (OGE) for fiscal year 2015, as submitted to the Office of Management and Budget.

The AFR includes OGE's Management Discussion and Analysis of Results and OGE's Management Assurances and Audited Financial Statements.

If you need additional information with regard to this submission please contact Shelley Finlayson, OGE's Chief of Staff and Program Counsel, at 202-482-9314.

Sincerely,

A handwritten signature in blue ink, appearing to read "Walter M. Shaub, Jr.", written over the printed name and title.

Walter M. Shaub, Jr.  
Director

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



The Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and Government Reform  
United States House of Representatives  
2157 Rayburn House Office Building  
Washington, D.C. 20515

Dear Mr. Chairman:

Please find attached a copy of the Annual Financial Report (AFR) for the U.S. Office of Government Ethics (OGE) for fiscal year 2015, as submitted to the Office of Management and Budget.

The AFR includes OGE's Management Discussion and Analysis of Results and OGE's Management Assurances and Audited Financial Statements.

If you need additional information with regard to this submission please contact Shelley Finlayson, OGE's Chief of Staff and Program Counsel, at 202-482-9314.

Sincerely,

A handwritten signature in blue ink, appearing to read "Walter M. Shaub, Jr.", written in a cursive style.

Walter M. Shaub, Jr.  
Director

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



The Honorable Elijah E. Cummings  
Ranking Member  
Committee on Oversight and Government Reform  
United States House of Representatives  
2471 Rayburn House Office Building  
Washington, D.C. 20515

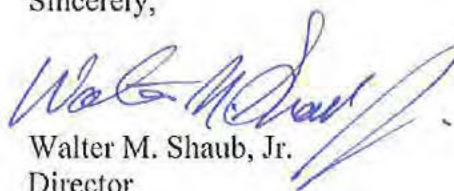
Dear Representative Cummings:

Please find attached a copy of the Annual Financial Report (AFR) for the U.S. Office of Government Ethics (OGE) for fiscal year 2015, as submitted to the Office of Management and Budget.

The AFR includes OGE's Management Discussion and Analysis of Results and OGE's Management Assurances and Audited Financial Statements.

If you need additional information with regard to this submission please contact Shelley Finlayson, OGE's Chief of Staff and Program Counsel, at 202-482-9314.

Sincerely,

A handwritten signature in blue ink, appearing to read "Walter M. Shaub, Jr.", written over a printed name and title.

Walter M. Shaub, Jr.  
Director



**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
MINORITY (202) 225-5051

<http://oversight.house.gov>

December 11, 2015

The Honorable Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, N.W., Suite 500  
Washington, D.C. 20005

Dear Mr. Shaub:

The Subcommittee on Government Operations of the Committee on Oversight and Government Reform hereby requests your testimony at a hearing on **December 16, 2015, at 10:00 a.m.** in room 2154 of the Rayburn House Office Building.

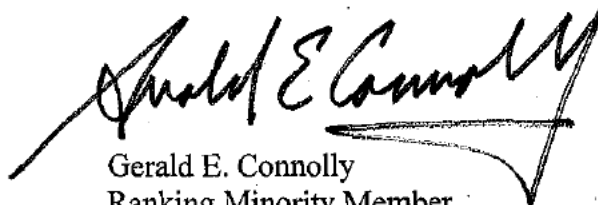
The hearing will examine reauthorization of the U.S. Office of Government Ethics (OGE), the U.S. Office of Special Counsel (OSC), and the U.S. Merit Systems Protection Board (MSPB). With regard to OGE, the hearing will examine its leadership and oversight efforts to prevent and resolve conflicts of interest in the executive branch. OGE has not been reauthorized since the end of fiscal year 2007, and the Subcommittee seeks to better understand OGE's authority, structure, and management of the executive branch ethics program. In addition, the hearing will examine potential legislative changes affecting OGE. You should be prepared to provide a five-minute opening statement and answer questions posed by Members.

The enclosed Witness Instruction Sheet provides information for witnesses appearing before the Committee. In particular, please note the procedures for submitting written testimony at least two business days prior to the hearing. If you have questions, please contact Janel Fitzhugh of the Majority staff at (b) (6), or Lena Chang of the Minority staff at (b) (6).

Sincerely,



Mark Meadows  
Chairman  
Subcommittee on Government  
Operations



Gerald E. Connolly  
Ranking Minority Member  
Subcommittee on Government  
Operations

Enclosure

**Witness Instruction Sheet**  
**Governmental Witnesses**

1. Witnesses should provide 70 copies of their written testimony to Sharon Casey, Deputy Chief Clerk, 2157 Rayburn House Office Building, no later than 10:00 a.m. two business days prior to the hearing. Witnesses should also provide their statement by this date in electronic format, either as a CD or via e-mail to (b)(6) - Sharon Casey email address.
2. Please do not send copies by U.S. Mail, UPS, Federal Express, or other shippers. Such packages are processed through an offsite security facility and will arrive 7-10 days late.
3. Witnesses should also provide a short biographical summary and include it with their written statement. The biographical summary should be included with the electronic copy of the testimony provided to the Clerk.
4. At the hearing, each witness will be asked to summarize his or her written testimony in five minutes or less in order to maximize the time available for discussion and questions. Written testimony will be entered into the hearing record and may extend to any reasonable length.
5. Written testimony will be made publicly available and will be posted on the Committee's website.
6. The Committee does not provide financial reimbursement for witness travel or accommodations. Witnesses with extenuating circumstances, however, may submit a written request for such reimbursements to Robin Butler, Financial Administrator, 2157 Rayburn House Office Building, at least one week prior to the hearing. Reimbursements will not be made without prior approval.
7. Witnesses with disabilities should contact Committee staff to arrange any necessary accommodations.
8. Committee Rules governing this hearing are online at [www.oversight.house.gov](http://www.oversight.house.gov).

For inquiries regarding these rules and procedures, please contact the Committee on Oversight and Government Reform at (202) 225-5074.

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
MINORITY (202) 225-6051

<http://oversight.house.gov>

December 11, 2015

The Honorable Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, N.W., Suite 500  
Washington, D.C. 20005

Dear Mr. Shaub:

The Subcommittee on Government Operations of the Committee on Oversight and Government Reform hereby requests your testimony at a hearing on **December 16, 2015, at 10:00 a.m.** in room 2154 of the Rayburn House Office Building.

The hearing will examine reauthorization of the U.S. Office of Government Ethics (OGE), the U.S. Office of Special Counsel (OSC), and the U.S. Merit Systems Protection Board (MSPB). With regard to OGE, the hearing will examine its leadership and oversight efforts to prevent and resolve conflicts of interest in the executive branch. OGE has not been reauthorized since the end of fiscal year 2007, and the Subcommittee seeks to better understand OGE's authority, structure, and management of the executive branch ethics program. In addition, the hearing will examine potential legislative changes affecting OGE. You should be prepared to provide a five-minute opening statement and answer questions posed by Members.

The enclosed Witness Instruction Sheet provides information for witnesses appearing before the Committee. In particular, please note the procedures for submitting written testimony at least two business days prior to the hearing. If you have questions, please contact Janel Fitzhugh of the Majority staff at (b) (6), or Lena Chang of the Minority staff at (b) (6).

Sincerely,



Mark Meadows  
Chairman  
Subcommittee on Government  
Operations



Gerald E. Connolly  
Ranking Minority Member  
Subcommittee on Government  
Operations

Enclosure

**Witness Instruction Sheet**  
**Governmental Witnesses**

1. Witnesses should provide 30 copies of their written testimony to Sharon Casey, Deputy Chief Clerk, 2157 Rayburn House Office Building, no later than 10:00 a.m. two business days prior to the hearing. Witnesses should also provide their statement by this date via e-mail to **(b)(6) - Sharon Casey email address**.
2. Please do not send copies by U.S. Mail, UPS, Federal Express, or other shippers. Such packages are processed through an offsite security facility and will arrive 7-10 days late.
3. Witnesses should also provide a short biographical summary and include it with their written statement. The biographical summary should be included with the electronic copy of the testimony provided to the Clerk.
4. At the hearing, each witness will be asked to summarize his or her written testimony in five minutes or less in order to maximize the time available for discussion and questions. Written testimony will be entered into the hearing record and may extend to any reasonable length.
5. Written testimony will be made publicly available and will be posted on the Committee's website.
6. The Committee does not provide financial reimbursement for witness travel or accommodations. Witnesses with extenuating circumstances, however, may submit a written request for such reimbursements to Robin Butler, Financial Administrator, 2157 Rayburn House Office Building, at least one week prior to the hearing. Reimbursements will not be made without prior approval.
7. Witnesses with disabilities should contact Committee staff to arrange any necessary accommodations.
8. Committee Rules governing this hearing are online at [www.oversight.house.gov](http://www.oversight.house.gov).

For inquiries regarding these rules and procedures, please contact the Committee on Oversight and Government Reform at (202) 225-5074.



**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
MINORITY (202) 225-5051

<http://oversight.house.gov>

December 17, 2015

The Honorable Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, N.W., Suite 500  
Washington, D.C. 20005

Dear Mr. Shaub:

On behalf of the Committee and its Members, I thank you for your testimony at the December 16, 2015, Subcommittee on Government Operations hearing titled, "Merit Systems Protection Board (MSPB), Office of Government Ethics (OGE), and Office of Special Counsel (OSC) Reauthorization."

The mission of our Committee is to ensure the efficiency, effectiveness, and accountability of the federal government and its agencies. We have a constitutional duty to provide meaningful oversight for the taxpayers. Only by working diligently to uncover the facts can we bring genuine reform to the operation of our government. Your participation in this important function is crucial, and greatly appreciated.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason Chaffetz", is written over the word "Sincerely,".

Jason Chaffetz  
Chairman



**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
MINORITY (202) 225-5051

<http://oversight.house.gov>

December 23, 2015

The Honorable Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, NW  
Washington, D.C. 20005

Dear Director Shaub:

The Office of Government Ethics was created by statute in 1978 to set standards for, and provide oversight of, federal agency ethics programs. The office assists agencies by interpreting and advising them on ethics laws and regulations to prevent conflicts of interest.<sup>1</sup> One such law is the Ethics in Government Act, which requires public disclosure of financial and employment history of public officials.<sup>2</sup>

Strong ethics programs are critical to build trust between the public and the government. As such, any implication that OGE is not meeting its mission must be examined by Congress. The Committee not only has government-wide oversight responsibilities, but also has substantive jurisdiction over OGE and enforcement of the Ethics in Government Act.

Earlier this year, press reports indicated that former Secretary of State Hillary Clinton and her husband failed to disclose millions of dollars in paid speeches over the past thirteen years under the belief they did not have a duty to report that because the speeches were delivered on behalf of the Clinton Foundation, and not in the Secretary's or the President's personal capacity.<sup>3</sup> Those reports indicated that Mrs. Clinton directed compensation for at least five speeches to the Clinton Foundation between 2014 and 2015 which were not disclosed on her May 2015 OGE Form 278.<sup>4</sup>

In the wake of this revelation, OGE spokesman Vincent Salamone issued the following statement regarding the disclosure requirements:

Disclosure of speaking fees is not required when a public filer or the filer's spouse is acting as an agent of an organization and payment is made directly to that organization. The rule is different when the speaking is done in a personal capacity and the fees are directed or donated to charity, in which case disclosure would be required.<sup>5</sup>

---

<sup>1</sup> Office of Gov't Ethics website, "OGE Advances a Strong, Uniform Executive Branch Ethics Program" available at <http://www.oge.gov/About/Mission-and-Responsibilities/OGE-Advances-a-Strong,-Uniform-Executive-Branch-Ethics-Program> (last accessed December 17, 2015).

<sup>2</sup> 5 U.S.C. app. 4 §§ 101-111.

<sup>3</sup> Josh Gerstein, *Hillary's speech disclosures come under fire*, POLITICO, May 20, 2015.

<sup>4</sup> Rebecca Ballhaus and Peter Nicholas, *More Clinton Fees to Be Disclosed*, WALL ST. J., May 18, 2015.

<sup>5</sup> *Id.*

Ethics experts, however, disagree that the Clintons' speeches fall within the exception, stating that there is little evidence the speeches had anything to do with the Clinton Foundation.<sup>6</sup> Experts are further concerned that, under this exception, an official or spouse who is an agent of a nonprofit does not need to report payments directed to that nonprofit, creating conflict of interest questions.<sup>7</sup>

Some of the speeches in question were given by President Clinton while Secretary Clinton served as Secretary of State. It is not clear whether Secretary Clinton, the Department of State, or the Clinton Foundation consulted with OGE on the unreported speaking fees, or if OGE provided advice on whether the speeches were given in the Clintons' personal capacities or as agents of the Clinton Foundation. The agency also declined to comment when asked by the press whether this exception has previously appeared in the agency's public guidance or regulations.<sup>8</sup>

In your appearance before the Committee on December 16, 2015, at a hearing on the reauthorization of OGE, you were asked where the rule referenced by Mr. Salamone was found. You stated: "The statute is a very long, very detailed statute."<sup>9</sup> Later in the hearing you testified that the rule was found in 5 U.S.C. appendix §102(a).<sup>10</sup> The relevant portion of that statute states:

Each report . . . shall include a full and complete statement with respect to . . . the source, date, and amount of honoraria from any source, received during the preceding calendar year, aggregating \$200 or more in value and, effective January 1, 1991, the source, date, and amount of payments made to charitable organizations in lieu of honoraria, and the reporting individual shall simultaneously file with the applicable supervising ethics office.<sup>11</sup>

To help the Committee understand the relevant rule, and how OGE determines whether certain activities comply, please provide responses to the following questions:

1. What provision of 5 U.S.C. appendix § 102(a) contains the rule referenced by Mr. Salamone? If the rule is not contained within the statute, what is the source of the rule?
2. What factors does OGE consider in determining whether an individual acts as an agent of an organization versus when speaking is done in a personal capacity?
3. If an individual serves as an agent for an outside entity in an outside activity, does that have to be disclosed in Schedule D of OGE Form 278, or anywhere else?
4. Under what circumstances does OGE offer opinions on ethics issues to journalists or parties other than the government employee under investigation or ethics officials within their department or agency?

---

<sup>6</sup> Josh Gerstein, *Hillary's speech disclosures come under fire*, POLITICO, May 20, 2015.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Merit Sys. Prot. Bd., Office of Gov't Ethics and Office of Special Counsel Reauthorization: Hearing Before the H. Subcomm. on Gov't Operations*, 114th Cong. 33 (December 16, 2015).

<sup>10</sup> *Id.* at 35.

<sup>11</sup> 5 U.S.C. app. § 102(a)(1)(A).



The Honorable Walter M. Shaub, Jr.

December 23, 2015

Page 3

In addition, please provide the following documents and information as soon as possible, but no later than January 6, 2016:

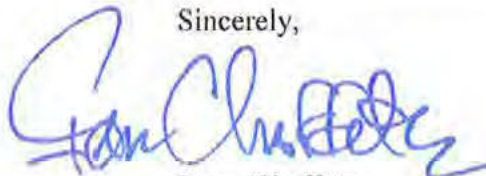
5. All rules or guidance applicable to Mr. Salamone's statement that disclosure of speaking fees is not required when an individual is acting as an agent of an organization and payment is made to that organization.
6. All documents and communications between OGE and the Clinton Foundation referring or relating to compliance with the Ethics in Government Act of 1978 including, but not limited to, disclosure of honoraria, since December 1, 2008.
7. All documents and communications between OGE and any other representatives of Secretary Clinton and President Clinton referring or relating to compliance with the Ethics in Government Act of 1978, including, but not limited to, disclosure of honoraria, since December 1, 2008.
8. All documents and communications between and among OGE employees referring or relating to the payment of speaking fees to Secretary Clinton, President Clinton, or the Clinton Foundation since December 1, 2008.
9. All documents and communications between and among OGE employees referring or relating to the disclosure of speaking fees by Secretary Clinton, President Clinton, or the Clinton Foundation since December 1, 2008.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

An attachment to this letter provides additional information about responding to the Committee's request. When producing documents to the Committee, please deliver production sets to the Majority staff in Room 2157 of the Rayburn House Office Building and the Minority staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

Please contact Jack Thorlin or Tristan Leavitt of the Committee staff at (b) (6) with any questions regarding this letter. Thank you for your attention to this matter.

Sincerely,



Jason Chaffetz  
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

### Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
  - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;  
  
BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,  
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,  
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,  
CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE,  
DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,  
INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,  
BEGATTACH.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.



19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

### Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term "employee" means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.



UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



January 11, 2016

The Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and Government Reform  
United States House of Representatives  
2157 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Chaffetz:

This responds to your letter dated December 23, 2016, requesting responses to four questions and the production of certain documents. The letter initially set a response deadline of January 6, 2016, but the Committee extended that deadline to January 11, 2016. Please find the enclosed responses to your questions. The requested documents are provided on a flash drive, which contains an index.

If your staff has any questions regarding these materials, please have them contact Shelley K. Finlayson, Chief of Staff and Program Counsel, at (202) 483-9314.

Sincerely,

Walter M. Shaub, Jr.  
Director

Enclosures

cc: The Honorable Elijah E. Cummings  
Ranking Member  
Committee on Oversight and Government Reform  
United States House of Representatives  
2471 Rayburn House Office Building  
Washington, DC 20515

THE FOLLOWING INFORMATION RESPONDS TO QUESTIONS NUMBERED 1 THROUGH 4 IN THE COMMITTEE'S DECEMBER 23, 2015, LETTER.

**1. What provision of 5 U.S.C. appendix § 102(a) contains the rule referenced by [OGE's spokesperson]? If the rule is not contained within the statute, what is the source of the rule?**

Subsection 102(a) of the Ethics in Government Act establishes requirements for reporting a filer's income.<sup>1</sup> Earned income is reportable to the extent specifically required under subsection 102(a)(1)(A).<sup>2</sup> When a filer acts as an agent for an organization, including a charitable organization, any revenue belongs to the organization and is not earned income of the filer.<sup>3</sup> Therefore, the organization's revenue is not reported as income in the filer's financial disclosure report because it is not the filer's own earned income.<sup>4</sup>

In contrast, a filer's own earned income is reportable, even if the filer donates it to charity. An honorarium is a type of earned income.<sup>5</sup> Accordingly, an honorarium that a filer directs to be donated to charity, in lieu of payment to the filer, is reportable under the donated honoraria clause of subsection 102(a)(1)(A). The payment is reportable only if the filer could have received the payment if not donated to charity,<sup>6</sup> meaning the filer had a personal financial interest in it.<sup>7</sup>

This concept is reinforced by the phrase "in lieu of" in the donated honoraria clause.<sup>8</sup> The phrase means that the donated honoraria clause applies only when a payment is made to a charity

---

<sup>1</sup> This response analyzes requirements for public financial disclosure filers. The analysis also generally applies to the spouses of filers in the executive and legislative branches, pursuant to 5 U.S.C. app. § 102(e)(1)(A).

<sup>2</sup> Personal investment income is addressed in other paragraphs of section 102(a) not relevant to this analysis.

<sup>3</sup> Under well-established principles of agency law, the acts of an agent are done for the benefit of the principal and "the gain realized by the agent's efforts is income to the principal," not income to the agent. *Comm'r v. Banks*, 543 U.S. 426, 437 (2005); see also *Md. Casualty Co. v. United States*, 251 U.S. 342, 347 (1920) (under tax law "receipt by an agent is regarded as receipt by his principal"); RESTATEMENT (THIRD) OF AGENCY §§ 1.01, 8.05, 8.12 (2006).

<sup>4</sup> See OGE Informal Advisory Opinion 02 x 2, at 3 n.3 (2002) ("[T]he interests of an employee's general partner or outside employer are covered by section 208 but are not reportable under section 102" of the Ethics in Government Act.).

<sup>5</sup> See U.S. OFFICE OF GOV'T ETHICS, PUBLIC FINANCIAL DISCLOSURE: A REVIEWER'S REFERENCE 3-9 (2d ed. 2004) ("Earned income includes fees, salaries, commissions, HONORARIA, and other compensation for personal services.") (emphasis in original); 5 C.F.R. § 2636.303(b) ("Outside earned income and compensation both mean wages, salaries, *honoraria*, commissions, professional fees and any other form of compensation for services....") (emphasis added); 135 Cong. Rec. H9254, H9271 (1989) (Report of the Bipartisan Task Force on Ethics on H.R. 3660, Government Ethics Reform Act of 1989) ("Proposed subsection (b) of the rule [at 5 U.S.C. app. § 501] provides that a Member may not have outside earned income, including honoraria."); 5 U.S.C. app. § 501 (inclusion of honoraria ban in Ethics in Government Act section limiting earned income of officials); H. COMM. ON ETHICS, INSTRUCTION GUIDE ON FINANCIAL DISCLOSURE STATEMENTS AND PERIODIC TRANSACTION REPORTS 27 (2015) (treating honoraria as earned income for new Members, employees, spouses and candidates).

<sup>6</sup> See *Banks*, 543 U.S. at 433-35 (2005) (analogous decision holding that the determination as to whether an assigned payment is attributable as taxable income of the assignor turns on whether the payment was one the assignor "could have received himself").

<sup>7</sup> See OGE Informal Advisory Opinion 02 x 1 (2002) (determining that a filer who is not a beneficiary of a trust but serves as its trustee is not required to disclose the trust's income because the filer has no "personal financial interest" in it); Mem. from Robert I. Cusick, Director, U.S. Office Gov't Ethics, to Designated Agency Ethics Officials, *Discretionary Trusts*, DO-08-024 (2008) (explaining that a filer does not need to disclose a discretionary trust's income because the filer, though an income beneficiary, does not have a financial interest in discretionary trust income that is not distributed to the filer).

<sup>8</sup> 5 U.S.C. app. § 102(a)(1)(A) (addressing "payments made to charitable organizations in lieu of honoraria").

standing in place of a filer as recipient, i.e., receiving the filer's earned income.<sup>9</sup> Therefore, if the filer could not have received the payment, that clause is inapplicable because the payment to the organization was not "in lieu of" a payment to the filer.<sup>10</sup>

## **2. What factors does OGE consider in determining whether an individual acts as an agent of an organization versus when speaking is done in a personal capacity?**

For purposes of 5 U.S.C. app. § 102(a), OGE would advise that filers apply the well-settled principles of agency law to determine whether they or their spouses are agents of organizations.<sup>11</sup> The elements of agency are set out in § 1.01 of the Restatement (Third) of Agency.

## **3. If an individual serves as an agent for an outside entity in an outside activity, does that have to be disclosed in Schedule D of OGE form 278, or anywhere else?**

An individual who acts as agent for an organization does not necessarily hold a "position" with that organization.<sup>12</sup> Only positions are reported in Schedule D, Part I, which requires disclosure of any position that a filer holds with an organization, unless the position is honorary or the organization is a religious, social, fraternal or political entity.<sup>13</sup> This requirement does not apply to the spouses of filers.<sup>14</sup>

Schedule D, Part II requires disclosure of the source of any payments during the reporting period that exceed \$5,000 in a calendar year for a filer's services.<sup>15</sup> Under the Ethics in Government Act, this reporting requirement applies when the payment for the filer's services is made to another person or organization, but the requirement applies only to new employees and

---

<sup>9</sup> See, e.g., *Fed. Grp., Inc. v. United States*, 67 Fed. Cl. 87, 106 (2005) ("The phrase 'in lieu of' means 'instead of' 'in place of,' or 'in substitution of.'").

<sup>10</sup> Inasmuch as the Committee's letter addresses the reporting requirements for "paid speeches over the past thirteen years," it bears noting that many of the financial disclosure reports filed during this 13-year period were filed with the Senate because the filer was a Senator from 2001 to 2009. Letter from Hon. Jason Chaffetz, Chairman, H. Comm. on Gov't Oversight and Reform, to Hon. Walter J. Shaub, Jr., Director, U.S. Office of Gov't Ethics, at 1 (Dec. 23, 2015). The same statutory authority applies to reviews of financial disclosure reports by both the Senate Select Committee on Ethics and OGE. 5 U.S.C. app. § 106(a)(2). National newspaper articles recount that these speeches were not reported in her Senate filings. See John Solomon & Matthew Mosk, *For Clinton, New Wealth in Speeches*, WASH. POST, Feb. 23, 2007 ("The Clintons declined to disclose the size and sources of the payments for speeches he delivered on behalf of the charity. Campaign law and Senate ethics rules require Hillary Clinton to disclose only the fees her husband has taken as personal income, not those he routed to charity."); Jeff Jacoby, *Harry Truman's Obsolete Integrity*, N.Y. TIMES, Mar. 2, 2007 ("The scale of Clinton's post-White House earnings is known only because financial-disclosure rules require his wife, Senator Hillary Clinton, to report them. (They don't include the additional millions his speeches have raised for the William J. Clinton Foundation, his nonprofit charity.)"). These articles would have been available to the Senate Select Committee on Ethics, yet there is no indication any of her Senate disclosures were rejected.

<sup>11</sup> See, e.g., RESTATEMENT (SECOND) OF AGENCY § 1 (1958); RESTATEMENT (THIRD) OF AGENCY § 1.01 (2006); *O'Neill v. HUD*, 220 F.3d 1354, 1360 (Fed Cir. 2000) (under the criminal government ethics prohibition at 18 U.S.C. § 205(a)(2), the term "agent" should be interpreted in light of its "well-settled common-law meaning").

<sup>12</sup> The conference committee specifically rejected a provision in the Senate version of the Ethics in Government Act that would have characterized service as an agent by a filer as a "position" and required it to be reported in Schedule D, Part I. S. DOC. 95-127, at 67, 70 (1978) (Conf. Rep.).

<sup>13</sup> 5 C.F.R. § 2634.307.

<sup>14</sup> *Id.* (requiring disclosure of positions held only "by the filer").

<sup>15</sup> 5 C.F.R. § 2634.308(b)(6).

nominees—it does not apply to incumbent or former employees, elected officials, candidates, or the spouses of filers.<sup>16</sup>

**4. Under what circumstances does OGE offer opinions on ethics issues to journalists or parties other than the government employee under investigation or ethics officials within their department or agency?**

OGE’s strategic plan includes a goal of providing information to citizens about government ethics requirements.<sup>17</sup> In support of this goal, OGE regularly responds to reporters and others who request information and technical assistance on the executive branch ethics laws and regulations. As OGE explained in its most recent Annual Performance Plan and Report,

OGE responds to requests for information and assistance from its external stakeholders on topics such as public financial disclosure, gifts from outside sources, and post-employment. For example, in fiscal year 2014, OGE responded to over 100 requests for assistance from the press. These interactions result in more accurate reporting about the ethics rules and regulations. These interactions also multiply OGE’s ability to reach the general public to further promote understanding of the executive branch ethics program and its role in ensuring government integrity. OGE also responded to requests for assistance from other stakeholders, including over 200 requests from public citizens. This assistance promotes understanding of the executive branch ethics program and related ethics rules and regulations.<sup>18</sup>

With regard to the articles mentioned in the Committee’s letter, OGE’s spokesperson was contacted by the reporters. Consistent with OGE’s practice, OGE’s spokesperson provided the reporters with information only about reporting requirements under the Ethics in Government Act. He declined to discuss the factual circumstances of any individual. For this reason, one of the reporters made a point of acknowledging in his article that, “[OGE] declined to comment on the specific case.”<sup>19</sup>

---

<sup>16</sup> *Id.*

<sup>17</sup> U.S. OFFICE OF GOV’T ETHICS, STRATEGIC PLAN FOR FISCAL YEARS 2014-2018, Strategic Goal 3, at 8 (2014), available at <http://www.oge.gov/About/Management-Reports-and-Policies/Performance-and-Strategic-Docs/Performance---Strategic-Documents/> (last visited Jan. 8, 2016).

<sup>18</sup> U.S. OFFICE OF GOV’T ETHICS, FISCAL YEAR 2016: EXPLANATORY NOTES, ANNUAL PERFORMANCE PLAN, AND ANNUAL PERFORMANCE REPORTS 36 (2015), available at <http://www.oge.gov/About/Legislative-Affairs-and-Budget/Budget-and-Appropriations/Budget-Submissions-to-Congress/> (last visited Jan. 7, 2016).

<sup>19</sup> Josh Gerstein, *Hillary’s Speech Disclosures Come Under Fire*, POLITICO, May 20, 2015.













**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

Issuance (202) 225-5074  
Museum (202) 225-5051  
<http://oversight.house.gov>

January 19, 2016

The Honorable Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue, N.W., Suite 500  
Washington, D.C. 20005

Dear Mr. Shaub:

Thank you for appearing before the Subcommittee on Government Operations hearing on December 16, 2015, titled, "Merit System Protection Board, Office of Government Ethics, and Office of Special Counsel Reauthorization." We appreciate the time and effort you gave as a witness before the Committee.

Pursuant to the direction of the Chairman, the hearing record remains open to permit Members to submit additional questions to the witnesses. In preparing your answers to these questions, please include the text of the Member's question along with your response.

Please provide your response to these questions by February 2, 2016. Your response should be addressed to the Committee office at 2157 Rayburn House Office Building, Washington, DC 20515. Please also send an electronic version of your response by e-mail to Sharon Casey, Deputy Chief Clerk, at (b) (6) in a single Word-formatted document.

Thank you for your prompt attention to this request. If you have any questions, please contact Janel Fitzhugh of the Committee staff at (b) (6).

Sincerely,



Mark Meadows  
Chairman  
Subcommittee on Government Operations

cc: The Honorable Gerald E. Connolly, Ranking Member  
Subcommittee on Government Operations

Enclosure

**Questions for The Honorable Walter M. Shaub, Jr.**  
Director  
U.S. Office of Government Ethics

**Questions from Chairman Mark Meadows**  
Subcommittee on Government Operations

Hearing: "Merit System Protection Board, Office of Government Ethics, and Office of Special Counsel Reauthorization"

---

1. When it passed the Ethics in Government Act of 1978, Congress gave the Director of the Office of Government Ethics responsibility for "monitoring and investigating compliance with the public financial disclosure requirements of title II of this Act by officers and employees of the executive branch and executive agency officials responsible for receiving, reviewing, and making available financial statements filed pursuant to such title" (5 U.S.C. app. § 402(b)(3)). The Director is also tasked with "monitoring and investigating individual and agency compliance with any additional financial reporting and internal review requirements established by law for the executive branch" (5 U.S.C. app. § 402(b)(5)). What does OGE do to investigate such compliance?
2. How does OGE confirm that commitments are made to resolve any potential conflicts of interest?
3. What does OGE do to follow up to ensure that such commitments are timely met and appropriately resolved?
4. What, if any, enforcement authority does OGE have to ensure compliance in this area?
5. If OGE does not have enforcement authority to ensure compliance, who has that responsibility?
6. Congress gave OGE the responsibility for "ordering corrective action of the part of agencies and employees which the Director deems necessary" (5 U.S.C. app. § 402(b)(9)), as well as various authorities to execute that responsibility (5 U.S.C. app. § 402(f)). Please provide a list of all instances since OGE's creation in which OGE has:
  - a. Ordered corrective action pursuant to 5 U.S.C. app. § 402(b)(9);
  - b. Submitted a notification to the President and the Congress, pursuant to 5 U.S.C. app. § 402(f)(1)(B), of agency noncompliance;
  - c. Recommended an investigation pursuant to 5 U.S.C. app. § 402(f)(2)(A)(i)(I);
  - d. Recommended disciplinary action pursuant to 5 U.S.C. app. § 402(f)(2)(A)(i)(I);
  - e. Submitted a notification to the President pursuant to 5 U.S.C. app. § 402(f)(2)(A)(ii)(II);

- f. Submitted a notification to an agency head pursuant to 5 U.S.C. app. § 402(f)(2)(A)(iii)(II);
  - g. Submitted a notification to the President pursuant to 5 U.S.C. app. § 402(f)(2)(A)(iv)(II); and
  - h. Conducted an investigation pursuant to 5 U.S.C. app. § 402(f)(2)(B)(i).
- 7. Congress also gave OGE the responsibility for “requiring such reports from executive agencies as the Director deems necessary” (5 U.S.C. app. § 402(b)(10)). Please provide a list of all such reports the Director has required since OGE’s creation.
- 8. If OGE does not believe factual assertions made in a Presidential candidate’s financial disclosure paperwork, who in the federal government would have responsibility for making a factual determination?
- 9. Who in the federal government has enforcement authority to ensure that Presidential candidates comply with financial disclosure requirements?
- 10. What is OGE’s role with developing and monitoring ethics agreements for current and former executive branch leaders who have been appointed by the President and confirmed by the Senate?
- 11. How does OGE ensure continued compliance with ethics agreements?
- 12. What oversight and enforcement authority does OGE have over ethics agreements?
- 13. In the context of honoraria disclosure, you stated in your testimony that the Ethics in Government Act is “not the statute that I would have written, as evidenced by the fact that OGE has a confidential financial disclosure system where Congress left us the ability to write our own rules.” What changes would you recommend to the statute?
- 14. What do you do to ensure that each federal agency has a Designated Ethics Official?
- 15. What do you do to ensure that such ethics officers dedicate the proper amount of time to ethics work?
- 16. What is OGE’s process for conducting plenary reviews and inspections of agency ethics programs?
- 17. How often does OGE review an agency’s program, and how are recommendations resolved?
- 18. If a deficiency is discovered in an agency’s ethics program, what is the process for correcting?
- 19. If an agency refuses to correct, does OGE have enforcement authority to seek correction? If not, who is responsible for enforcing correction?



20. What type of information does OGE collect from the Annual Agency Ethics Program Questionnaire and how does OGE utilize that information?
21. Are the results shared with the ethics community and the public?
22. Based on the data from the questionnaire, has OGE identified any common issue areas? If so, how does OGE plan to address such areas?
23. How will the upcoming Presidential election impact your workload and how does OGE prepare for the transition?
24. Explain how OGE is working with GSA, OPM and NARA to prepare for the upcoming Presidential transition.
25. In working with the Partnership for Public Service, what recommendations were provided to assist with the transition?
26. Please discuss any lessons learned or best practices from the last transition that will be incorporated into this upcoming transition.
27. How does OGE support agencies with succession planning in executive branch ethics programs?
28. Please describe your agency's restructuring involving the Program Counsel and the General Counsel, including all former and current responsibilities for each.
29. Please describe all problematic issues which arose in the course of restructuring.
30. The statute on special government employees specifically states that they are "not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days" (18 U.S.C. § 202(a)). What gives OGE the authority to interpret this provision in a different manner than that indicated by the plain language passed by Congress?
31. What steps does OGE take to ensure that this time limit for special government employees is followed?
32. What are the consequences for failing to follow the law with regard to the length of time an individual may be considered a special government employee?
33. What are some of the trends and emerging issues you have identified through your Agency Information Management System (AIMS)?
34. How have you worked with agencies on understanding and addressing those issues?
35. Please describe your new electronic filing system, *Integrity*. How does the system work, how many agencies are currently using the system, approximately how many filers are registered?
36. In light of the recent data breaches at federal agencies, what has OGE done to ensure the new filing system complies with all government security and privacy requirements?

**Questions for The Honorable Walter M. Shaub, Jr.**  
Director  
U.S. Office of Government Ethics

**Questions from Ranking Member Gerald E. Connolly**  
Subcommittee on Government Operations

Hearing: "Merit System Protection Board, Office of Government Ethics, and Office of Special Counsel Reauthorization"

---

1. As the head of an employing agency, do you believe Office of Government Ethics (OGE) has sufficient tools and authorities to discipline employees for misconduct or performance issues when necessary?
2. Based on your agency's experience, do you think statutory change is needed to streamline the federal employee disciplinary process?

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



February 9, 2016

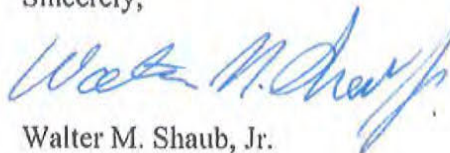
The Honorable Mark Meadows  
Chairman  
Subcommittee on Government Operations  
Committee on Oversight and Government Reform  
United States House of Representatives  
2157 Rayburn House Office Building  
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter dated January 19, 2016, requesting a response to questions for the record. The letter initially set a response deadline of February 2, 2016, but the Committee extended the deadline to February 9, 2016. Please find the enclosed responses to the questions.

If your staff has any questions regarding the responses, please have them contact Ms. Shelley K. Finlayson, Chief of Staff and Program Counsel, at (202) 483-9314.

Sincerely,



Walter M. Shaub, Jr.  
Director

Enclosure

cc: The Honorable Gerald E. Connolly  
Ranking Member  
Subcommittee on Government Operations  
Committee on Oversight and Government Reform  
United States House of Representatives  
2471 Rayburn House Office Building  
Washington, DC 20515

**Questions for The Honorable Walter M. Shaub, Jr.**  
Director  
U.S. Office of Government Ethics

**Questions from Chairman Mark Meadows**  
Subcommittee on Government Operations

Hearing: "Merit System Protection Board, Office of Government  
Ethics, and Office of Special Counsel Reauthorization"

**RESPONSE TO QUESTION 1**

1. When it passed the Ethics in Government Act of 1978, Congress gave the Director of the Office of Government Ethics responsibility for "monitoring and investigating compliance with the public financial disclosure requirements of title II of this Act by officers and employees of the executive branch and executive agency officials responsible for receiving, reviewing, and making available financial statements filed pursuant to such title" (5 U.S.C. app. § 402(b)(3)). The Director is also tasked with "monitoring and investigating individual and agency compliance with any additional financial reporting and internal review requirements established by law for the executive branch" (5 U.S.C. app. § 402(b)(5)). What does OGE do to investigate such compliance?

As the supervising ethics office for the executive branch, the U.S. Office of Government Ethics (OGE) works with the Designated Agency Ethics Official (DAEO) of each of the more than 130 agencies to ensure that public financial disclosure requirements of the Ethics in Government Act (Act) are uniformly implemented across the executive branch, as required by 5 U.S.C. app. § 402(b)(3). OGE also works with the DAEO of each agency to ensure that the requirements of the supplemental confidential financial disclosure reporting system, established pursuant to 5 U.S.C. app. § 107, are uniformly implemented in accordance with 5 U.S.C. app. § 402(b)(5). With regard to the highest level of filers, the process involves direct review of all reports by OGE. With regard to other filers, the process involves direct review by agency ethics officials of the more than 400,000 public and confidential reports filed in the executive branch each year and programmatic monitoring through OGE's program reviews of agency ethics programs. As discussed in more detail below, OGE's program reviews include examination of a sampling of financial disclosure reports for compliance with the requirements, and OGE posts the program review reports on its website.

For the highest level of filers, whose official duties implicate the greatest potential risk for the ethics program, OGE requires that agencies submit, at the beginning of the filing cycle each year, updated lists identifying every Presidentially-appointed, Senate-confirmed public



financial disclosure filer and DAEO whose report is subject to certification by OGE.<sup>1</sup> Given the challenges of tracking personnel in over 130 agencies across the executive branch, these lists support OGE's efforts to ensure that agencies collect annual financial disclosure reports from all of these filers and transmit them in a timely manner to OGE. OGE uses the updated lists to track the agencies' collection and processing of the financial disclosure reports of these filers.<sup>2</sup> If a delay is the result of a filer's failure to file a financial disclosure report, disciplinary or civil penalties can be imposed. The Act expressly indicates that authority to take disciplinary action rests with the head of each agency or, in the case of Presidential appointees, the President.<sup>3</sup> Authority to seek civil and criminal penalties for willful failure to file rests with the Department of Justice.<sup>4</sup>

OGE's review of an individual financial disclosure report is a two-stage process. Each report is reviewed first by a staff-level reviewer and then by a supervisor. In analyzing these financial disclosure reports, both agency and OGE reviewers are required to use the procedures and review standard set forth in § 106 of the Act.<sup>5</sup> Under that section, a reviewer is required make all determinations "on the basis of information contained in such report."<sup>6</sup> Congress specifically considered and rejected alternate provisions that would have authorized OGE and the Comptroller General to audit a limited number of reports.<sup>7</sup> Therefore, the 24-year old regulation implementing the Act incorporates this standard, providing that, "The reviewing official need not audit the report to ascertain whether the disclosures are correct. Disclosures shall be taken at 'face value' as correct, unless there is a patent omission or ambiguity or the official has independent knowledge of matters outside the report."<sup>8</sup> Accordingly, OGE and agency ethics officials do not audit the reports under this longstanding standard. Nonetheless, the reviews of these financial disclosure reports often involve multiple exchanges between filers and reviewers.

---

<sup>1</sup> See U.S. OFFICE OF GOV'T ETHICS, PA-15-03: DEADLINES AND PROCEDURES FOR ANNUAL PUBLIC FINANCIAL DISCLOSURE REPORTS REQUIRED TO BE FILED WITH THE U.S. OFFICE OF GOVERNMENT ETHICS (2015).

<sup>2</sup> See *id.*

<sup>3</sup> 5 U.S.C. app. § 104(c).

<sup>4</sup> 5 U.S.C. app. § 104(a).

<sup>5</sup> 5 U.S.C. app. § 106; see also 5 U.S.C. app. § 402(f)(2)(B)(iv) (reiterating that OGE is to use the procedures contained in 5 U.S.C. app. § 106, as opposed other procedures, for investigating financial disclosure reports and ordering corrective action on the basis of information submitted in such reports); 5 C.F.R. §§ 2638.504(a), 2638.505(a). OGE and agency ethics officials apply these review procedures in connection with both public and confidential reports. See 5 C.F.R. §§ 2634.605, 2634.909.

<sup>6</sup> 5 U.S.C. app. § 106(b)(2).

<sup>7</sup> The Act's review standard establishes that determinations as to compliance with the law are to be based on the information submitted by the filer in the financial disclosure report. 5 U.S.C. app. § 106. Earlier proposals that would have required auditing of the data and documentation supporting the financial information presented in the financial disclosure reports were rejected. See, e.g., Financial Disclosure Act, H.R. 9, 95th Cong. § 7(f) (1977) (rejected provision requiring the Comptroller General to randomly audit 5% of public financial disclosure reports each year, to audit at least one report of the President and Vice President per term, and to audit at least one report of each Member of the House and the Senate every six years); Ethics in Government Act of 1977, H.R. 6954, 95th Cong. § 201(a) (as reported by the H. Comm. on Post Office and Civil Service, September 28, 1977) (rejected provision that would have required OGE to randomly audit public financial disclosure reports); Watergate Reorganization and Reform Act of 1976, S. 495, 94th Cong. § 306(f) (as reported by the S. Comm. on the Judiciary, June 15, 1976).

<sup>8</sup> 5 C.F.R. § 2634.605(b)(2).

When OGE needs additional information or has a question about the conflicts of interest analysis, OGE contacts the ethics office for the employing agency. OGE has advised agencies that, "Agency ethics officials are required to respond to requests from OGE for additional information regarding these reports as soon as practicable but not later than 30 days after the request."<sup>9</sup> After reviewing the requested information, the OGE reviewer may direct the agency reviewer to work with the filer to make appropriate corrections to the financial disclosure report. In most cases, the correction of the report resolves the issue and no further action is required.<sup>10</sup>

If, however, the OGE reviewer is of the opinion, on the basis of the information in the financial disclosure report, that further action is needed in order to comply with applicable laws and regulations, the OGE reviewer will notify the filer, through the agency. In that event, the OGE reviewer will identify the corrective actions that the filer can take to comply.<sup>11</sup> These include such actions as recusal, reassignment, and divestiture.<sup>12</sup> If the filer fails to take such actions, the filer's failure is to be referred to the appropriate authority for action. In the case of Presidentially-appointed, Senate-confirmed appointees, that authority is the President; for other employees, that authority is the head of the employee's agency.<sup>13</sup> If a filer, including a Senate-confirmed appointee, misses a filing deadline the agency is authorized to impose a \$200 late fee,<sup>14</sup> and if the filer willfully fails to file a financial disclosure report the Department of Justice can seek civil or criminal penalties.<sup>15</sup>

In addition, if information contained in a financial disclosure report indicates a possible violation of conflicts of interest laws or that a filer has falsified a financial disclosure report, the filer may face criminal prosecution, civil penalties, or disciplinary action.<sup>16</sup> Investigations of such issues are generally conducted by the 14,000-member Inspector General community, and OGE can request that Inspectors General conduct investigations when necessary.<sup>17</sup> OGE is statutorily prohibited from making any finding that any criminal law has been violated.<sup>18</sup> If OGE or an agency has "reasonable cause to believe" that a filer has "willfully falsified or willfully failed to file information required to be reported" on a public financial disclosure report, OGE or the agency is required to refer the matter to the Attorney General.<sup>19</sup> The same requirement

---

<sup>9</sup> U.S. OFFICE OF GOV'T ETHICS, PA-15-03: DEADLINES AND PROCEDURES FOR ANNUAL PUBLIC FINANCIAL DISCLOSURE REPORTS REQUIRED TO BE FILED WITH THE U.S. OFFICE OF GOVERNMENT ETHICS (2015).

<sup>10</sup> This practice is consistent with the practice of the House of Representatives Committee on Ethics, which is subject to the same review standard at 5 U.S.C. app. § 106, with regard to Members of Congress. HOUSE COMM. ON ETHICS, IN THE MATTER OF ALLEGATIONS RELATING TO REPRESENTATIVE VERNON G. BUCHANAN, H.R. REP. NO. 112-588, at 5 (2012) ("[E]rrors and omissions in Financial Disclosure Statements are an ordinary part of the process for many filers, and in the normal course of review and amendment of Financial Disclosure Statements, the fact of errors and omissions are typically not the subject of an investigation or Report by the Committee, but rather are disclosed publicly by the filing of the amendment itself.").

<sup>11</sup> 5 U.S.C. app. § 106(b)(3).

<sup>12</sup> *Id.*

<sup>13</sup> 5 U.S.C. app. § 106(b)(4)-(5).

<sup>14</sup> 5 U.S.C. app. § 104(d).

<sup>15</sup> 5 U.S.C. app. § 104(a).

<sup>16</sup> *See, e.g.*, 18 U.S.C. § 216; 5 U.S.C. app. §§ 104, 504; 5 U.S.C. § 7513.

<sup>17</sup> *See* 5 U.S.C. app. §§ 4(a)(1), 403(a).

<sup>18</sup> 5 U.S.C. app. § 402(f)(5).

<sup>19</sup> 5 U.S.C. app. § 104(b).



applies in the case of apparent violations of criminal conflict of interest laws.<sup>20</sup> The Department of Justice has authority to seek criminal<sup>21</sup> or civil penalties<sup>22</sup> for willfully submitting false information in a financial disclosure report. OGE's recent prosecution surveys highlight some of the Department of Justice's work in this area.<sup>23</sup>

Following the close of the calendar year, OGE issues a letter directly to the head of each agency, with a copy to the agency's DAEO, regarding OGE's review of the annual financial disclosure reports of the highest level of financial disclosure filers. In the letter, OGE identifies by name any filer whose report has not received certification by OGE and indicates whether certification has been denied because the report has not been received, whether additional information needed for certification has not been received, and whether the filer's report was not compliant with applicable requirements.<sup>24</sup>

With regard to employees at other levels in the executive branch, the public and confidential financial disclosure reports are reviewed by the ethics office for the employing agency. Counting both public and confidential financial disclosure reports, the executive branch collects over 400,000 reports each year. OGE has instituted a programmatic approach to monitoring and investigating compliance with regard to this massive annual undertaking. Accordingly, OGE focuses on agencies' programs for collecting and reviewing these 400,000 financial disclosure reports. OGE has directed each DAEO in the executive branch to establish "[a]n effective system and procedure for the collection, filing, review, and, when applicable, public inspection of the financial disclosure reports."<sup>25</sup> To this end, OGE has required that DAEOs ensure that "[a]ll financial disclosure reports submitted by employees ... are properly maintained and effectively and consistently reviewed for conformance with all applicable laws and statutes."<sup>26</sup> The review of these financial disclosure reports by agency ethics officials are subject to the same review requirements described above with regard to the reports of the highest level of filers whose reports are transmitted to OGE for certification. In addition, the same potential exists in individual cases for involvement of Inspectors General and for disciplinary,

---

<sup>20</sup> 28 U.S.C. § 535.

<sup>21</sup> See, e.g., 5 U.S.C. app. § 104(a)(2), 18 U.S.C. §§ 1001, 1018.

<sup>22</sup> 5 U.S.C. app. § 104(a)(1).

<sup>23</sup> For example, the Department of Justice reported 10 criminal prosecutions involving false statements or omissions in financial disclosure reports in five of OGE's recent prosecution surveys. See U.S. OFFICE OF GOV'T ETHICS, LA-15-10: 2014 CONFLICT OF INTEREST PROSECUTION SURVEY (*United States v. Kenneth H. Nix and Velma Salinas-Nix*); U.S. OFFICE OF GOV'T ETHICS, LA-13-12: 2012 CONFLICT OF INTEREST PROSECUTION SURVEY (2013) (*United States v. Shih Chi Liu*; *United States v. Cheng Yi Liang*); U.S. OFFICE OF GOV'T ETHICS, LA-12-06: 2011 CONFLICT OF INTEREST PROSECUTION SURVEY (2012) (*United States v. Jeffrey Williams*; *United States v. Robert Barry Adcock*); U.S. OFFICE OF GOV'T ETHICS, LA-11-08: 2010 CONFLICT OF INTEREST PROSECUTION SURVEY (2011) (*United States v. Martin Lieb*; *United States v. Joseph McCloskey*; *United States v. Frank Davis*); U.S. OFFICE OF GOV'T ETHICS, DO-09-029: 2008 CONFLICT OF INTEREST PROSECUTION SURVEY (2009) (*United States v. Hardrick Crawford, Jr.*; *United States v. Jack W. Snyder*).

<sup>24</sup> For the calendar year 2015 filing cycle, all agencies have successfully completed the review process as to filers requiring OGE certification.

<sup>25</sup> 5 C.F.R. § 2638.203(b)(2).

<sup>26</sup> 5 C.F.R. § 2638.203(b)(4).

civil, and criminal penalties in connection with false filings or with conflicts of interest identified through the review of financial disclosure reports.<sup>27</sup>

OGE monitors agencies' compliance with these requirements through program reviews conducted by OGE's Compliance Division.<sup>28</sup> These reviews involve the collection and analysis of agency documentation, onsite fieldwork, interviews with ethics officials and agency staff, and examination of agency training, advice and counsel, and tracking systems. During these program reviews, OGE also examines a sampling of financial disclosure reports for compliance with the requirements. At the close of a program review, OGE's Compliance Division issues a report detailing its findings and, when appropriate, making specific recommendations for improvement. When the report includes recommendations, OGE conducts a follow-up program review, usually six months after the initial program review, to assess the agency's progress. OGE posts its program review reports, including its follow-up program review reports, on its website.

In addition, OGE issues its Annual Agency Ethics Program Questionnaire each year to collect a comprehensive report from each agency regarding its ethics program. The questionnaire gathers information about a range of program activities, including the agency's financial disclosure operations. OGE analyzes this information for trends, and seeks follow-up information from agencies when there are significant year-to-year statistical discrepancies in information provided by the agency. OGE's Compliance Division also reviews this information in connection with its program review activities, using the data either to select agencies for program reviews or to develop the program review strategy for individual agencies already selected for review. OGE's current policy is to post the agencies' responses to the questionnaire on its website.

## **RESPONSE TO QUESTIONS 2 & 10, QUESTIONS 3 & 11, QUESTIONS 4 & 12, AND QUESTION 5<sup>29</sup>**

2. How does OGE confirm that commitments are made to resolve any potential conflicts of interest?

(corresponding question) 10. What is OGE's role with developing and monitoring ethics agreements for current and former executive branch leaders who have been appointed by the President and confirmed by the Senate?

3. What does OGE do to follow up to ensure that such commitments are timely met and appropriately resolved?

---

<sup>27</sup> See, e.g., 5 U.S.C. § 7513; 5 U.S.C. app. §§ 4(a)(1), 104, 402(f)(5), 403(a), 504; 18 U.S.C. §§ 208, 216, 1001, 1018; 28 U.S.C. § 535.

<sup>28</sup> A list of criteria used by OGE to determine whether an agency has complied with the requirements of having an effective system for public and confidential financial disclosure can be found on OGE's website. *Ethics Program Review Guidelines*, U.S. OFF. GOV'T ETHICS, <http://www.oge.gov/Program-Management/Program-Review/Ethics-Program-Review-Guidelines> (last visited Jan. 25, 2016).

<sup>29</sup> Because Questions 2, 3, and 4 overlap with Questions 10, 11, and 12, respectively, the responses to all of these questions, as well as the response to related Question 5, are combined here.

(corresponding question) 11. How does OGE ensure continued compliance with ethics agreements?

4. What, if any, enforcement authority does OGE have to ensure compliance in this area?

(corresponding question) 12. What oversight and enforcement authority does OGE have over ethics agreements?

5. If OGE does not have enforcement authority to ensure compliance, who has that responsibility?

As part of the financial disclosure review process for all Presidentially-appointed, Senate-confirmed (PAS) nominees whose reports are subject to certification by OGE, OGE and the agency perform a comprehensive conflicts analysis of the PAS nominee's financial interests. The analysis focuses on 18 U.S.C. § 208 and other applicable legal authorities, such as 18 U.S.C. §§ 203, 205 & 209; 5 C.F.R. §§ 2635.502, 2635.503, 2635.807, 2636.305 & 2636.306; Executive Order 12674, § 102 (1989), as amended by Executive Order 12731 (1990); and Executive Order 13490 (2009).

Based on that analysis, an ethics agreement, which prescribes the steps that will be taken by the PAS nominee to resolve any conflicts of interest, is developed as a joint product of the agency and OGE. OGE provides expert guidance and model language, and determines whether the commitments outlined in the ethics agreement are sufficient to ensure compliance with applicable laws and regulations. The PAS nominee must agree to comply with all terms specified in the ethics agreement for the duration of the appointment to the position to which he or she is nominated. OGE's approval of the actions specified in the ethics agreement is a precondition for certification of the PAS nominee's financial disclosure report, which has to occur before OGE forwards the certified report and ethics agreement to the Senate.

OGE conducts follow-up to ensure that PAS appointees timely comply with the ethics agreements they signed as PAS nominees. To facilitate this follow-up, OGE tracks the Senate confirmation dates of PAS nominees. Unless a date for compliance is indicated in the ethics agreement, the individual must comply within three months of confirmation with commitments specified in the ethics agreement.<sup>30</sup> Extensions for compliance with any element of an ethics agreement can be granted in cases of unusual hardship.<sup>31</sup>

Upon confirmation, OGE sends a notice to ethics officials at the employing agency reminding them of the importance of working with the individual to ensure compliance with the ethics agreement by applicable deadlines. OGE sends additional notices to the ethics officials throughout the 90-day compliance period until OGE has been notified that the PAS appointee has provided agency ethics officials with evidence of compliance with commitments in the ethics

---

<sup>30</sup> 5 C.F.R. § 2634.802(b).

<sup>31</sup> *Id.*



agreement. Agency ethics officials notify OGE of any issues that may delay full compliance, in which case OGE staff and agency ethics officials coordinate either to ensure timely compliance by the PAS appointee or, if appropriate, grant an extension. After a PAS appointee has complied with the ethics agreement, OGE continues to monitor the appointee's subsequent public financial disclosure reports to ensure that the appointee continues to comply with the ethics agreement.

OGE's monitoring of ethics agreement commitments is grounded in the understanding that the ethics agreement is a prophylactic measure designed to avoid potential conflicts of interest and to ensure compliance with specific legal authorities. Because the primary risk presented by noncompliance with an ethics agreement is that an employee could violate conflicts of interest laws, OGE insists that agencies require PAS appointees to comply with ethics agreements. If a PAS appointee fails to comply with an ethics agreement and the noncompliance were to result in a violation of the conflicts of interest laws, OGE would refer the matter to an appropriate Inspector General for possible investigation or to the Department of Justice for possible criminal or civil prosecution based on the violation. Irrespective of whether or not the noncompliance were to result in violation of the conflicts of interest laws, OGE would require the agency to ensure compliance with the ethics agreement. Agency ethics officials are not authorized to modify these ethics agreements without OGE's approval. If a PAS appointee were to decline to comply with an ethics agreement, OGE would escalate the matter to the agency head and, if necessary, the White House.<sup>32</sup> If a regulation were violated as a result of the noncompliance, OGE would also request information regarding any follow-up action, such as an order from the agency head compelling compliance or removal of the PAS appointee from government service. Note, however, that the United States Constitution limits authority to remove a Senate-confirmed Presidential appointee to the President under Article II, Section 2, clause 2.

The ethics agreement covers the entire period of appointment to the particular position. When a PAS appointee leaves government service and becomes a private citizen, the PAS appointee is subject to post-employment restrictions, pursuant to 18 U.S.C. § 207. Agency ethics officials provide guidance to former PAS appointees concerning their post-employment activities. However, enforcement of 18 U.S.C. § 207, which is a criminal statute, is within the purview of the U.S. Department of Justice, which has the authority to prosecute private citizens.

With regard to the millions of non-PAS employees, the decentralized executive branch ethics program assigns each agency's DAEO responsibility for reviewing financial disclosure reports, identifying potential conflicts of interest, and addressing those potential conflicts. As discussed in response to Question 1, OGE monitors the processes put in place by the DAEOs through its reviews of agency ethics programs. As part of the program review process, OGE examines both an agency's financial disclosure program and a sampling of financial disclosure reports. In addition, OGE examines whether agency ethics officials provide employees guidance with regard to conflicts of interest and implement remedies to address them. If OGE identifies issues in the course of a program review, OGE will make recommendations in its program

---

<sup>32</sup> OGE has not generally had to take such action to obtain a PAS appointee's compliance. Early in OGE's history, a compliance question involving the ethics agreement of a cabinet official was escalated to an independent counsel when it could not be resolved informally. See OGE Informal Advisory Opinion 88 x 13 (1988).



review report and will conduct a follow-up program review to assess the agency's remediation of the issues. OGE posts its program review reports, including its follow-up program review reports, on its website.

## RESPONSE TO QUESTION 6

6. Congress gave OGE the responsibility for "ordering corrective action of the part of agencies and employees which the Director deems necessary" (5 U.S.C. app. § 402(b)(9)), as well as various authorities to execute that responsibility (5 U.S.C. app. § 402(f)). Please provide a list of all instances since OGE's creation in which OGE has:

- a. Ordered corrective action pursuant to 5 U.S.C. app. § 402(b)(9);
- b. Submitted a notification to the President and the Congress, pursuant to 5 U.S.C. app. § 402(f)(1)(B), of agency noncompliance;
- c. Recommended an investigation pursuant to 5 U.S.C. app. § 402(f)(2)(A)(ii)(I);
- d. Recommended disciplinary action pursuant to 5 U.S.C. app. § 402(f)(2)(A)(ii)(I);
- e. Submitted a notification to the President pursuant to 5 U.S.C. app. § 402(f)(2)(A)(ii)(II);
- f. Submitted a notification to an agency head pursuant to 5 U.S.C. app. § 402(f)(2)(A)(iii)(II);
- g. Submitted a notification to the President pursuant to 5 U.S.C. app. § 402(f)(2)(A)(iv)(II); and
- h. Conducted an investigation pursuant to 5 U.S.C. app. § 402(f)(2)(B)(i).

With regard to individual employees, the formal procedures in § 402(f) are inapplicable to any matters involving either conflicts of interest provisions, which are criminal in nature, or financial disclosure provisions, which are addressed solely under § 106 of the Act.<sup>33</sup> As for other types of matters not involving conflicts of interest or financial disclosure, OGE has not needed to invoke formal procedures for corrective action against an individual employee. OGE has found that direct communication with agency officials, including the Designated Agency Ethics Officials and agency Inspectors General, has been effective and a more efficient approach for obtaining action by agencies to remediate issues that arise. The approach of using direct communication with relevant officials produces quicker results than invoking the formal procedures would permit. In addition, invoking those procedures would have unnecessarily increased the transaction costs in obtaining compliance, due to the time and resources that OGE and the agency would have had to devote to the formal steps outlined in the statute and its implementing regulation.

In addition to OGE's direct communication with agency officials, two other processes have proven highly effective. First, with regard to high level officials, the process at § 106 of the

---

<sup>33</sup> 5 U.S.C. app. § 402(f)(2)(B)(iv), (f)(5).

Act has been effective in resolving potential conflicts of interest. In the PAS nominee program in particular, OGE has leveraged its authority to certify financial disclosure reports as a means to require individuals to enter into ethics agreements containing commitments to eliminate conflicts of interest. The prospect that OGE would not certify a nominee's report that reveals an unresolved conflict is sufficient to induce ethics officials to obtain the necessary information and commitments from filers to resolve conflicts of interest. OGE then monitors compliance with the ethics agreements and reviews subsequent annual financial disclosure reports for continued compliance. Second, the more than 4,500 professional ethics officials embedded in agencies, who are generally closer to factual information than OGE, are able to work within their agencies to address issues as they arise. Agency ethics officials also communicate directly with Inspectors General, who have a combined staff of approximately 14,000 employees across the executive branch, and with agency managers, who have authority to take disciplinary actions, in connection with matters arising at their agencies. OGE supports these agency ethics officials through training and access to OGE desk officers.

At the agency program level, the practice has been much the same as for individual employees. OGE has invoked formal procedures, rather than using the traditional approach of direct communication with agency officials, on only a few occasions in its 38-year history: (1) OGE issued a notice of deficiency in 1991 after a program review of the U.S. Agency for International Development and escalated the matter to the agency head in 1992 when remedial action remained incomplete, but OGE closed the matter in 1993 when the agency completed remediation; (2) OGE issued a similar notice in 1994 after a program review of the National Credit Union Administration but closed the matter that same year when the agency completed remediation; (3) OGE issued a notice in 1997 after a program review of the Small Business Administration (SBA) but closed the matter four months later when the agency completed remediation; (4) OGE issued another notice to SBA after a program review in 2003 but closed the matter in 2004 when the agency completed remediation; (5) OGE issued a notice in 1996 after a program review of the U.S. Commission on Civil Rights but closed the matter in 1997 when the agency completed remediation; (6) OGE issued a notice in 1997 after a program review of the Advisory Council on Historic Preservation but closed the matter in 1998 because the agency's written response resolved the concern; (7) OGE issued a notice in 1997 after a program review of the Council of Economic Advisers but closed the matter a month later because the agency's written response resolved the concern; (8) OGE issued a notice in 1997 after a program review of the Department of the Interior but closed the matter in 1998 when the agency completed remediation; (9) OGE issued a notice in 1997 after a program review of the Department of Agriculture and closed the matter in 2000 when the agency remediated identified issues but issued another notice in 2002, as a result of another program review, and closed the matter again in 2004 when the agency completed remediation; and (10) OGE issued a notice in 1999 after a program review of the National Transportation Safety Board but closed the matter in 2001 when the agency completed remediation.

In each of those instances, the matter did not proceed beyond the preliminary phases because OGE found that either the agency's written response resolved the concern or the agency completed its remediation of the deficiencies. Each of those matters arose as the result of the findings of OGE's routine program reviews, yet OGE's invocation of formal procedures triggered additional steps that OGE had to take before it could obtain satisfactory outcomes. For



this reason, OGE has generally found that these formal procedures are less efficient than its traditional approach of escalating the matter through direct communication with the agency in order to correct program deficiencies. OGE's program reviews generally achieve the same outcomes, without triggering the additional steps. In fact, OGE has recently refined its processes for conducting program reviews, making recommendations, and conducting follow-up program reviews to evaluate agencies' correction of deficiencies. In contrast to the formal procedures, these refined measures have produced needed changes more quickly and have conserved taxpayer resources.

When OGE identifies program deficiencies through its program reviews, OGE issues recommendations directing the agency to take action to address the deficiencies and bring its ethics program into compliance with applicable laws and regulations. OGE has issued thousands of recommendations and, with few exceptions, has been able to document that agencies have taken appropriate action to address the underlying deficiencies. By way of example, OGE issued 122 recommendations in fiscal year 2015. Within that same fiscal year, better than 89% of those recommendations were successfully closed, and OGE is continuing to coordinate with agencies on the remaining recommendations. In comparison, during recent Congressional testimony the Comptroller General stated that approximately 80% of recommendations issued by the General Accountability Office are closed four years after issuance.<sup>34</sup>

## RESPONSE TO QUESTION 7

7. Congress also gave OGE the responsibility for "requiring such reports from executive agencies as the Director deems necessary" (5 U.S.C. app. § 402(b)(10)). Please provide a list of all such reports the Director has required since OGE's creation.

As the supervising office for the executive branch ethics program, OGE obtains information from agencies in a variety of ways. For example, OGE collects information and documents from individual agencies in connection with its reviews of agency ethics programs. Reporting requirements over the years have included other one-time requests for particular types of information directly related to specific program operations, such as data calls regarding government ethics training needs and the information technology used by agency ethics programs.

Based on its years of experience overseeing the executive branch ethics program, OGE has consolidated much of the data it collects each year into a comprehensive Annual Agency Ethics Program Questionnaire. Authority to conduct this consolidated data collection was made expressly available to OGE by the enactment of 5 U.S.C. app. § 402(e), which was added to the Ethics in Government Act as part of OGE's reauthorization in 1988.<sup>35</sup> OGE transmits this

<sup>34</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-16-272T, GOVERNMENT EFFICIENCY AND EFFECTIVENESS: IMPLEMENTING GAO RECOMMENDATIONS CAN ACHIEVE FINANCIAL BENEFITS AND STRENGTHEN GOVERNMENT PERFORMANCE 2, tbl. 1 (statement of Gene L. Dodaro, Comptroller General of the United States, before the Subcomm. on Regulatory Affairs and Federal Management of the S. Comm. on Homeland Security and Governmental Affairs).

<sup>35</sup> Act of Nov. 3, 1988, Pub. L. No. 100-598, § 6, 102 Stat. 3031, 3032.

questionnaire to agencies in January every year. Agency responses to the questionnaire give OGE an understanding of each agency's individual ethics program, while the compiled data provides OGE with an overview of the entire executive branch ethics program. Typically, the questionnaire requires agencies to submit information about how they administer the elements of their ethics programs, as well as to provide data demonstrating compliance with regulatory training and financial disclosure requirements. In its current form, the questionnaire directs agencies to provide information on the following topics: (1) Organizational Structure; (2) Program Administration; (3) Education and Training; (4) Advice and Counseling; (5) Public Financial Disclosure; (6) Confidential Financial Disclosure; (7) Remedies and Enforcement of Standards of Conduct, Criminal, and Civil Statutes; and (8) Advisory Committees and Special Government Employees. Agency questionnaire responses are due to OGE in February each year, and OGE staff review the data collected. Recognizing the value of this material to a wider audience, in 2014, OGE published on its website a summary of aggregate data from the agencies' responses. In 2015, OGE also began posting all of the raw data from agency responses in order to be even more transparent.

Outside of the questionnaire, OGE conducts certain other annual data collections. These include: a collection from agencies of lists of employees occupying certain categories of positions for financial disclosure purposes; a collection of agency component designations for purposes of applying post-employment restrictions; a survey of all U.S. Attorney offices and other offices in the Department of Justice regarding prosecutions related to conflicts of interest laws; and a survey of ethics officials to collect information from OGE's "customers" about the services OGE provides.

OGE has also made information requests pursuant to specific legal authorities, such as a request for information pursuant to the Presidential Transition Act of 2000, which required OGE to conduct a study and submit a report on improvements to the financial disclosure process for Presidential nominees. Examples of other categories of information or reports that OGE requires on an ongoing basis under other legal authorities include: the Annual Ethics Pledge Survey, which provides information about agency compliance with the President's Executive Order on Ethics (Executive Order 13490); the OGE Form 202, which, pursuant to 5 U.S.C. app. § 402(e)(2), collects information regarding referrals to the Department of Justice related to violations of conflicts of interest laws; and the OGE Form 1353 which, pursuant to 31 U.S.C. § 1353(d)(1), collects information from agencies twice per year regarding payments for travel, subsistence, and related expenses received from non-Federal sources in connection with the attendance of employees at certain meetings or similar functions.

## **RESPONSE TO QUESTIONS 8 AND 9**

8. If OGE does not believe factual assertions made in a Presidential candidate's financial disclosure paperwork, who in the federal government would have responsibility for making a factual determination?

9. Who in the federal government has enforcement authority to ensure that Presidential candidates comply with financial disclosure requirements?

Under the Ethics in Government Act, Presidential candidates file their financial disclosure reports with the Federal Election Commission (FEC).<sup>36</sup> The FEC has responsibility for collecting late filing fees in the event that candidates miss the applicable deadlines for filing their financial disclosure reports.<sup>37</sup> If a candidate willfully fails to file a financial disclosure report, the FEC is required to refer the candidate to the Attorney General, who has authority to seek civil penalties for failure to file.<sup>38</sup>

After reviewing and certifying a financial disclosure report, the FEC forwards the report to OGE for additional review.<sup>39</sup> The Ethics in Government Act requires OGE to make a certification determination on the basis of information contained in the report.<sup>40</sup> In reviewing the report, OGE communicates with the candidate's representative to answer any questions that may arise in the course of the review of the report.<sup>41</sup> As part of this process, the candidate's representative ensures that the candidate amends the report as needed to reflect the correct information.

Willfully making a false factual assertion in the financial disclosure report would implicate criminal law,<sup>42</sup> and OGE is statutorily precluded from making a finding that a criminal law has been violated.<sup>43</sup> Therefore, OGE may not make a factual determination that a filer has willfully made false factual assertions in a financial disclosure report. If reasonable cause exists to believe that a candidate has willfully made false factual assertions, however, the Ethics in Government Act provides for referral of the candidate to the Attorney General.<sup>44</sup> In cases of inadvertent errors, OGE will usually work with a candidate to ensure that the report is amended to reflect the correct information.<sup>45</sup>

---

<sup>36</sup> 5 U.S.C. app. § 103(e).

<sup>37</sup> 5 C.F.R. § 2634.704(c).

<sup>38</sup> 5 U.S.C. app. § 104(b).

<sup>39</sup> 5 U.S.C. app. § 103(c).

<sup>40</sup> 5 U.S.C. app. § 106(b)(1).

<sup>41</sup> See 5 U.S.C. app. § 106(b)(2).

<sup>42</sup> See, e.g., 5 U.S.C. app. § 104; 18 U.S.C. §§ 1001, 1018.

<sup>43</sup> 5 U.S.C. app. § 402(f)(5).

<sup>44</sup> 5 U.S.C. app. § 104(b).

<sup>45</sup> In this regard, it is notable that the House of Representatives Committee on Ethics, which is subject to the same review standard at 5 U.S.C. app. § 106 and the same requirement of referral to the Attorney General at 5 U.S.C. app. § 104(b), has explained that, in the vast majority of cases, appropriate action is limited to requiring a filer to correct an incorrect financial disclosure report:

[L]ess substantial errors and omissions on Financial Disclosure Statements are not uncommon. In fact, between 30% and 50% of all Financial Disclosure Statements reviewed by the Committee each year contain errors or require a corrected statement. For over 95% of these inaccurate Financial Disclosure Statements, the filer appears to be unaware of the errors until they are notified by the Committee. Some filers also appear to become aware of errors after being notified by members of the media or outside groups who review the statements and other public records. Generally, unless there is some evidence that errors or omissions are knowing or willful, or appear to be significantly related to other potential violations, the Committee notifies the filer of the error



## RESPONSE TO QUESTIONS 10, 11, AND 12

This response has been combined with the response to Questions 2, 3, 4, and 5, as discussed above.<sup>46</sup>

## RESPONSE TO QUESTION 13

13. In the context of honoraria disclosure, you stated in your testimony that the Ethics in Government Act is “not the statute that I would have written, as evidenced by the fact that OGE has a confidential financial disclosure system where Congress left us the ability to write our own rules.” What changes would you recommend to the statute?

If Congress were to focus on revising the disclosure requirements for honoraria, I would consider recommending expansion of the reporting requirements of 5 U.S.C. app. § 102(a)(6)(B). That section currently requires disclosure of the source of any payments during the reporting period that exceed \$5,000 in a calendar year for a filer’s services. This reporting requirement, which applies to honoraria and other types of payments, applies without regard to whether the payment is made to the filer or another, and it applies whether or not the filer is acting in a personal capacity. Under the Ethics in Government Act, however, this requirement applies only to filers who are new entrants (*i.e.*, new hires) or nominees—it does not apply to filers who are current employees filing annual reports, former employees filing termination reports, elected officials (*i.e.*, the President, the Vice President, and Members of Congress), or candidates. I would consider recommending the extension of this requirement to all of the excluded filers in the executive and legislative branches with regard to both honoraria and other types of payments.

It also bears noting that two independent organizations have recently issued recommendations for changes to the financial disclosure system for executive branch employees. In March 2013, the National Academy of Public Administration (NAPA) conducted a congressionally mandated and funded study of financial disclosure issues related to the STOCK Act, and the report of that study makes several general recommendations related to tailoring public financial disclosure requirements in the executive branch to correspond with information

---

and requires that he or she submit an amendment, which is then publicly filed. Once the amendment is properly submitted, the Committee takes no further action. Accordingly, errors and omissions in Financial Disclosure Statements are an ordinary part of the process for many filers, and in the normal course of review and amendment of Financial Disclosure Statements, the fact of errors and omissions are typically not the subject of an investigation or Report by the Committee, but rather are disclosed publicly by the filing of the amendment itself.

HOUSE COMM. ON ETHICS, IN THE MATTER OF ALLEGATIONS RELATING TO REPRESENTATIVE VERNON G. BUCHANAN, H.R. REP. NO. 112-588, at 5 (2012).

<sup>46</sup> Because questions 2, 3, and 4 overlap with questions 10, 11, and 12, respectively, the responses to all of these questions are combined in the earlier section above.

needed to perform conflicts of interest analysis.<sup>47</sup> Without taking a position on them, NAPA's report also includes a list of specific recommendations for improving public financial disclosure requirements in the executive branch.<sup>48</sup> In another congressionally mandated study, the Working Group on Streamlining Paperwork for Executive Nominations, on which I served as a member, made a number of similar recommendations concerning the public financial disclosure system.<sup>49</sup> Should the subcommittee wish to consider these recommendations, OGE would be available to provide technical assistance at the subcommittee's request.

## **RESPONSE TO QUESTIONS 14 AND 15**

14. What do you do to ensure that each federal agency has a Designated Ethics Official?

15. What do you do to ensure that such ethics officers dedicate the proper amount of time to ethics work?

OGE desk officers provide agencies with a dedicated point of contact for overall ethics program support, including issues such as vacancies to key ethics program positions and access to program resources. Agency interaction with OGE desk officers allows OGE to assist agencies in transitional situations when a Designated Agency Ethics Official (DAEO) position becomes vacant. Desk officers also review and follow-up on agencies' responses to the Annual Agency Ethics Program Questionnaire that identify any vacant DAEO positions. In addition, OGE program review staff review formal DAEO designation letters during ethics program reviews to ensure these positions are staffed and the designations are current. To provide additional coverage, OGE also works with agencies to appoint Alternate DAEOs (ADAEOs).

With regard to program resources, OGE desk officers also review and follow-up on agency questionnaire responses that identify the percentage of time the DAEO and ADAEO of an agency dedicate to ethics-related work. In addition, OGE program reviews generate objective ethics program performance results, which can expose situations where sufficient time does not appear to be dedicated to ethics work and result in recommendations for improvement.

## **RESPONSE TO QUESTIONS 16, 17, 18, AND 19**

16. What is OGE's process for conducting plenary reviews and inspections of agency ethics programs?

17. How often does OGE review an agency's program, and how are recommendations resolved?

---

<sup>47</sup> NAT'L ACAD. OF PUB. ADMIN., *THE STOCK ACT: AN INDEPENDENT REVIEW OF THE IMPACT OF PROVIDING PERSONALLY IDENTIFIABLE FINANCIAL INFORMATION ONLINE* 63-64 (2013), *available at* <http://www.napawash.org/wp-content/uploads/2013/03/STOCKactFinal1.pdf>.

<sup>48</sup> *Id.*

<sup>49</sup> WORKING GRP. ON STREAMLINING PAPERWORK FOR EXEC. NOMINATIONS, *STREAMLINING PAPERWORK FOR EXECUTIVE NOMINATIONS* 18-33 (2012), *available at* <http://whitehousetransitionproject.org/resources/briefing/appointments/Report%20of%20S679%20Working%20Group-Final.pdf>.

18. If a deficiency is discovered in an agency's ethics program, what is the process for correcting?

19. If an agency refuses to correct, does OGE have enforcement authority to seek correction? If not, who is responsible for enforcing correction?

OGE's Compliance Division is currently reviewing agencies on a five-year cycle, which is the same length as the statutory term for an OGE Director. Although OGE generally schedules reviews based on the time elapsed since an agency's last review, OGE also considers other factors including input from OGE desk officers, the involvement of other OGE divisions and branches in issues arising at individual agencies, and prior reviews when selecting agencies for program reviews.

OGE conducts three types of program reviews: inspections, plenary reviews, and follow-up reviews. The first two types of reviews, inspections and plenary reviews, are generally conducted in much the same manner. They consist of several distinct phases, which are discussed below. OGE conducts follow-up reviews only after an inspection or plenary review in order to assess an agency's implementation of recommendations in the program review report. This type of review is discussed below after the discussion of inspections and plenary reviews.

The first phase of an inspection or plenary review is the engagement phase. During this phase, an agency is notified that OGE has selected its ethics program for review and is asked to produce specified information and documents relevant to program operations. In the case of inspections, the information and document requests generally focus on program compliance, meaning the focus is on the results of the efforts of the agency's ethics program with respect to compliance with applicable statutory and regulatory requirements. In the case of plenary reviews, the information and document requests generally focus on program compliance as well as on program operations, meaning the focus is on results but also on the processes and procedures by which the agency obtains those results. Therefore, the requests with regard to plenary reviews are more extensive, and response time is somewhat longer. In the case of both inspections and plenary reviews, OGE is actively engaged in ensuring that the agency produces the requested information and documents, clarifying the scope of the request if needed.

The next phase is the pre-review phase. The pre-review phase is the same for inspections and plenary reviews. During this phase, OGE's assigned program reviewers evaluate relevant information and documents to assess the agency's ethics program. This evaluation includes the information and documentation that the agency produced during the engagement phase in response to OGE's request. It also includes information and documentation that OGE has acquired through other processes, such as the Annual Agency Ethics Program Questionnaire discussed in response to Question 7 above, the ethics agreement tracking process, and the financial disclosure process for high level officials whose reports OGE certifies. OGE's program reviewers assess this compilation of information and documents for compliance with statutory



and regulatory requirements applicable to agency ethics programs,<sup>50</sup> and they seek to preliminarily identify program strengths and vulnerabilities. Next, they develop questions to probe further into aspects of the agency's ethics program, obtain responses to the questions from the agency, evaluate the responses, and inquire further if necessary. They then coordinate with the agency to schedule dates for site visits to conduct fieldwork.

The next phase is the fieldwork phase. During the fieldwork phase, OGE's program reviewers work onsite at the agency's ethics offices. This phase is procedurally the same for inspections and plenary reviews. The work takes longer for plenary reviews, however, because, while both focus on results, the plenary reviews also focus on work processes. In either case, the program reviewers begin with an entrance meeting to introduce themselves to ethics officials and agency leadership. They conduct interviews of ethics officials and, as necessary, other agency personnel involved with the ethics program. They also meet with the agency's Office of Inspector General. They collect additional information, resolve any outstanding questions that remain from the pre-review phase, and identify any additional documents needed for the program review. Among other documents reviewed during this phase, they review a sampling of financial disclosure reports filed by individual agency employees and appointees. During this process, the program reviewers routinely discuss their observations with agency ethics officials. These discussions sometimes lead agency ethics officials to begin remediating issues that reviewers have observed.

If possible, OGE works with the agency during the review process to immediately correct deficiencies as they are identified. This type of correction during the review is most common for administrative and documentation issues, such as updating procedures, destroying expired records, or amending ethics training materials to meet compliance requirements. An agency's correction of an issue during the program review will not cause OGE to refrain from addressing the issue in its final program review report. OGE will, however, acknowledge the agency's remediation of the deficiency in the report. The final program review report will note both the deficiency and the specific corrective actions taken, and it will indicate whether a recommendation is closed as a result of the agency's remediation efforts.

The next phase is the report drafting phase. The report drafting phase is more extensive for plenary reviews than for inspections. The format for inspection reports is highly prescriptive, employing a specific format that facilitates comparison of agencies inspected. In contrast, the format for plenary reviews is largely narrative, with more discussion of individual agency work processes that led to the outcomes identified. In the cases of both inspections and plenary reviews, OGE's program reviewers finalize their analysis of the agency's program and draft the program review report during this phase. The first step is usually to transcribe their notes from the fieldwork they conducted. After reviewing all material related to the program review, they formulate their findings and recommendations. They also carefully index and reference work papers, in order to substantiate their findings. They then prepare a draft report, which they discuss with agency officials in order to afford the agency an opportunity to present any additional information needed to resolve potential factual errors and to begin drafting a response

---

<sup>50</sup> See, e.g., 5 C.F.R. pt. 2638.



to OGE's findings and recommendations. The program reviewers will then prepare a final draft for formal agency comment.

If the agency was not able to remediate a deficiency during the program review, the program review report will include a recommendation for the agency to correct the deficiency. For plenary reviews, OGE typically provides an agency six months to complete corrective actions, at which time OGE will conduct a follow-up program review to assess the implementation of those actions. The six-month window may be extended for certain corrective actions that require additional time to either correct or assess, including corrective actions to an agency's financial disclosure program which typically requires the completion of an annual filing cycle prior to reassessment. For inspections, OGE and the agency will jointly establish a date for completion of corrective actions, after which OGE will conduct a follow-up program review.

The next phase is the publication phase. This phase is the same for both inspections and plenary reviews. After OGE has issued a final program review report, OGE provides copies of the report to the agency's leadership, ethics officials, and Inspector General. OGE also posts the report on its website in order to make it available to the public.

The final phase for an inspection or plenary review is the post-review phase. If the program review report generated as a result of the inspection or plenary review includes recommendations, program reviewers conduct a follow-up review to assess the agency's remediation of issues identified. In order to ensure that these issues are resolved quickly and accurately, OGE makes itself available to consult with agencies prior to a follow-up review to ensure any proposed corrective actions meet the established compliance criteria. Alternatively, if an inspection has revealed significant results-based compliance issues program, program reviewers may conduct a plenary review in order to assess the agency's work processes and identify possible causes of the unsatisfactory results. If the program review report does not include recommendations, the agency's ethics program will return to the pool of agencies awaiting the next cycle of program reviews. Whether or not the report makes recommendations, the program reviewers consult with the OGE desk officer assigned to support the agency in order to discuss their findings.

As noted above, the third type of program review is a follow-up review. As the name suggests, OGE conducts this type of program review to assess an agency's progress in implementing recommendations made in the program review report generated as a result of an inspection or plenary review. The timing of a follow-up review after an inspection varies, but the follow-up review typically occurs one to six months after issuance of the program review report for the inspection, unless the Deputy Director schedules an agency for a plenary review instead of a follow-up review after an inspection. A follow-up review after a plenary review typically occurs approximately six months after issuance of the program review report for the plenary review, except when circumstances warrant a different timeframe. After a follow-up review is completed, OGE issues a program review report on the findings of the follow-up review. If significant recommendations remain outstanding, OGE will schedule subsequent follow-up reviews as needed.

Nearly all recommendations are closed as a result of this follow-up review process. The Ethics in Government Act provides certain formal steps that can be used in the event that an agency fails to sufficiently address a deficiency. As discussed in more detail in response to Question 6, however, OGE has found it more efficient to communicate directly with agency officials and escalate as necessary to the agency head. OGE has issued thousands of recommendations and, with few exceptions, has been able to document that agencies have taken appropriate action to address the underlying deficiencies.

## **RESPONSE TO QUESTIONS 20, 21 AND 22**

20. What type of information does OGE collect from the Annual Agency Ethics Program Questionnaire and how does OGE utilize that information?

21. Are the results shared with the ethics community and the public?

22. Based on the data from the questionnaire, has OGE identified any common issue areas? If so, how does OGE plan to address such areas?

OGE collects information from each executive branch agency regarding several categories of topics in its Annual Agency Ethics Program Questionnaire (questionnaire):

- First, the questionnaire collects information about each agency's organizational structure. Questions related to this topic seek information about the resources that each agency devotes to its ethics program. This includes information about the Designated Agency Ethics Official and Alternate Designated Agency Ethics Official, such as the amount of ethics experience each possesses, the amount of time each devotes to managing their agency's ethics program, the grade level of each, and the political or career appointment status of each. Also covered is information about the ethics officials' eligibility for retirement for succession planning purposes. In addition, agencies are asked to provide information about the number of ethics officials who perform ethics program duties, as well as the amount of time that they devote to ethics duties. Agencies are also asked about the distribution of ethics officials inside and outside of the Washington, D.C. area and about the supervisory status of the DAEO over agency officials performing ethics duties.
- Second, the questionnaire collects information about each agency's ethics program administration. Specifically, agencies are asked to rank the amount of time devoted to administering specific program elements, to indicate whether the ethics program has leadership support, to identify which tools they use to ensure the short- and long-term continuity of their ethics programs, and to indicate whether they have required standard operating procedures in place. Agencies are asked about the use of technology and any internal quality controls, as well as about the need for additional resources for the ethics



program. They are also asked about significant accomplishments and challenges during the year.

- Third, the questionnaire collects information about education and training. Questions focus on compliance statistics with regard to the number of employees required to receive initial and annual ethics training and the number who actually received the required training within the calendar year. Questions also focus on the allocation of responsibility for developing the required training content, the offices responsible for conducting training sessions, and the means of delivering the required training.
- Fourth, the questionnaire collects information about an agency's ethics advice and counseling activities. Agencies are asked to indicate what steps they take to ensure that they provide timely and consistent ethics advice to their employees. They are asked to identify and rank the particular ethics subjects that are most frequently at issue in their advice and counseling activities. They are also asked about post-employment counseling to ensure that former employees remain compliant with post-employment restrictions.
- Fifth, the questionnaire collects information about public financial disclosure. Collectively, the more than 130 executive branch agencies collect and review approximately 26,000 public financial disclosure reports each year. Questions in this section focus on compliance statistics with regard to the number of new entrant, annual, and termination public financial disclosure reports that were required to be filed in the calendar year, as well as the number of each type that were actually filed. Additionally, the questionnaire collects information about the number of filing extensions granted, the number of late fees assessed, and the timeliness of report filings and reviews. The questionnaire also asks agencies about the number of periodic transaction reports filed. In addition, it poses a series of questions about the ways each agency implements programmatic requirements for public disclosures, and about whether an agency requires supervisory review as part of the conflicts of interest review.
- Sixth, the questionnaire next seeks information about confidential financial disclosure. Collectively, the more than 130 executive branch agencies collect and review approximately 380,000 confidential financial disclosure reports each year. Questions in this section focus on compliance statistics with regard to the number of new entrant, annual, and termination confidential financial disclosure reports that were required to be filed in the calendar year, as well as the number of each type that were actually filed. Questions focus on filing extensions and timeliness issues. Questions also focus on the programmatic requirements for confidential disclosures.
- Seventh, the questionnaire collects information about remedies and enforcement of the Standards of Conduct and the ethics-related criminal and civil statutes. Agencies are asked to provide information about the number of remedial actions taken each year and the number of disciplinary actions taken based on violation of the Standards of Conduct regulations or the criminal and civil statutes. Agencies are also asked to specify the number of such actions taken on the basis of specific issues listed in the questionnaire. They are asked about waivers of regulatory or statutory ethics provisions issued during



the year. In addition, they are asked in this section about referrals to the Department of Justice for potential prosecution.

- Finally, the questionnaire seeks information about advisory committees and special government employees. Specifically, the questionnaire seeks information about the number of advisory committees each agency maintains, as well as information about other types of committees, boards, and commissions that each agency maintains. Agencies are also asked about the number of special government employees they employ, the procedures for designating employees as special government employees, and the offices that are responsible for determining that an employee is a special government employee. Agencies are also asked about ethics training for, and financial disclosures collected from, special government employees. In addition, agencies are asked to specify how many special government employees are federal advisory committee members and how many are employed in other specified roles.

The Annual Agency Ethics Questionnaire is a critical source of information for OGE in its work overseeing the executive branch ethics program. OGE uses the data collected through the questionnaire to develop knowledge about individual programs, as well as about the state of the executive branch ethics program as a whole. This information is also used to make determinations about resource allocation, such as the amount of resources devoted to OGE's desk officer function, its program review function, its ethics official training function, and its electronic filing system for public financial disclosure. In addition, OGE's program reviewers use the questionnaire data in connection with selecting agencies for program reviews, identifying strengths and weaknesses of specific agency ethics programs in the course of conducting program reviews, and targeting aspects of agency ethics programs for closer examination during the fieldwork phase of program reviews.

With regard to sharing the information with the ethics community and the public, OGE is now posting on its public website each individual agency's response to the questionnaire, in addition to a summary report with aggregate data, and an overview document with key highlights from the data excerpted from the questionnaire. Further, OGE presents highlights of the aggregate results of the questionnaire to the ethics community each year in a learning environment, as part of its Advanced Practitioner Series. OGE takes these steps to increase transparency and share information about the program with interested stakeholders, such as the public, the ethics community, and Congress.

OGE has also used the information from the questionnaire to identify and address common issue areas based on data received in agency responses. For example, issues related to succession planning and continuity of ethics program operations are a consistent area of concern as much of the federal workforce has approached or reached retirement eligibility in recent years. In calendar year 2015, agencies' responses to the annual questionnaire revealed that two-thirds of Designated Agency Ethics Officials possess less than four years of experience in the position.

OGE is taking a number of actions to address this issue. OGE will continue providing training targeted to new ethics officials and to develop targeted training products. OGE will continue conducting its quarterly meetings for agency ethics officials, at which OGE presents



information about ethics program processes and activities, recent developments, and upcoming events. OGE will also dedicate a portion of its Advanced Practitioner Series training sessions and sessions at the 2016 National Government Ethics Summit to the topic of ethics program management in order to bolster agency ethics programs during the period of Presidential transition. In addition, OGE will address making risk assessment and mitigation practices a routine part of an agency's ethics program, creating standard operating procedures to ensure program continuity, developing techniques for briefing new leaders, and instituting self-assessment programs to ensure preparedness for staff turnover.

OGE has also begun developing written materials that agencies can distribute to new employees, along with model training modules that agencies can use and tailor to their own needs. With the assistance of agency ethics officials, OGE is also developing a repository of targeted scenarios for use in conducting annual ethics training for employees whose responsibilities place them at increased or unique risk of facing certain ethical dilemmas. In addition, OGE has provided ethics officials with a high-quality template for their agency's annual ethics training plans. The template prompts ethics officials to think strategically about how they will deliver ethics training throughout the year.

Through OGE's Institute for Ethics in Government (IEG) virtual online store, OGE makes these and other materials, such as practical job aids and reference guides, available to ethics officials at no cost. The IEG store is also where members of the ethics community can share similar products that they themselves have created, including materials to assist with annual employee ethics training. This is an efficient way for agency ethics officials to obtain the educational materials that are most pertinent to their agencies' particular needs. In addition to the products available in the IEG Store, OGE makes available to ethics officials the video and audio recordings of the distance learning events that OGE sponsors, along with the informational slide decks, job aids, and reference materials used in those training events. OGE has made all of these materials permanently available to agency ethics officials, who are routinely encouraged to use these on-demand courses and materials to train their own staffs.

## **RESPONSE TO QUESTIONS 23 AND 24**

23. How will the upcoming Presidential election impact your workload and how does OGE prepare for the transition?

24. Explain how OGE is working with GSA, OPM and NARA to prepare for the upcoming Presidential transition.

OGE expects that its workload in support of the Senate confirmation process for Presidential nominees (PAS nominees) will triple during the Presidential transition. Given the critical importance of the Presidential transition to national security and the continuity of our nation's representative form of government, it is imperative that the process be carried out effectively and in a wholly non-partisan manner to support the Presidential transition team of whichever candidate is successful in the general election in November 2016. OGE is fully committed to its ongoing preparations for the Presidential transition, and we and our fellow

transition support providers aspire to make the upcoming Presidential transition the most efficient one in the modern era.

For its part, OGE anticipates that it will be called upon to complete ethics reviews for up to 700 or more PAS nominees between November 2016 and the end of 2017, which will require that a substantial portion of OGE's staff be assigned to review the financial disclosure reports of PAS nominees for compliance with disclosure requirements, evaluate their financial interests for potential conflicts of interest, and work with agency ethics officials to develop ethics agreements to resolve those potential conflicts of interest. The financial disclosure reports of PAS nominees and the conflicts of interest issues they present are typically more complex at the beginning of an administration than at other times, due to the level of positions being filled, the breadth of the financial interests held, and the degree of uncertainty on the part of agency ethics officials as to the incoming administration's plans for the activities of the nominees and their agencies.

This massive transfer of power from one Presidential administration to the next requires intensive preparation. With an election coming in November 2016, OGE's transition preparations are already well under way. OGE has streamlined its processes, and the nominee program is currently operating at an unprecedented level of efficiency. One innovation since the time of OGE's last reauthorization is a comprehensive 75-page ethics agreement guide that has sped up the process of resolving potential conflicts of interest and increased the uniformity of nominee ethics agreements across the executive branch. In 2014, OGE issued an updated version of that guide based on its real-world experiences using the original guide for nominee ethics agreements. This innovation, coupled with OGE's ethics agreement tracking efforts, increases accountability for Presidential nominees coming into the government. OGE has sought and obtained input on best practices and suggestions for ways to improve transition efforts from individuals who were active in Presidential transitions following the elections of President Bush and President Obama, respectively. OGE has also developed a complex workflow feature in its electronic filing system, *Integrity*, that enables staff to review nominee packages electronically. OGE is now using this feature for nominees in the current administration, and OGE anticipates that this feature will enhance the efficiency of the nominee program during the Presidential transition.

OGE is also conducting extensive training of executive branch officials. Internally, OGE began preparing for the Presidential transition in calendar year 2014, by implementing a comprehensive training plan to build the knowledge and skills of its staff through formal training sessions, informal "brown bag" discussions, and staff mentoring. OGE increased the amount of internal training in 2015, in order to continue adding new reviewers to the nominee program and to increase the expertise of existing reviewers. Throughout the executive branch, OGE is also continuing its efforts to provide significant training for nominee financial disclosure reviewers at the agencies. Training activities include in-person training classes and distance-learning conducted through webinars.

Next month, OGE will convene a National Government Ethics Summit focused specifically on preparing the community of executive branch ethics officials for the Presidential transition. The Summit will consist of three full days of training, running from March 8 through March 10, 2016, with presentations occurring in various combinations of an auditorium and three



large training rooms. The onsite audience at the Summit will comprise 400 participants, mostly ethics officials with 15 slots reserved for Inspector General personnel and a few slots for other stakeholders. OGE will also be live-streaming the sessions in the auditorium and one of the training rooms, so that the public can participate virtually in many of the Summit's sessions online in real time. We will leave the recorded sessions online after the Summit for public viewing on OGE's YouTube channel.<sup>51</sup>

Prior to the Summit, on March 7, 2016, OGE will also present a full-day symposium on financial disclosure training for ethics officials. This event will include two separate tracks, one for beginners and one for advanced reviewers. OGE will be able to accommodate up to 400 beginners and up to 140 advanced reviewers, and OGE will not charge agencies for the event.

OGE will issue additional guidance and resource materials to address the executive branch ethics program's needs with regard to both outgoing and incoming officials. This material will include a comprehensive web-based guide to assist nominees in completing the new OGE Form 278e and periodic transaction reports. This new guide will also be a valuable resource for ethics officials because it updates and expands on the existing guide, which is one of OGE's most popular resources among ethics officials in both the executive and legislative branches. OGE is also preparing a guide book for prospective nominees and a separate guide book for the Presidential transition team. These guide books will be available in both paper and electronic formats. OGE has contributed material for a similar guide being prepared by the Partnership for Public Service to be used by Presidential campaigns and the Presidential transition team. OGE also provided substantive content for the GSA-hosted Presidential Transition Directory website. In addition, OGE is preparing legal guidance to address topics related to seeking employment and post-employment restrictions to support agencies' counseling of outgoing administration officials.

In connection with these efforts, OGE has been actively participating in the Transition Service Providers Council, which is a roundtable led by the non-partisan Partnership for Public Service. Members of this group include representatives of the General Services Administration (GSA), the Office of Personnel Management, the National Archives and Records Administration, the Department of Justice, and the National Academy of Public Administration. One activity of this council has been to develop a detailed process map of transition services, activities, and deadlines. OGE has contributed to this process map, participated in meetings, and provided feedback on important transition-related issues. OGE and GSA have also made arrangements for OGE to have onsite office space adjacent to transition space that GSA is preparing for the campaigns prior to the election and for the Presidential transition team after the election. This will enable OGE staff to provide onsite support to the campaigns and transition teams in connection with technical aspects of electronic financial disclosure and with the ethics review of prospective PAS nominees.

---

<sup>51</sup> OGE Inst. for Ethics in Gov't, YOUTUBE, <https://www.youtube.com/user/OGEInstitute> (last visited Feb. 8, 2016).



OGE is also coordinating with representatives of Presidential campaigns. OGE plans to send representatives to an event that the Partnership for Public Service will present this spring to encourage Presidential campaigns to prepare for the Presidential transition. Separately, OGE will contact representatives of Presidential campaigns prior to the election and offer briefings on the nominee process, electronic filing, and establishing effective ethics programs.

## RESPONSE TO QUESTION 25

25. In working with the Partnership for Public Service, what recommendations were provided to assist with the transition?

As described above, OGE is currently in the process of working closely with the Partnership for Public Service, transition service provider agencies, and other interested stakeholders to develop recommendations to ensure a smooth transfer of power from one Presidential administration to the next. A Presidential transition is a critical time when the nation is vulnerable, with the potential for manmade, natural, or economic disasters to strike while the government's top leadership positions are vacant. OGE has invested significant effort in documenting its processes through the Partnership's service provider timeline project as well as serving on the Transition Service Provider Council. Through these efforts, OGE continues to actively participate in the ongoing development of consensus recommendations that are being developed and published through the Partnership's newly launched Center for Presidential Transition.<sup>52</sup> In particular, OGE has contributed its expertise with regard to the nominee financial disclosure requirements and processes within the executive branch. This includes ideas about how campaigns and transition teams might better prepare themselves and their prospective nominees to more accurately and efficiently complete these important required disclosures so that OGE may assist them in identifying and resolving any potential conflicts of interest.

The subcommittee may also be interested in reviewing the related recommendations of two congressionally mandated studies on this topic. The Presidential Appointment Efficiency and Streamlining Act of 2011 directed the Presidentially-appointed Working Group on Streamlining Paperwork for Executive Nominations to submit to Congress two reports on streamlining the executive nomination and confirmation process. These reports make a number of recommendations for improving the nominee process, which is a critical component of any Presidential transition.<sup>53</sup> In 2013, Congress also directed the National Academy of Public Administration (NAPA) to conduct an independent study of financial disclosure issues in connection with amendments to the STOCK Act of 2012. Without taking a position on the recommendations, NAPA shares in Appendix B of the report of that study a list of recommendations for improving public financial disclosure requirements in the executive

---

<sup>52</sup> CENTER FOR PRESIDENTIAL TRANSITION, <http://presidentialtransition.org> (last visited Feb. 8, 2016).

<sup>53</sup> These reports were submitted to Congress in November 2012 and May 2013. A copy of the first report is available online. See WORKING GRP. ON STREAMLINING PAPERWORK FOR EXEC. NOMINATIONS, STREAMLINING PAPERWORK FOR EXECUTIVE NOMINATIONS 18-33 (2012), available at <http://whitehousetransitionproject.org/resources/briefing/appointments/Report%20of%20S679%20Working%20Group-Final.pdf>. The second report does not appear to be available online, but OGE would be able to provide a copy to the Chairman.

branch.<sup>54</sup> Should the subcommittee wish to consider these recommendations, OGE would be available to provide technical assistance at the subcommittee's request.

## RESPONSE TO QUESTION 26

26. Please discuss any lessons learned or best practices from the last transition that will be incorporated into this upcoming transition.

OGE continually evaluates and refines the nominee process. OGE began preparations in 2014 for the upcoming transition, incorporating a number of lessons learned and best practices from the previous transitions.

One area in which OGE has experience is with understanding the staffing required, particularly with regard to the nominee financial disclosure review process, for a Presidential transition. OGE's experience over several transitions is that the process runs most effectively when adequate attention is paid to developing a sufficient number of experienced nominee reviewers. This consideration applies equally to the staff of the Presidential transition team, OGE's own staff, and the staffs of agency ethics offices.

With regard to Presidential transitions, I observed first-hand noteworthy planning on two separate occasions: one after the 2008 election and one prior to the 2012 election. First, in November 2008, I was asked to participate in the first meeting between the outgoing administration of President Bush and the incoming Obama-Biden Presidential transition team in my role as OGE's career-level Deputy General Counsel. At that meeting, held at GSA's headquarters the morning after the election, the transition team asked for a seasoned ethics official to be detailed from the Department of Treasury to the transition team for the purpose of assisting with the financial disclosure and conflicts of interest reviews of prospective nominees. This detailee quickly became OGE's primary contact at the transition team in connection with the ethics review of nominees, and her expertise contributed greatly to OGE's success in processing an extraordinary volume of PAS nominees in record-breaking time. The next occasion was in 2012, when the Presidential campaign of Governor Romney contacted OGE even before the election and asked whether OGE would be able to detail to the transition team a highly experienced ethics official who had overseen the White House's ethics reviews of nominees in the administration of President Bush. OGE was more than willing to detail this individual to the possible transition team of this candidate in order to provide the expertise necessary to support the nominee financial disclosure process in the event of a Presidential transition. OGE plans to encourage Presidential campaigns to continue this tradition of seeking to acquire the services of a current or former senior ethics official to assist the transition team. Likewise, OGE plans to advise the campaigns that the transition is most effective when the White House ethics official in the early days of the new administration has a working knowledge

---

<sup>54</sup> NAT'L ACAD. OF PUB. ADMIN., THE STOCK ACT: AN INDEPENDENT REVIEW OF THE IMPACT OF PROVIDING PERSONALLY IDENTIFIABLE FINANCIAL INFORMATION ONLINE 63-64 (2013), *available at* <http://www.napawash.org/wp-content/uploads/2013/03/STOCKactFinal1.pdf>.



of executive branch ethics laws and regulations and is familiar with executive branch financial disclosure.

OGE also knows the value of preparing its staff for the Presidential transition. OGE began increasing the capacity of its staff to manage the 2009 transition two years before the 2008 election. Since that time, OGE has been internally evaluating and refining its approach to the nominee financial disclosure program. Specifically, OGE has developed a cross-functional approach to staffing the nominee program, particularly during peak workload periods. In addition to OGE staff dedicated full-time to the nominee program, OGE has trained additional staff in other divisions to support the nominee financial disclosure function during the upcoming Presidential transition following the 2016 election. This approach ensures both short-term capacity for its nominee work in the high-volume post-election period and long-term continuity of OGE's capability to perform mission-critical work.

In previous transitions, not all executive branch agencies have had a sufficient number of experienced ethics staff available to review the increased volume of nominee financial disclosure reports, which resulted in protracted reviews. In preparation for the upcoming transition, leadership at all agencies must ensure that they have a sufficient number of experienced ethics staff and that these ethics officials have ready access to other program officials to assist in identifying potential conflicts. As described in response to Questions 23 and 24, OGE is providing significant training for nominee financial disclosure reviewers at the agencies, including in-person training classes, distance learning through webinars, a National Government Ethics Summit focusing on the Presidential transition, and a full-day symposium dedicated exclusively to financial disclosure.

Another area in which OGE has experience relevant to Presidential transitions is the review of financial disclosure reports. The review of financial disclosure reports in the executive branch is necessarily more complex than in the legislative branch, due to the conflicts of interest requirements applicable to executive branch officials.<sup>55</sup> A complex nominee financial disclosure report with many assets and business relationships can take weeks to review, refine, and analyze for conflicts of interest. For this reason, OGE encourages campaigns, Presidential transition teams, and White House ethics office to impress upon potential nominees the importance of the financial disclosure and conflicts of interest requirements. OGE also encourages them to emphasize the need to respond quickly to OGE and agency questions regarding financial disclosures, explaining the complexities and expectations of the nomination process and the expedited procedure for nominee financial disclosure reports.

Transition team members focusing on personnel recruitment and selection should coordinate with those focusing on the ethics reviews. Their goals should include identifying prospective nominees early, collecting financial disclosure reports and initiating the ethics review as soon as possible, and looking out for potential conflicts of interest issues that may be hard to resolve or that may delay nomination if not addressed early in the process. OGE will

---

<sup>55</sup> Compare 18 U.S.C. § 208(a), with H. COMM. ON STANDARDS OF OFFICIAL CONDUCT, 110TH CONG., HOUSE ETHICS MANUAL 248 (2008) ("No federal statute, regulation, or rule of the House absolutely prohibits a Member or House employee from holding assets that might conflict with or influence the performance of official duties.").

encourage the Presidential transition team to transmit the financial disclosure reports of nominees to OGE as early as possible. To this end, one option OGE will discuss with the Presidential transition team is the possibility of OGE conducting an initial "blind" review of a financial disclosure report if the Presidential transition team is otherwise reluctant to share an individual's financial disclosure before it has made a final decision to pursue that individual's nomination. OGE can conduct an initial review of a report for technical legal compliance with disclosure requirements without knowing the identity of the filer or the position for which the filer is being considered. Additional review will be necessary later after the identity of the filer and the position are known in order to fully evaluate certain disclosure and conflicts of interest issues. While not an ideal arrangement because a blind review is merely preliminary, a blind review can advance the ethics process considerably by resolving technical issues, which are often the most time-consuming part of the process.

OGE has also found that strong communication and coordination are key elements for a successful transition. OGE is currently working with the Partnership for Public Service on a transition plan to recommend to the campaigns. OGE is also coordinating with GSA transition staff and has arranged for office space in transition facilities that OGE staff can use to support the campaigns and the transition team. In addition, OGE personnel will be available to the Presidential transition team and White House ethics office to discuss financial disclosure and ethics issues at any time.

OGE has also found that written guidance can expand the availability of OGE's support to transition team members, nominees, and agency ethics officials during a transition when OGE's resources are stretched thinnest. The response to Questions 23 and 24, above, describes a variety of written materials that OGE has issued or is developing, as well as the new electronic filing system, that will support the transition efforts.

## **RESPONSE TO QUESTION 27**

27. How does OGE support agencies with succession planning in executive branch ethics programs?

OGE has established a strategic objective to support succession planning in the executive branch ethics program in order to minimize the impact of the departure from the federal workforce of employees who possess specialized ethics knowledge. Succession planning can involve the documentation of current processes, transfer of institutional knowledge, and availability of personnel prepared to assume ethics official positions at all levels. OGE addresses each of these aspects of succession planning through its various programs.

OGE supports the documentation of current processes both directly and indirectly. To communicate to agencies the importance of documenting current processes and to track their efforts in this regard, OGE's Annual Agency Ethics Program Questionnaire asks questions about the use of standard operating procedures. Certain program review processes also focus on agencies' use of standard operating procedures, and the program review reports for plenary reviews include recommendations for establishment or enhancement of procedures when they are lacking. In addition, OGE conducts training on model program practices that emphasizes the



importance of agency ethics offices documenting current processes. OGE has also encouraged agencies to use a sample of the program report form that OGE uses for inspections as a checklist to conduct self-assessments of the state of their ethics programs and to take any necessary steps to address issues they identify.

OGE supports the transfer of institutional knowledge through a variety of means. OGE issues written guidance that is available on OGE's website. OGE convenes quarterly meetings for the leadership of agency ethics offices to disseminate information uniformly throughout the executive branch. OGE prepares job aids and training material for use by agency ethics officials, which OGE makes available through a forum on OGE's MAX.gov site. OGE also hosts an electronic site on MAX.gov where agency ethics officials share their own written products with one another. OGE also conducts program management training sessions that emphasize the importance of transferring institutional knowledge internal to an agency's ethics office. In addition, OGE's Instructor Development Program is a certificate program for agency ethics instructors through which they can become qualified to deliver OGE-developed ethics training to their own agencies. By expanding the number of instructors available to provide ethics training, OGE better equips agencies to provide quality internal professional development to their own ethics professionals. OGE has also actively encouraged agencies to develop knowledge libraries through intranet sites, videos, and shared network drives.

To ensure the availability of personnel prepared to assume ethics official positions at all levels, OGE provides extensive training to agency ethics officials. OGE teaches ethics officials how to review financial disclosure forms for conflicts of interest, provide advice and counseling on the ethics rules, train their agencies' employees on applicable ethics obligations, and promote an ethical culture within their organizations. As discussed in my written testimony, this work is of vital importance and has been a focus of mine as Director. Starting in 2013 when I was appointed, OGE has pursued an aggressive reinvention of its approach to delivering training in order to address the challenge of reaching a large and geographically dispersed audience of ethics officials with limited resources. We have leveraged technology to steadily increase the reach of our education program in the past three years from an average of about 1,400 registrations per fiscal year in the first five years after OGE's last authorization, 2008 to 2013, to now more than 7,500 registrations in fiscal year 2015.

With regard to the professional development of ethics officials, OGE has developed several specialized programs to address specific needs. For example, the Intensive Curriculum for New Ethics Officials program, which targets new ethics officials with a critical need for intensive and rapid professional development because they have been, or will soon be, assigned new ethics responsibilities as Designated Agency Ethics Officials or ethics program managers. By focusing on those officials with the greatest responsibilities, OGE provides targeted, timely support to ensure continuity of operations in agency ethics programs. OGE also offers regular, monthly distance learning events aimed at developing the skills and knowledge base of ethics officials at all levels. OGE's Ethics Fundamental Series provides monthly training on topics geared to new or less experienced ethics officials. OGE's Advanced Practitioner Series deals with more complex topics and ethics policy issues more suitable for experienced ethics officials. OGE also regularly offers financial disclosure training for ethics officials of all skills levels, with a particular focus more recently on preparing for a Presidential transition. This training is offered

via the “Google+” platform, which allows OGE to broadcast to hundreds of attendees in a single session, and to record and post trainings on OGE’s YouTube channel for on-demand access. Finally, through its detailee program, OGE invites ethics practitioners from other agencies to serve as desk officers and financial disclosure reviewers at OGE. This program supports succession planning by providing detailees valuable hands-on experience with support from OGE’s knowledgeable staff, and they bring that experience back to their home agencies.

Through all of these programs, OGE ensures agencies are focusing on succession planning. One of the means by which OGE measures the success of its efforts is through agency responses to the Annual Agency Ethics Program Questionnaire. Responses to the 2015 questionnaire indicated that 95% of agencies are actively engaged in succession planning to ensure long-term continuity of ethics programs. The top two tools agencies reported using to address this critical need were structured training and the establishment of knowledge libraries (intranet, videos, and shared drives).

## **RESPONSE TO QUESTION 28**

28. Please describe your agency’s restructuring involving the Program Counsel and the General Counsel, including all former and current responsibilities for each.

As a longtime career employee of OGE prior to my appointment as Director, I was familiar with the agency’s operations at the time of my appointment and initiated the restructuring in January 2013 in order to increase its efficiency and effectiveness, reduce duplication and fragmentation, and strengthen the agency’s overall performance. With regard to the General Counsel and Program Counsel Divisions, OGE was restructured partly to separate the legal policy office from the agency legal compliance office, as is the case in most agencies. Some of the Program Counsel Division’s responsibilities were also drawn in part from the former Office of Agency Programs.<sup>56</sup>

Among other changes, the reorganization consolidated agency legal compliance functions traditionally performed by an agency general counsel’s office into a newly-created Program Counsel Division, while focusing the General Counsel and Legal Policy Division on the agency’s ethics policy mission. The head of the Program Counsel Division serves both as the agency’s Program Counsel and as its Chief of Staff, with programmatic responsibility that reaches beyond legal compliance issues as described in more detail below. These changes resulted in rapid and measurable successes, as noted in the response to Question 29. The current work of these two Divisions is described more fully below.

---

<sup>56</sup> Other responsibilities of the former Office of Agency Programs were absorbed by the Compliance Division. While the Program Counsel absorbed the desk officer and functions, which are agency support programs, the Compliance Division absorbed the program review function and the financial disclosure function, which are agency oversight programs.



## *GENERAL COUNSEL AND LEGAL POLICY DIVISION*

The head of the General Counsel and Legal Policy Division (GCLPD) serves as the General Counsel. The General Counsel has executive branch-wide responsibility for the substantive legal requirements and policy of the government ethics program. GCLPD is responsible for: (1) establishing and maintaining a legal framework for the executive branch ethics program; and (2) providing assistance to the President and Senate in connection with the process for Presidential nomination and Senate confirmation. This Division consists of two branches: the Ethics Law and Policy Branch and the Presidential Nominations Branch.

### *Ethics Law and Policy Branch*

The Ethics Law and Policy Branch (ELPB) is responsible for the substantive legal and policy work of the executive branch government ethics program. ELPB develops, drafts, and issues all executive branch ethics regulations. ELPB also reviews agency-specific regulations supplementing the standards of conduct for employees of the executive branch. When appropriate, ELPB drafts recommendations for changes in the conflicts of interest statutes and other ethics statutes. ELPB sets forth executive branch-wide policy and interpretive guidance of the ethics laws and regulations applicable to the executive branch. To promote consistent interpretation and application of the ethics laws, regulations, and policy guidance across the entire executive branch, ELPB publishes written guidance in the form of Legal Advisories.

### *Presidential Nominations Branch*

The Presidential Nominations Branch (PNB) supports the President and the Senate in connection with Presidential nominees requiring Senate confirmation. PNB works closely with the White House and agency ethics officials to help prospective Presidential nominees to Senate-confirmed positions comply with the extensive financial disclosure requirements of the Ethics in Government Act. PNB carefully evaluates the nominee's financial disclosure report and works with the agency ethics official to prepare an individualized ethics agreement to avoid and resolve potential conflicts of interest before the nominee enters government service. PNB coordinates with the relevant Senate committees to transmit nominee packages for consideration through the Senate's confirmation process. PNB also reviews the financial disclosure reports of the most senior White House staff members.

## *PROGRAM COUNSEL DIVISION*

The head of Program Counsel Division (PCD) serves as both the Chief of Staff and the Program Counsel. The Chief of Staff has agency-wide responsibility for all OGE staff, strategic planning, performance management, and budget. PCD is responsible for: (1) coordinating and conducting outreach between OGE and its many stakeholders, including Congress, the Office of Management and Budget, good government groups, and the public; (2) developing and providing training to agency ethics officials across the executive branch; (3) carrying out initiatives that reach across executive branch agencies, such as the operation of OGE's electronic filing system for public financial disclosure, *Integrity*; (4) providing agency-specific legal support to OGE; (5) managing OGE's budget, performance, and legislative affairs programs; and (6) through its



desk officer program, supporting agency ethics officials in carrying out the executive branch ethics program. PCD consists of two branches: the Legal, External Affairs and Performance Branch and the Agency Assistance Branch.

#### *Legal, External Affairs and Performance Branch*

The Legal, External Affairs, and Performance Branch (LEAP) supports OGE through a range of cross-cutting programmatic responsibilities. LEAP provides agency-specific legal support to OGE. LEAP manages OGE's strategic initiatives, including the Annual Agency Ethics Program Questionnaire, the development and operation of OGE's electronic filing system for public financial disclosure, performance management, budget, communications, and legislative affairs programs. LEAP serves as OGE's liaison to the Federal Register and the Office of Information and Regulatory Affairs within the Office of Management and Budget, and oversees OGE's Freedom of Information Act, Privacy Act, and records management programs. LEAP develops and provides substantive training to agency ethics officials throughout the executive branch and to OGE staff in order to help them attain the knowledge and skills necessary to carry out the duties of their positions.

#### *Agency Assistance Branch*

The Agency Assistance Branch (AAB) provides vital services and support to agency ethics officials throughout the executive branch. Through its desk officer program, AAB provides timely and accurate advice to ethics officials in response to questions regarding unique or emerging ethics-related issues. In addition to responding to requests for advice, AAB's desk officers actively reach out the ethics community to address issues and challenges that are of common interest in order to arrive at and share collaborative solutions.

### **RESPONSE TO QUESTION 29**

29. Please describe all problematic issues which arose in the course of restructuring.

Rather than producing problems, OGE's restructuring has proven to be highly successful both in terms of OGE's performance and in terms of employee engagement. Within GCLPD and PCD, the restructuring was largely carried out through the reassignment of existing staff, the majority of whom continued to perform much of the same types of functions they had performed prior to the restructuring. The positive results of the reorganization on OGE's programs are measurably demonstrated through a wide variety of outcomes.

Consolidating agency administrative law and compliance functions into PCD has allowed for necessary focus on such issues by employees specializing in these fields rather than by ethics attorneys carrying them out on a part-time basis. This focus has created a culture of performance and innovation that has enabled OGE to excel in many areas, including: improved external and internal communications; improved budget process and fiscal law analysis; more efficient records management, including a rapid transition to becoming a paperless agency; and improved accountability, which is ultimately reflected in agency performance. OGE's education program,

in particular, has become more agile and effective since the restructuring. Operating with a small core staff and leveraging technology, OGE has steadily increased its reach from an average of about 1,400 registrations per year in the first five years after OGE's last authorization to more than 7,500 registrations in fiscal year 2015.

Since the restructuring, OGE has been recognized by external stakeholders for its leadership role and success in areas under the purview of PCD's Legal, External Affairs and Performance Branch (LEAP) branch. For example, OGE's FOIA program has been recognized by the Department of Justice Office of Information Policy for model practices in a small agency program. OGE has been recognized by the Office of Management and Budget and in news articles for innovations in cost-effective "conference" planning, with respect to OGE's 2014 National Government Ethics Summit. The Performance Improvement Council (PIC) has recognized OGE for its performance management efforts. In addition, PCD has enhanced OGE's transparency by increasing public access to agency-generated information, for example, through publication on OGE's website of the results of the Annual Agency Ethics Program Questionnaire and the summary of OGE's annual performance highlights.

PCD's LEAP also led the highly successful development and deployment of OGE's executive branch-wide electronic filing system, *Integrity*, which was a remarkable achievement for a component of an agency as small as OGE. As indicated in my written testimony, on January 1, 2015, we successfully launched *Integrity*, a secure, web-based electronic filing system for the executive branch, which is used by thousands of public filers in the executive branch. OGE contributed its own extensive financial disclosure expertise to develop a system that significantly enhances the filing, review, and program management aspects of the executive branch public financial disclosure program. A combination of smart data-entry tables and context-dependent questions helps filers disclose all of their reportable financial interests with increased accuracy. *Integrity* enables agency ethics officials to assign, review, track, and manage reports electronically. OGE also focused on ensuring the security of user access and maintaining data. Notably, *Integrity* is hosted in a secure government cloud and has successfully undergone a full, independent security assessment. Both *Integrity's* authentication provider and host are authorized under GSA's Federal Risk and Authorization Management Program (FedRAMP). Using a shared-services model with operational funding in OGE's budget, OGE is continuing to make *Integrity* available to executive branch agencies without charge, thereby reducing duplication and fragmentation within the executive branch. Since the date when I submitted my written testimony, the number of agencies and registered in *Integrity* has continued to grow. As of today, 13 months after *Integrity's* launch, we have registered 120 agencies and over 11,000 filers in the system. *Integrity* also received a 90% favorable rating from agency administrators who responded to a satisfaction survey in its first year of operation.

PCD's Agency Assistance Branch has continued the success of OGE's desk officer program. The desk officers assist agency ethics officials in evaluating complex issues, provide information about how other agencies are implementing ethics requirements, and give guidance on OGE's policies regarding program activities. The desk officers are also able to assist agencies in implementing the recommendations that OGE makes through its program reviews. To enhance OGE's staff expertise to perform this complex work, I launched an aggressive Employee Development Program after I was appointed to the Director position. As a result, feedback about



desk officer responses to the nearly 2,000 requests for assistance received this year was very favorable: 91% of respondents to OGE's executive branch-wide customer satisfaction survey indicated that the assistance provided by OGE's desk officers has been effective in helping them do their jobs.

We have enjoyed equally positive results in GCLPD. The ability of GCLPD to focus exclusively on government ethics law and policy has resulted in the Division reviewing and drafting significant revisions to four of OGE's substantive ethics regulations, while continuing to issue helpful legal advisories and other guidance to the ethics community. The streamlining of functions within GCLPD has enabled its Ethics Law and Policy Branch (ELPB) staff to develop highly specialized knowledge and skills with regard to the substantive legal and policy requirements of the executive branch ethics program and has strengthened OGE's nominee program. In response to a survey conducted this year, over 98% of DAEOs and Alternate DAEOs, as well as over 95% of agency ethics officials who responded, indicated that OGE's legal advisories help them perform their jobs.

GCLPD's Presidential Nominations Branch (PNB) has successfully led OGE's well-regarded nominee program and has contributed to OGE's preparations for the upcoming Presidential transition. PNB has been particularly effective in streamlining OGE's nominee processes and is currently operating at an unprecedented level of efficiency. In 2014, PNB issued an updated version of OGE's ethics agreement guide based on its real-world experiences using the original guide for nominee ethics agreements. PNB actively participated in the design of the highly complex workflow feature in our electronic filing system, *Integrity*, which enables us to review nominee packages electronically. We are now using that feature for nominees in the current administration, and we anticipate that it will help us greatly during the Presidential transition. PNB is currently finalizing a comprehensive web-based guide to assist nominees in completing the new OGE Form 278e and periodic transaction reports. This new guide will also be a valuable resource for ethics officials because it updates and expands on the existing guide, which is one of OGE's most popular resources among ethics officials in both the executive and legislative branches. PNB is also preparing a guide book for prospective nominees and a separate guide book for the Presidential transition team. In addition, PNB is training executive branch officials on the review of nominee reports. This training effort has included a comprehensive internal training plan to build the knowledge and skills of OGE staff through formal training sessions, informal "brown bag" discussions, and staff mentoring. PNB is also preparing a full-day symposium on advanced nominee financial disclosure for up to 140 advanced nominee financial disclosure reviewers, which PNB will present on March 7, 2016, the day before the National Government Ethics Summit begins.

Although the subcommittee's questions focus only on PCD and GCLPD, it also bears noting that the establishment of OGE's Compliance Division (CD) has also produced positive results. CD's Financial Disclosure Branch (FDB) has significantly enhanced OGE's financial disclosure program for annual financial disclosure reports, which is one of OGE's oversight mechanisms for agency ethics programs. When I became Director, I focused on improving this important mechanism because timely review is necessary to detect and resolve conflicts of interest. Since my appointment, OGE has improved its efficiency by going paperless and reducing its average review time for annual and termination reports from over 180 days to less



than 30 days. Notably, these improvements were achieved at a time when, due to new STOCK Act reporting requirements, OGE also received approximately 900 periodic transaction reports per year. OGE's second-level review of these reports is a quality control mechanism to ensure that agencies are timely reviewing these reports for conflicts of interest and to ensure the filers' compliance with their ethics agreements. In January 2015, we also began to issue year-end status reports to agency heads regarding the status of their agency's efforts to review the financial disclosure reports of Senate-confirmed appointees. These "report cards" generally resulted in agencies getting annual filings to OGE earlier in 2015 than in prior years.

Likewise, CD's Program Review Branch (PRB) has had success in carrying out OGE's oversight mechanisms through program reviews. As part of OGE's process of conducting program reviews, we routinely make specific recommendations for improving individual agency ethics programs, and we monitor their efforts to implement our recommendations. I took a new approach to this work by establishing a methodology that allows us to more regularly and timely conduct these important reviews. We have also refined our review processes in order to provide increased support to agencies in making program improvements. This past year, OGE issued 59 reports on its reviews of agency programs and is on pace to review all executive branch agencies during my five-year term. We make every one of these program review reports available to the public on OGE's website.

Another notable indicator of the agency-wide success of the restructuring is the measurable increases in the engagement of OGE employees as reflected in OGE's scores on the "employee engagement index" compiled through the annual Federal Employee Viewpoint Survey. Overall, OGE's scores on this important index, which includes employees' perceptions of agency leadership, supervisory relationships, and feelings of motivation and competency related to their work, rose 14% after the restructuring (from 2013 to 2015). OGE currently ranks 5<sup>th</sup> among the small and independent agencies with regard to the employee engagement index score. In fact, with an employee engagement index score of 80%, OGE was one of 11 executive branch agencies to score above 75% and one of only five to score 80% or better in 2015.

## **RESPONSE TO QUESTIONS 30, 31, AND 32**

30. The statute on special government employees specifically states that they are "not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days" (18 U.S.C. § 202(a)). What gives OGE the authority to interpret this provision in a different manner than that indicated by the plain language passed by Congress?

31. What steps does OGE take to ensure that this time limit for special government employees is followed?

32. What are the consequences for failing to follow the law with regard to the length of time an individual may be considered a special government employee?

The executive branch's longstanding interpretation, established in a Presidential memorandum and opinions of the Department of Justice's Office of Legal Counsel (OLC), that section 202 requires a prospective determination at the time of appointment is consistent with the plain language of the statute. Paragraph (a) of section 202 provides the following definition of the term "special government employee":

[T]he term "special Government employee" shall mean an officer or employee of the executive or legislative branch of the United States Government, of any independent agency of the United States or of the District of Columbia, who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis....<sup>57</sup>

OLC has held, in opinions that are binding on OGE and executive branch agencies,<sup>58</sup> that application of this definition requires the employing agency to make a prospective determination at the time the employee is appointed:

The designation of an officer or employee of the United States as a special Government employee, as that term is defined in 18 U.S.C. § 202, depends on a good faith estimate by the employing agency, made at the time of appointment, that the individual concerned will not actually perform services on all or part of more than 130 of the succeeding 365 days. The designation of a special Government employee remains in effect for the entire 365 days, even if it should turn out that the individual in fact serves for more than 130 days.<sup>59</sup>

The interpretation that section 202 requires a prospective determination actually predates both OLC's opinions and the creation of OGE. More than a half century ago, shortly after enactment of 18 U.S.C. §§ 202-209, President John F. Kennedy issued a memorandum describing the provisions of the new conflict of interest provisions and their effect on special government employees.<sup>60</sup> That 1963 memorandum provided instructions as to the application of 18 U.S.C. § 202, including the following: "Even if it becomes apparent, prior to the end of a period of 365 days for which an agency has made an estimate with regard to an appointee, that

<sup>57</sup> 18 U.S.C. § 202(a).

<sup>58</sup> See, e.g., Memorandum from Stephen G. Bradbury, Principal Deputy Assistant Attorney Gen., to Attorneys of the Office of Legal Counsel 1 (May 16, 2005) ("[S]ubject to the President's authority under the Constitution, OLC opinions are controlling on questions of law within the Executive Branch.").

<sup>59</sup> Federal Advisory Committee Act (5 U.S.C. App. I)—United States-Japan Consultative Group on Economic Relations, 3 Op. O.L.C. 321, 323 (1979); see also Merit Systems Protection Board—Special Counsel—Employment of Temporary or Intermittent Attorneys and Investigators (31 U.S.C. § 686), 3 Op. O.L.C. 451, 454 (1979).

<sup>60</sup> Memorandum on Preventing Conflicts of Interest on the Part of Special Government Employees, 28 Fed. Reg. 4539 (May 2, 1963). Note also that the Civil Service Commission incorporated this instruction in the Federal Personnel Manual more than a decade before OGE was created. U.S. CIVIL SERV. COMM'N, FEDERAL PERSONNEL MANUAL, ch.735, app. C (1965).



he has not been accurately classified, he should nevertheless continue to be considered a special Government employee or not, as the case may be, for the remainder of the 365-day period.”<sup>61</sup>

The prospective nature of the determination as to special government employee status is established by the language of the statutory definition, which applies to any employee who is “retained, designated, appointed, or employed *to perform ... for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties.*”<sup>62</sup> This language indicating that the employee is appointed *to perform for 130 days or less* signals that the definition applies when an employee is appointed for the purpose of serving for that number of days.<sup>63</sup> That purpose is necessarily established at the time of appointment. This interpretation is further reinforced by the differences in the language of section 202(a), which is based on a prospective determination, and sections 203(c)(2) and 205(c), which are based on the number of days actually served.<sup>64</sup> In addition, because section 202 is a definitional provision, it does not restrict the number of days an employee can serve. In other words, an employee who meets this definition is a special government employee, and an employee who does not meet this definition is a regular employee.

This prospective determination is done so that employees are on notice with respect to the ethics laws and rules that will apply to them.<sup>65</sup> Accordingly, as provided in the OLC opinions and the 1963 Presidential memorandum, the fact that an individual actually works 131 days in a 365-day period would not change that individual’s status as a special government employee if a good faith estimate was made at the time of appointment that the individual would work 130 days or less in that period. It should be noted, however, that special government employees are covered by many of the government’s ethics laws and regulations. Most notably, they are covered by the primary criminal conflict of interest law, 18 U.S.C. § 208. The potential consequences to a special government employee who violates this criminal law include criminal prosecution.<sup>66</sup> This sweeping criminal law prohibits each executive branch employee, including a special government employee, from participating in any “particular matter in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial

---

<sup>61</sup> Memorandum on Preventing Conflicts of Interest on the Part of Special Government Employees, 28 Fed. Reg. at 4541. In connection with this Presidential interpretation of 18 U.S.C. § 202, it should be noted that the language in that section was originally proposed by the President. See Special Message to the Congress on Conflict-of-Interest Legislation and on Problems of Ethics in Government, 1961 Pub. Papers 326 (Apr. 27, 1961); see also Executive Employees’ Standards Act, H.R. 7139, 87th Cong. § 2 (1961) (“[T]he term ‘special Government employee’ shall mean a Government employee . . . who is retained, designated, appointed, or employed (i) to perform, for a term not to exceed one hundred and thirty days during any consecutive period of three hundred and sixty-five days, temporary duties....”).

<sup>62</sup> 18 U.S.C. § 202(a) (emphasis added).

<sup>63</sup> *Id.*

<sup>64</sup> Compare 18 U.S.C. § 202(a) (applying the definition of special government employee to any employee who was retained, designated, appointed, or employed “to perform . . . for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days”), with 18 U.S.C. § 203(c)(2) (limiting an exception based on the number days a special government employee actually “has served”), and 18 U.S.C. § 205(c) (same).

<sup>65</sup> OGE Informal Advisory Opinion 00 x 1 (2000).

<sup>66</sup> 18 U.S.C. §§ 208, 216.

interest.” 18 U.S.C. § 208(a). Thus, for example, section 208 would bar a special government employee from participating in any particular matter affecting the interests of an outside employer.

As a further clarification, it bears reiterating that 18 U.S.C. § 202 is not a hiring or appointment authority. That section provides a definition used exclusively for the purpose of determining the coverage of certain ethics requirements but has nothing to do with the authority to appoint an employee.<sup>67</sup> Inasmuch as a special government employee is in every case an “employee,” the employing agency must have authority—independent of 18 U.S.C. § 202(a)—to appoint that individual.<sup>68</sup> Therefore, the broader questions as to whether an individual should be appointed as an employee, how long an appointment that individual should be given, and what types of duties that individual should be assigned to perform, are questions that relate to the specific authorities used to appoint the individual. OGE has no authority over an agency’s exercise of appointment authorities, which are wholly separate from the agency’s application of 18 U.S.C. § 202(a).

OGE has taken a variety of steps to assist agency ethics officials in applying ethics laws and regulations applicable to regular and special government employees. OGE has issued guidance on ethics matters involving special government employees, including the applicability of criminal conflicts of interest laws and the proper method of day-counting.<sup>69</sup> OGE’s desk officers also regularly respond to questions from agency ethics officials. In addition, OGE offers training to agency ethics officials on topics related to special government employees.

---

<sup>67</sup> 18 U.S.C. § 202(a).

<sup>68</sup> See U.S. OFFICE OF GOV’T ETHICS, ATTACHMENT TO DO-00-003: SUMMARY OF ETHICAL REQUIREMENTS APPLICABLE TO SPECIAL GOVERNMENT EMPLOYEES (2000) (“The first and perhaps most important point to emphasize is that SGEs *are* Government employees, for purposes of the conflict of interest laws.”).

<sup>69</sup> See, e.g., U.S. OFFICE OF GOV’T ETHICS, LA-12-01: POST-EMPLOYMENT NEGOTIATION AND RECUSAL REQUIREMENTS UNDER THE STOCK ACT (2012) (including discussion of applicability to special government employees); U.S. OFFICE OF GOV’T ETHICS, 08 x 3a: BOOK DEALS INVOLVING REGULAR EMPLOYEES AND SPECIAL GOVERNMENT EMPLOYEES (2008); U.S. OFFICE OF GOV’T ETHICS, 07 x 3: OPINION OF OFFICE OF LEGAL COUNSEL ON SGE DAY-COUNTING (2007); U.S. OFFICE OF GOV’T ETHICS, 07 x 1: COUNTING DAYS OF SERVICE FOR SPECIAL GOVERNMENT EMPLOYEES (2007); U.S. OFFICE OF GOV’T ETHICS, 05 x 4: FEDERAL ADVISORY COMMITTEE APPOINTMENTS (2005); U.S. OFFICE OF GOV’T ETHICS, 04 x 9: SGEs AND REPRESENTATIVES ON FEDERAL ADVISORY COMMITTEES (2004); U.S. OFFICE OF GOV’T ETHICS, 03 x 7: 60-Day Thresholds for SGEs (2003); U.S. OFFICE OF GOV’T ETHICS, DO-03-021: FINANCIAL DISCLOSURE REPORTING REQUIREMENTS FOR SPECIAL GOVERNMENT EMPLOYEES (SGEs) (2003); U.S. OFFICE OF GOV’T ETHICS, 03 x 5: Appointment to Advisory Committee as “Representative” versus SGE (2003); U.S. OFFICE OF GOV’T ETHICS, 01 x 2: ETHICAL REQUIREMENTS APPLICABLE TO POTENTIAL PAS APPOINTEES EMPLOYED AS “ADVISORS” OR “COUNSELORS” (2001); U.S. OFFICE OF GOV’T ETHICS, DO-00-003: SUMMARY OF ETHICAL REQUIREMENTS APPLICABLE TO SPECIAL GOVERNMENT EMPLOYEES (2000); U.S. OFFICE OF GOV’T ETHICS, DO-95-019: CONFIDENTIAL FINANCIAL DISCLOSURE AND SPECIAL GOVERNMENT EMPLOYEES SERVING IN A POSITION FOR MORE THAN ONE YEAR (1995); U.S. OFFICE OF GOV’T ETHICS, 94x17: IMPACT OF 60-DAY THRESHOLD ON SPECIAL GOVERNMENT EMPLOYEES FILING SF 278s AND SF 450s (1994); U.S. OFFICE OF GOV’T ETHICS, 93 x 14: STATUS OF INDIVIDUALS APPOINTED TO A FEDERAL ADVISORY COMMITTEE (1992); U.S. OFFICE OF GOV’T ETHICS, DA-10-20-92: ADDITIONAL GUIDANCE ON CONFIDENTIAL FINANCIAL DISCLOSURE (1992); U.S. OFFICE OF GOV’T ETHICS, 91 x 17: ETHICS RESTRICTIONS APPLICABLE TO SPECIAL GOVERNMENT EMPLOYEES (1991); U.S. OFFICE OF GOV’T ETHICS, 82 x 22: Members of Federal Advisory Committees and the Conflict-of-Interest Statutes (1982); U.S. OFFICE OF GOV’T ETHICS, 81 x 24: SPECIAL GOVERNMENT EMPLOYEES AND 18 U.S.C. §§ 202, 203, AND 205 (1981); U.S. OFFICE OF GOV’T ETHICS, 81 x 8: DETERMINING WHO IS CONSIDERED A SPECIAL GOVERNMENT EMPLOYEE (1981).



## RESPONSE TO QUESTIONS 33 AND 34

33. What are some of the trends and emerging issues you have identified through your Agency Information Management System (AIMS)?

34. How have you worked with agencies on understanding and addressing those issues?

The Agency Information Management System (AIMS) has enabled OGE to track its external interactions based on the topic, complexity, source, and volume of questions OGE receives from agencies and other stakeholders, such as the public, the media, and Congress. Based on this information, OGE has identified the following trends and emerging issues in government ethics.

With regard to the topics raised, the most frequently asked questions from agency ethics officials related to financial disclosure, the criminal conflicts of interest prohibition at 18 U.S.C. § 208, administration of the ethics program, and gifts from outside sources. With regard to the complexity, OGE determined that a high percentage of the complex questions it received related to a criminal conflict of interest statute barring government employees from certain representational activities involving the United States. With regard to the volume and sources of contacts, OGE has identified two trends. First, within the ethics community, OGE receives the most calls from the cabinet agencies. Second, outside of the ethics community OGE receives the most calls from private citizens, federal employees, and the media.

OGE has used the data gathered in AIMS to work with agencies in a variety of ways to increase their understanding of government ethics requirements and to address the trends identified through the system. Specifically, OGE has developed new job aids, made agencies aware of relevant training courses, developed new training courses, and drafted regulatory changes.

For example, in response to the high volume of financial disclosure questions OGE receives from agencies, OGE has been developing a comprehensive web-based guide that will provide ethics officials with instructions on financial disclosure requirements and processes. In addition, OGE has been offering training to agency ethics officials regarding financial disclosure on a regular basis. As discussed earlier, OGE is also holding a free, full-day, in-person training event next month for beginner and advanced financial disclosure reviewers. This training will enable agency ethics officials to successfully manage the surge in financial disclosure filings related to the anticipated high volume of departing employees in 2016 and incoming nominees and other new hires in 2017 and 2018. The beginner financial disclosure track will prepare ethics officials to review the new OGE Form 278e generally with regard to most of the executive branch's public financial disclosure filers. The advanced financial disclosure track will prepare ethics officials to review the complex issues specifically presented by nominee financial disclosure reports.

With the knowledge that questions about gifts from outside sources generate more questions than any other area of the Standards of Conduct, OGE has focused on the gift rules when targeting which subparts of the Standards of Conduct to revise. As these proposed regulatory revisions continue through the regulatory process and afterward, OGE will continue to assist agency ethics officials in providing consistent and accurate counseling to their employees in order to prevent or remedy conflicts of interest related to gifts.

OGE desk officers regularly use the data in AIMS to gain insight into the agencies to which they are assigned so that they may provide those agencies with tailored support. For example, OGE desk officers use the data about the topics of the inquiries they receive from their agencies' ethics officials in order to recommend upcoming OGE training offerings tailored to the issues that are generating the ethics officials' questions. This data increases the ability of OGE desk officers to provide useful, direct support to their agencies.

As noted above, a significant percentage of the interactions recorded in AIMS relate to agency administration of the ethics program. One of the primary roles of OGE's program review function is to ensure the proper administration of the ethics program at the agency under review through evaluating the agency's processes and procedures for carrying out its program. If procedural deficiencies are identified, the OGE program review team will recommend the agency take corrective action and will work with the agency to implement the recommendations, often drawing upon model practices identified during prior reviews of other agencies.

Finally, the trends identified in AIMS have resulted in the development of new training courses. For example, after an analysis of the data revealed that a high volume of complex calls related to a criminal conflict of interest statute barring government employees from certain representational activities involving the United States, OGE developed an in-depth course on the topic to address the identified need for training. The course was delivered during OGE's 2014 National Government Ethics Summit. Based on feedback from the session, 94% of surveyed ethics officials responded that the training improved their understanding of this criminal law and that they were better able to provide their agency's employees with quality advice on its requirements. The course was also subsequently recorded and made permanently available online as a training tool for future use.

## RESPONSE TO QUESTION 35

35. Please describe your new electronic filing system, *Integrity*. How does the system work, how many agencies are currently using the system, approximately how many filers are registered?

*Integrity* is OGE's secure, web-based system for the collection and review of public financial disclosure reports (OGE Form 278e and OGE Form 278-T) in the executive branch. OGE developed the system pursuant to requirements in the STOCK Act of 2012.<sup>70</sup> Launched on

---

<sup>70</sup> Stop Trading on Congressional Knowledge Act of 2012, Pub. L. No. 112-105, § 11(b), 126 Stat. 291, 299, amended by Act of Apr. 16, 2013, Pub. L. No. 113-7, § 1(b)(2), 127 Stat. 438, 439.



January 1, 2015, the system currently has 120 executive branch agencies and over 11,000 filers registered. As of January 1, 2016, OGE is using *Integrity* to collect reports from Designated Agency Ethics Officials and Senate-confirmed Presidential appointees whose reports come to OGE for final review and certification. In November 2015, OGE completed and launched the nominee functionality of the system, and in December 2015 the White House began directing nominees to submit nominee financial disclosure reports through *Integrity*. OGE briefed more than a dozen Senate committees regarding the new look of the rendering, the OGE Form 278e, in order to prepare them for nominees' submissions of the new form. Some of the key features of *Integrity* include:

- **Filer Wizards and Intelligent Tables:** *Integrity* increases filing accuracy through use of wizards that prompt filers to provide information through variable sets of context-dependent questions relevant to an individual filer. OGE limited this targeted assistance feature to areas involving financial interests related to outside employment of filers and their spouses, where mistakes and omissions most often occur in initial submissions of reports. For other types of financial interests, OGE developed intelligent data entry tables that guide filers to provide the correct information the first time. A benefit of increasing the accuracy of initial submissions is the efficiency that can be achieved by reducing the level of effort required during the review process to amend and finalize filer submissions.
- **Asset Name Assistance:** An asset name auto-complete feature suggests possible matches for over 13,000 assets as the filer types either the asset name or ticker symbol. This can increase accuracy and uniformity of entries.
- **Comment and Endnote Features:** The comment and endnote features allow filers to submit comments and questions to reviewers about their reports and to add endnotes that provide explanatory information about their assets. Through the comment feature, agency reviewers can also instruct filers to make corrections, or add information, to their reports.
- **Compare feature:** *Integrity* enables agency ethics officials to compare current filings with past filings, in order to focus on changes in filers' financial interests from year to year. This feature enhances the conflicts of interest analysis by highlighting new financial interests.
- **Import feature:** *Integrity* enables filers to select and import transactions from periodic transaction reports into annual and termination reports. *Integrity* also enables filers to import data from previous new entrant and annual reports into subsequent annual and termination reports in order to prepopulate their forms with data that can be updated during the filing process.
- **Variable Workflows:** *Integrity* provides a variety of workflow options so that agencies can tailor the report review processing sequence from initial report assignment to final report certification in the manner that best accommodates the agency's processes.



- Direct Submission to OGE: For those public financial disclosure reports that require a second-level review by OGE,<sup>71</sup> *Integrity* routes the reports directly to OGE immediately upon certification of the report by the agency.
- Notices and Reminders: *Integrity* can send notices and reminders through agencies' email systems to assist ethics officials in managing their agencies' financial disclosure programs by sending out notices and reminders to both filers and reviewers.
- Easy Access: Users can access *Integrity* anywhere over the internet by going to [www.integrity.gov](http://www.integrity.gov) and signing on through the authentication services of MAX.gov by entering their MAX user name and password or by swiping their PIV or CAC cards.

## RESPONSE TO QUESTION 36

36. In light of the recent data breaches at federal agencies, what has OGE done to ensure the new filing system complies with all government security and privacy requirements?

*Integrity* meets rigorous standards for information security and privacy. OGE leadership continuously monitors *Integrity* operations and regularly evaluates security best practices for application to *Integrity*. *Integrity* is a web-based application housed at the U.S. Department of Agriculture's National Information Technology Center (NITC) in a secure government cloud. *Integrity* was authorized to operate after the system successfully underwent a full, independent security assessment. *Integrity* uses the authentication services of an existing government system, Max.gov, operated by the Budget Formulation and Execution Line of Business (BFELoB) of the Office of Management and Budget. This existing platform currently provides secure authentication for about 170,000 users. Both *Integrity*'s authentication provider, MAX.gov, and host, NITC, are authorized under GSA's Federal Risk and Authorization Management Program (FedRAMP). To ensure that NITC complies with the Federal Information Security Management Act (FISMA), NITC follows the National Institute of Standards and Technology (NIST) Risk Management Framework for categorization, selection, development, implementation, assessment, authorization, and monitoring of security controls.

The public financial disclosure reports collected through *Integrity* are publicly available without redaction to any requestor who completes and submits an OGE Form 201 to request a copy of a report. Nevertheless, OGE treats these reports as private until requested. OGE's launch of *Integrity* involved a thorough assessment to ensure that privacy requirements are observed, and that appropriate processes are put in place to protect personally identifiable information and sensitive information maintained in the system. For example, prior to launching the application, OGE prepared a Privacy Impact Assessment specific to *Integrity*. OGE also updated its Breach Policy and prepared a separate Incident Response Plan for *Integrity*. In addition, OGE requires that all agencies registered in the system sign a Memorandum of Acknowledgement (MOA)

---

<sup>71</sup> See 5 U.S.C. app. § 103(c).

delineating each agency's responsibility to coordinate with OGE, as well as to comply with the user agency's own breach policies, in the event of a security incident involving *Integrity*. The MOA also reminds user agencies of their responsibilities to provide Privacy Act training to agency employees; to enforce user behaviors designed to protect the security of the system and the information contained in it; to limit administrator access to the system only to those with a "need to know"; and to comply with all laws, policies, and procedures regarding public access to information maintained in the system.

**Questions for The Honorable Walter M. Shaub, Jr.**  
Director  
U.S. Office of Government Ethics

**Questions from Ranking Member Gerald E. Connolly**  
Subcommittee on Government Operations

Hearing: "Merit System Protection Board, Office of Government Ethics, and Office of Special Counsel Reauthorization"

**RESPONSE TO QUESTION 1**

1. As the head of an employing agency, do you believe Office of Government Ethics (OGE) has sufficient tools and authorities to discipline employees for misconduct or performance issues when necessary?

Yes. As the head of an employing agency, I believe the Office of Government Ethics (OGE) has sufficient tools and authorities to discipline its employees for misconduct or performance issues when necessary.

**RESPONSE TO QUESTION 2**

2. Based on your agency's experience, do you think statutory change is needed to streamline the federal employee disciplinary process?

No. My general concern as the head of an executive branch agency is that stripping oversight through merit systems principles could risk eventually increasing the sort of whistleblower retaliation and politically-motivated personnel actions against career employees that the merit systems principles were implemented to prevent. Instead, I would be interested in congressional proposals to streamline the federal hiring process.



UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



APR 18 2016

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Under the Ethics in Government Act of 1978, Presidential nominees requiring Senate confirmation who are not expected to serve in their Government positions for more than 60 days in a calendar year are not required to file public financial disclosure reports. The Act, as amended, however, contains a provision in section 101(b) that allows the committee with jurisdiction to request any financial information it deems appropriate from the nominee.

We understand that your committee desires to receive a financial disclosure report (OGE Form 278) from any Presidential nominee for a position on the Board of Governors of the United States Postal Service, along with a written opinion from this Office regarding any possible conflicts of interest.

Therefore, I am forwarding a copy of the financial disclosure report of Jeffrey A. Rosen, who has been nominated by President Obama for the position of a Governor on the Board of Governors, United States Postal Service. Because the nominee is not expected to serve more than 60 days in any calendar year, the enclosed report and this letter are submitted to you in accordance with your committee's confirmation procedures and will be available for public inspection only to the extent provided by your practices. There is no authority under the Act for public release of this material by the executive branch.

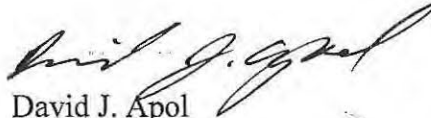
We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

The Honorable Ron Johnson

Page 2

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Apol", written in a cursive style.

David J. Apol  
General Counsel

Enclosures

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



JUN 27 2016

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

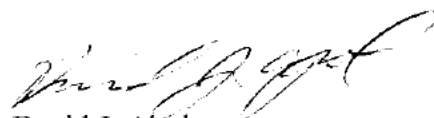
Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Mark D. Acton, who has been nominated by President Obama for the position of Commissioner, Postal Regulatory Commission.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

A handwritten signature in black ink, appearing to read "David J. Apol".

David J. Apol  
General Counsel

Enclosures



UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



September 19, 2016

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Robert G. Taub, who has been nominated by President Obama for the position of Commissioner of the Postal Regulatory Commission.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

DAVID APOL

Digitally signed by DAVID APOL  
DN: c=US, o=U.S. Government, ou=Office of  
Government Ethics, cn=DAVID APOL,  
0.9.2342.19200300.100.1.1=95491002981876  
Date: 2016.09.19 15:20:56 -0400

David J. Apol  
General Counsel

Enclosures

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



September 27, 2016

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Elizabeth A. Field, who has been nominated by President Obama for the position of Inspector General, Office of Personnel Management.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

DAVID APOL

Digitally signed by DAVID APOL  
DN: c=US, o=U.S. Government, ou=Office of  
Government Ethics, cn=DAVID APOL,  
0.9.2342.19200300.100.1.1=95491002981870  
Date: 2016.09.27 12:56:48 -0400

David J. Apol  
General Counsel

Enclosures

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



OCT 11 2016

The Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and Government Reform  
United States House of Representatives  
2157 Rayburn House Office Building  
Washington, DC 20515

Dear Mr. Chairman:

Pursuant to section 720 of title 31 of the U.S. Code, the U.S. Office of Government Ethics (OGE) is submitting the following statement of action in response to the recommendation for OGE in the Government Accountability Office (GAO) report, *FEDERAL WORKFORCE: Opportunities Exist to Improve Data on Selected Groups of Special Government Employees* (GAO-16-548). The report, which was publicly released on August 15, 2016, contains one recommendation for OGE:

To help ensure that agencies report consistent and reliable data, the Director of OGE should determine (e.g., through a survey of Designated Agency Ethics Officials and/or by analyzing agency data) whether other executive branch agencies are experiencing data challenges similar to HHS, State, and NRC. If they are, the Director should take steps to help the agencies strengthen their data.

*Id.* at 27.

As GAO recommended, OGE is surveying agency ethics officials to determine whether executive branch agencies are experiencing data challenges related to special Government employees (SGEs) who do not serve on federal boards.<sup>i</sup> After completing the survey, if OGE determines that agencies are experiencing data challenges, OGE will evaluate what steps may help agencies strengthen their data.

OGE has already taken two measures with respect to strengthening this data. In consultation with the U.S. Office of Personnel Management (OPM), OGE recently proposed new regulations that would improve coordination between agency human resources officials and agency ethics officials, which should lead to more reliable data. *See* EXECUTIVE BRANCH ETHICS



PROGRAM AMENDMENTS, 81 Fed. Reg. 36193, 36195, 36198-99 (proposed June 6, 2016) (to be codified at 5 C.F.R. pt. 2638). Notably, the proposed regulations would specifically require an agency's human resources officials to provide its agency ethics officials with prompt notification of the appointment of all financial disclosure report filers, including SGEs.<sup>ii</sup> *Id.* at 36198. In addition, OGE has expanded its ongoing program review of the Department of Health and Human Services (HHS) in light of GAO's recommendation for HHS to "take steps to improve the reliability of data on SGEs not serving on boards." The program review will further evaluate the mechanisms HHS has in place for tracking SGEs who do not serve on federal boards and may offer recommendations for improving them.

If your staff has any questions regarding this correspondence, please have them contact Ms. Shelley K. Finlayson, OGE's Chief of Staff and Program Counsel, at (202) 482-9314.

Sincerely,



Walter M. Shaub, Jr.  
Director

Cc: The Honorable Elijah E. Cummings  
Ranking Member  
Committee on Oversight and Government Reform  
United States House of Representatives  
2471 Rayburn House Office Building  
Washington, DC 20515

---

<sup>i</sup> The scope of GAO's review was limited to SGEs not serving on federal boards. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-16-548, FEDERAL WORKFORCE: OPPORTUNITIES EXIST TO IMPROVE DATA ON SELECTED GROUPS OF SPECIAL GOVERNMENT EMPLOYEES 2 (2016).

<sup>ii</sup> SGEs are financial disclosure report filers. 5 C.F.R. § 2635.904(a)(2).

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



OCT 11 2016

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
340 Dirksen Senate Office Building  
Washington, DC 20515

Dear Mr. Chairman:

Pursuant to section 720 of title 31 of the U.S. Code, the U.S. Office of Government Ethics (OGE) is submitting the following statement of action in response to the recommendation for OGE in the Government Accountability Office (GAO) report, *FEDERAL WORKFORCE: Opportunities Exist to Improve Data on Selected Groups of Special Government Employees* (GAO-16-548). The report, which was publicly released on August 15, 2016, contains one recommendation for OGE:

To help ensure that agencies report consistent and reliable data, the Director of OGE should determine (e.g., through a survey of Designated Agency Ethics Officials and/or by analyzing agency data) whether other executive branch agencies are experiencing data challenges similar to HHS, State, and NRC. If they are, the Director should take steps to help the agencies strengthen their data.

*Id.* at 27.

As GAO recommended, OGE is surveying agency ethics officials to determine whether executive branch agencies are experiencing data challenges related to special Government employees (SGEs) who do not serve on federal boards.<sup>i</sup> After completing the survey, if OGE determines that agencies are experiencing data challenges, OGE will evaluate what steps may help agencies strengthen their data.

OGE has already taken two measures with respect to strengthening this data. In consultation with the U.S. Office of Personnel Management (OPM), OGE recently proposed new regulations that would improve coordination between agency human resources officials and agency ethics officials, which should lead to more reliable data. See EXECUTIVE BRANCH ETHICS

PROGRAM AMENDMENTS, 81 Fed. Reg. 36193, 36195, 36198-99 (proposed June 6, 2016) (to be codified at 5 C.F.R. pt. 2638). Notably, the proposed regulations would specifically require an agency's human resources officials to provide its agency ethics officials with prompt notification of the appointment of all financial disclosure report filers, including SGEs.<sup>ii</sup> *Id.* at 36198. In addition, OGE has expanded its ongoing program review of the Department of Health and Human Services (HHS) in light of GAO's recommendation for HHS to "take steps to improve the reliability of data on SGEs not serving on boards." The program review will further evaluate the mechanisms HHS has in place for tracking SGEs who do not serve on federal boards and may offer recommendations for improving them.

If your staff has any questions regarding this correspondence, please have them contact Ms. Shelley K. Finlayson, OGE's Chief of Staff and Program Counsel, at (202) 482-9314.

Sincerely,

A handwritten signature in blue ink, reading "Walter M. Shaub, Jr.", with a stylized flourish at the end.

Walter M. Shaub, Jr.  
Director

cc: The Honorable Thomas Carper  
Ranking Member  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
344 Dirksen Senate Office Building  
Washington, DC 20515

---

<sup>i</sup> The scope of GAO's review was limited to SGEs not serving on federal boards. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-16-548, FEDERAL WORKFORCE: OPPORTUNITIES EXIST TO IMPROVE DATA ON SELECTED GROUPS OF SPECIAL GOVERNMENT EMPLOYEES 2 (2016).

<sup>ii</sup> SGEs are financial disclosure report filers. 5 C.F.R. § 2635.904(a)(2).



RON JOHNSON, WISCONSIN, CHAIRMAN

JOHN MCCAIN, ARIZONA  
ROB PORTMAN, OHIO  
RAND PAUL, KENTUCKY  
JAMES LANKFORD, OKLAHOMA  
MICHAEL B. ENZI, WYOMING  
KELLY AYOTTE, NEW HAMPSHIRE  
JONI ERNST, IOWA  
BEN SASSE, NEBRASKA

THOMAS R. CARPER, DELAWARE  
CLAIRE McCASKILL, MISSOURI  
JON TESTER, MONTANA  
TAMMY BALDWIN, WISCONSIN  
HEIDI HEITKAMP, NORTH DAKOTA  
CORY A. BOOKER, NEW JERSEY  
GARY C. PETERS, MICHIGAN

## United States Senate

COMMITTEE ON  
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS  
WASHINGTON, DC 20510-6250

CHRISTOPHER R. HIXON, STAFF DIRECTOR  
GABRIELLE A. HATKIN, MINORITY STAFF DIRECTOR

November 20, 2016

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

Dear Director Shaub:

As the Ranking Member of the Senate Committee with jurisdiction over the Office of Government Ethics, I write today to request your assistance with understanding how your office plans to address the potential for conflicts of interest in the upcoming Administration of President-elect Donald Trump.

As you know, President-elect Trump is a businessman with considerable financial interests in the United States and around the world. The full extent of his financial interests remains unclear, in part because he was the first presidential candidate in modern history to decline to release his tax returns to the American public. These unique circumstances raise important questions about how the Administration of President-elect Trump will avoid conflicts of interest and ensure integrity of executive branch programs and operations.

As you know, the Office of Government Ethics oversees the executive branch ethics program and works with ethics practitioners in more than 130 agencies to implement this effort. The Office of Government Ethics also plays a critical role in the 2016 Presidential Transition by making sure that prospective nominees are free of conflicts of interest. This role includes providing guidance regarding the federal laws that prohibit certain officials from participating personally and substantially in an official capacity in any matter that will have a direct and predictable effect on their financial interests. Unless an official receives a waiver or an exemption applies, the official with a conflict of interest must disqualify him or herself from participating in the matter. Criminal penalties may apply to officials who violate this statute.

As the independent ethics watchdog of the federal government, the Office of Government Ethics must provide assurances to the American people that your agency will advance a strong ethics program that holds the Administration of President-elect Trump accountable for any conflicts of interest. To better understand how your office plans to address the potential for conflicts of interest in the upcoming Administration of

President-elect Donald Trump, I ask that you please provide the following information by December 5, 2016:

1. **Handling of Trump Organization** – For constitutional reasons, the President is exempt from certain conflict of interest rules, such as the prohibition on acting in matters affecting his personal financial interest or representing his own claims and business interests to the government. However, the President remains subject to many related statutes, such as prohibitions on bribery and embezzlement. President-elect Trump and the Trump Organization reportedly have business with the federal government, lease federal property, and have regulatory and enforcement matters presently being adjudicated by federal government agencies.
  - a. What guidance has Office of Government Ethics (OGE) provided to agency ethics officials regarding the protocols for handling matters directly affecting President-elect Trump and the Trump Organization?
  - b. Will OGE recommend safeguards to protect federal officials from fear of reprisal in dealings with the Trump Organization?
  - c. Will OGE take steps to ensure Trump Organization employees do not have privileged access to decision-makers or access to nonpublic government information?
  - d. President-elect Trump reportedly intends to transfer control of the Trump Organization to his three oldest children.<sup>1</sup> Does this transfer meet the standards of a qualified blind trust, as defined under the Ethics in Government Act?
2. **President-elect Trump's Financial Conflicts** – President-elect Trump's previous financial disclosure reports reveal potential financial conflicts of interest in several areas of the economy and foreign relations. While Presidents are exempt from conflict of interest rules for constitutional reasons, Presidents of both parties, dating back to Lyndon Johnson, have taken significant steps to avoid the appearance of a conflict.<sup>2</sup>
  - a. Please identify the information that must be included in the President's annual financial disclosure, when a President must file his first disclosure, and whether the public will receive access to these disclosures.
  - b. What steps does OGE require a President to take if any conflicts of interest are apparent on the face of a financial disclosure?
  - c. What steps will OGE require to *prevent* acquisition of new conflicts by President-elect Trump and his Trump Organization?
3. **Transition Team** – President-elect Trump's three oldest children are members of the Presidential Transition team while continuing to serve as executives and

---

<sup>1</sup> *Three Trump Children Seen Managing President-Elect's Company*, REUTERS (Nov. 11, 2016).

<sup>2</sup> CYNTHIA BROWN AND L. PAIGE WHITAKER, CONG. RESEARCH SERV., LEGAL SIDEBAR, CONFLICTS OF INTEREST AND THE PRESIDENCY (2016).

officers in the Trump Organization.<sup>3</sup> As leaders on the Transition team, his children will be party to sensitive government information and empowered to discuss matters of government policy and operations with the leadership of several federal agencies.

- a. What guidance has OGE provided to agency ethics officials regarding the handling of non-transition business communications from Mr. Trump's children and the Trump Organization during the transition?

4. **President-elect Trump's Oldest Children and Jared Kushner** – President-elect Trump has reportedly expressed interest in obtaining security clearances for his three oldest children and his son-in-law, Jared Kushner.<sup>4</sup>

- a. What guidance has OGE provided to President-elect Trump's oldest children and Mr. Kushner concerning the management of their conflicts of interest while participating in executive branch deliberations?
- b. Does President-elect Trump have legal authority to appoint these individuals to government positions?
- c. Are President-elect Trump's children and Mr. Kushner exempt from conflict of interest laws?
- d. Has OGE provided guidance to these individuals to ensure they disqualify themselves from matters in which they have financial interests and to prevent inadvertent disclosure of confidential government information?

5. **Ongoing Financial Disclosure Obligations** – President-elect Trump has disclosed a large portfolio of financial interests that include securities interests in several investment companies.<sup>5</sup> President-elect Trump will be under an ongoing obligation to file public reports of any securities transactions so that the public may understand his financial interests.

- a. What guidance has OGE provided to President-elect Trump to ensure he continues to file any required financial disclosures of securities transactions?
- b. How often will President-elect Trump be required to file such disclosures?
- c. Will OGE or the White House Counsel be responsible for assessing fines for any late filings?

---

<sup>3</sup> Brian Naylor & Barbara Sprunt, *From Lobbyists to Loyalists, See Who's on Donald Trump's Transition Team*, NPR (Nov. 16, 2016).

<sup>4</sup> Jim Acosta et al., *Trump Transition Team Asked about Security Clearance for His Children*, CNN (Nov. 15, 2016).

<sup>5</sup> Gregor Aisch et al., *What's in Donald Trump's 104-Page Financial Disclosure?*, N.Y. TIMES (May 18, 2016).




6. **Outside Fiduciary Positions** – President-elect Trump has disclosed that he serves as chairman or board member of hundreds of companies.<sup>6</sup> As a board member or officer, he owes those entities and their investors' legal fiduciary duties that have the potential to interfere with his duties as president.
- a. What guidance has OGE provided to President-elect Trump regarding his outside positions and the steps he should take to address potential conflicts of interest?
  - b. What safeguards will OGE establish to prevent conflicts of interest between his legal fiduciary obligations to these companies and his legal obligations and duties as President?
7. **Misuse of Image** – Longstanding White House policy across Administrations prohibits the use of the President's name or image in advertising or for the endorsement of any commercial product or service.
- a. What guidance has OGE provided to President-elect Trump regarding the use of his name and image for the endorsement of the Trump Organization or his children's businesses?

If you or members of your staff have any questions about this request, please feel free to contact Roberto Berrios of my staff at (b) (6). Thank you very much for your attention to this matter.

With best personal regards, I am

Sincerely yours,



Tom Carper  
Ranking Member

cc: The Honorable Ron Johnson  
Chairman

---

<sup>6</sup> David Goldman, *Donald Trump's 500 Businesses Would Pose 'Unprecedented Ethical Dilemma'*, CNN (Mar. 17, 2016).

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



December 12, 2016

The Honorable Thomas R. Carper  
Ranking Member  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
513 Hart Senate Office Building  
Washington, DC 20510-6250

Dear Ranking Member Carper:

Thank for your letter dated November 20, 2016, regarding the role of the United States Office of Government Ethics (OGE) in preventing conflicts of interest. Your letter initially set a response deadline of December 5, 2016, but your office extended that deadline to December 12, 2016. I have enclosed OGE's responses to the questions posed in your letter.

If your staff has any questions or would like to discuss these responses, they may feel free to contact OGE's Chief of Staff, Shelley K. Finlayson, at (202) 482-9292.

Sincerely,

Walter M. Shaub, Jr.  
Director

Enclosure

cc. The Honorable Ron Johnson  
Chairman



RESPONSES TO THE QUESTIONS POSED IN THE NOVEMBER 20, 2016, LETTER OF THOMAS R. CARPER, RANKING MEMBER, COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, UNITED STATES SENATE (DECEMBER 12, 2016)

Before responding to each of your questions, some background on OGE and its legal authorities may prove helpful. As your letter correctly indicates, OGE oversees the executive branch ethics program and works with ethics practitioners in more than 130 federal agencies to carry out its important mission of preventing conflicts of interest on the part of the approximately 2.7 million federal employees. However, OGE is not, as your letter indicates, an “independent” agency, with the protections and authorities<sup>1</sup> that such status would confer. Instead, OGE is an executive agency with the limited authorities that the Ethics in Government Act vests in it.<sup>2</sup>

As your letter suggests, OGE has some involvement in ethics issues related to Presidents. For example, the Stop Trading on Congressional Knowledge Act (STOCK Act) imposes limited ethics-related restrictions on the President.<sup>3</sup> The STOCK Act bars the President from: using nonpublic information for private profit;<sup>4</sup> engaging in insider trading;<sup>5</sup> participating in an initial public offering;<sup>6</sup> intentionally influencing an employment decision or practice of a private entity solely on the basis of partisan political affiliation;<sup>7</sup> and participating in a particular matter directly and predictably affecting the financial interests of any person with whom he has, or is negotiating for, an agreement of future employment or compensation.<sup>8</sup> In addition, OGE is authorized to review the President’s annual, periodic transaction, and termination financial disclosure reports.<sup>9</sup> OGE’s regulations on gifts from outside sources and gifts from employees also apply to the President.<sup>10</sup>

---

<sup>1</sup> Such protections and authorities typically include: a restriction on removing the agency head, except for cause; a requirement that Congress be notified of the agency’s independent budget request; and bypass authority for unrestricted communications with Congress. *See, e.g.*, 5 U.S.C. §§ 1202(d), 1204(k)-(l), 1205-1206, 1211(b), 1212(e), 1217-18 (2012); 5 U.S.C. app. §§ 3(b), 5, 6(f) (2012).

<sup>2</sup> 5 U.S.C. app. §§ 401-408 (2012).

<sup>3</sup> *See* STOCK Act, Pub. L. No. 112-105, § 2(3)(B)(i), 126 Stat. 291 (2012), as amended.

<sup>4</sup> *See* STOCK Act, Pub. L. No. 112-105, § 9(a), 126 Stat. 291 (2012) (linked to the subject of OGE’s regulation on the misuse of nonpublic information at 5 C.F.R. § 2635.703 (2016)).

<sup>5</sup> *See* STOCK Act, Pub. L. No. 112-105, § 9(b), 126 Stat. 291 (2012).

<sup>6</sup> *See* STOCK Act, Pub. L. No. 112-105, § 12, 126 Stat. 291 (2012). However, note that, except for identifying and advising covered executive branch officials, OGE is not involved in interpreting section 12 because that section amends the Securities and Exchange Act of 1934, 15 U.S.C. 78u-1. *Cf.* OGE LA-14-02 (Mar. 7, 2014).

<sup>7</sup> *See* STOCK Act, Pub. L. No. 112-105, § 18, 126 Stat. 291 (2012), (codified at 18 U.S.C. § 227 (2012)). Note, however, that the Ethics in Government Act does not authorize OGE to make any finding that a criminal law has been violated. 5 U.S.C. app. § 402(f)(5).

<sup>8</sup> *See* STOCK Act, Pub. L. No. 112-105, § 17, 126 Stat. 291 (2012). Note that OGE has interpreted future employment or compensation as employment or compensation that will commence after a covered individual’s government service has ended. *See* OGE LA-13-06 (Apr. 25, 2013); OGE LA-12-01 (Apr. 6, 2012).

<sup>9</sup> *See* 5 U.S.C. app. §§ 101(f)(1), 103(b), 106 (2012).

<sup>10</sup> *See* 5 C.F.R. 2635.102(h) (2016). Note that an exception to the gift rules generally permits the President to accept gifts from outside sources, but that exception does not except him from overarching considerations relating to the acceptance of gifts. *See* 5 C.F.R. §§ 2635.204(j), 2635.202(c) (2016); *see also* 81 Fed. Reg. 81,641, 81,648-49 (Nov. 18, 2016) (to be codified at 5 C.F.R. § 2635.201).



At the same time, OGE's involvement in ethics issues related to the President has significant limits. For example, although the bribery statute applies to the President, a 1980 memorandum of understanding between OGE and the U.S. Department of Justice withholds from OGE authority to issue binding opinions on the statutory prohibition against bribery.<sup>11</sup> Similarly, although the President is subject to the Emoluments Clause<sup>12</sup> and the Presidential Emoluments Clause<sup>13</sup> of the United States Constitution, OGE lacks authority and expertise to address issues arising under those clauses. In addition, provisions of the Ethics in Government Act limiting outside earned income and outside employment are inapplicable to the President because they employ the terms "officer" and "employee," which are subject to definitions that exclude the President in the same title of the United States Code.<sup>14</sup> Most important to the questions raised in your letter, the primary criminal conflicts of interest statute, 18 U.S.C. § 208, is inapplicable to the President, though OGE has for more than three decades asserted authority to make nonbinding recommendations regarding a President's conflicts of interest.<sup>15</sup>

While OGE's role in ethics issues involving the President is limited, OGE has significant involvement in ethics issues related to the President's nominees. The law requires OGE to review the financial disclosure reports of most Presidential nominees for civilian positions requiring Senate confirmation. If confirmed, these individuals become, upon assuming their government positions, subject to the criminal conflict of interest laws at 18 U.S.C. §§ 201-208, as well as the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct) and other OGE regulations. Those who are not special government employees also become subject to 18 U.S.C. § 209.<sup>16</sup> Therefore, OGE reviews their financial disclosure reports not only for compliance with applicable disclosure requirements but also for conflicts of interest. OGE approaches this work from the perspective of managing risk, preparing ethics agreements to prescribe concrete steps they must take to reduce the potential for conflicts of interest to arise. OGE then transmits their nominee packages directly to the Senate.<sup>17</sup>

With this background, please find below OGE's responses to each of the questions posed in your November 20, 2016, letter.

---

<sup>11</sup> See 18 U.S.C. § 201 (2012).

<sup>12</sup> U.S. Const., art. I, § 9, cl. 8.

<sup>13</sup> U.S. Const., art. II, § 1, cl. 7.

<sup>14</sup> See 5 U.S.C. §§ 2104 (officer), 2105 (employee); 5 U.S.C. app. §§ 501 (Outside earned income limitation), 502 (Limitations on outside employment), 505(2) (modifying the definitions of "officer" and "employee" in title 5, United States Code to exclude from those definitions special government employees for purposes of title V of the Ethics in Government Act).

<sup>15</sup> See 18 U.S.C. § 202(c) (2012); see also OGE opinion 83x16 (October 20, 1983) available online at [https://www.oge.gov/web/oge.nsf/Legal%20Advisories/01F8E09232041FD185257E96005FBBE8/\\$FILE/64ed9ad9bd294b45a88ac8729a97968a3.pdf?open](https://www.oge.gov/web/oge.nsf/Legal%20Advisories/01F8E09232041FD185257E96005FBBE8/$FILE/64ed9ad9bd294b45a88ac8729a97968a3.pdf?open).

<sup>16</sup> For additional information, you may find it helpful to review OGE's Transition Guide, OGE's Nominee Ethics Guide, and the appendix to OGE's Nominee Ethics Guide. All three of these documents are available online at: <https://www.oge.gov/web/oge.nsf/Resources/PRESIDENTIAL+TRANSITION>.

<sup>17</sup> For more information about OGE's mission, structure and operations, you might find it useful to review OGE's newly released agency profile publication, which is available online at [https://www.oge.gov/web/oge.nsf/0/AAD52FD1763F7B6A85258082005E8840/\\$FILE/OGE%20Agency%20Profile%20Book%20Spread%20View.pdf](https://www.oge.gov/web/oge.nsf/0/AAD52FD1763F7B6A85258082005E8840/$FILE/OGE%20Agency%20Profile%20Book%20Spread%20View.pdf)



## QUESTION 1:

1. ***Handling of Trump Organization***—*For constitutional reasons, the President is exempt from certain conflict of interest rules, such as the prohibition on acting in matters affecting his personal financial interest or representing his own claims and business interests to the government. However, the President remains subject to many related statutes, such as prohibitions on bribery and embezzlement. President-elect Trump and the Trump Organization reportedly have business with the federal government, lease federal property, and have regulatory and enforcement matters presently being adjudicated by federal government agencies.*
  - a. *What guidance has Office of Government Ethics (OGE) provided to agency ethics officials regarding the protocols for handling matters directly affecting President-elect Trump and the Trump Organization?*

For approximately the past 18 months, OGE has worked diligently to prepare the executive branch ethics community for the types of ethics issues that demand greater focus during a Presidential transition. As part of that preparation, OGE undertook significant regulatory reforms and provided extensive guidance and training to agency ethics officials across the executive branch. The effort included, among other measures, strengthening OGE's regulations on seeking employment, gifts from outside sources, and requirements for the executive branch ethics program.<sup>18</sup> 81 Fed. Reg. 48,687 (July 26, 2016); 81 Fed. Reg. 81,641 (November 18, 2016) (gifts from outside sources); and 81 Fed. Reg. 36,193 (June 6, 2016) (ethics program requirements). The effort also included proposed revisions to OGE's financial disclosure regulations. 81 Fed. Reg. 69,204 (October 5, 2016). In addition, OGE developed and distributed a number of new guidance and resource materials to ethics officials on topics such as nominee financial disclosure, ethics agreements, and post-employment restrictions.<sup>19</sup> OGE provided extensive training to agency ethics officials on ethics issues related to the transition, including: a three-day training event regarding the Presidential transition with over 500 in-person participants and thousands of online viewers; a full day of financial disclosure training, with separate tracks for beginner and advanced reviewers; and a transition readiness program, comprising six distance learning events. This transition-specific training was in addition to the regular training that OGE presents in order to ensure that agency ethics officials have the requisite skills to support executive branch officials. In fiscal year 2016, OGE received nearly 7,000 registrations for its training courses, and recorded sessions from its past training events were viewed online over 20,000 times across the year.

OGE also worked extensively with the nonpartisan Partnership for Public Service and a number of agency service providers to advance the Partnership's transition readiness project. This project involved the development of guidance, training, and an expansive database of resource materials<sup>20</sup> for the transition teams of both major party Presidential candidates. In

---

<sup>18</sup> Significantly, OGE's regulatory revisions to ethics program requirements included expanded ethics training requirements for executive branch employees, with specific emphasis on impartiality and misuse of position.

<sup>19</sup> These materials are all available on OGE's website at [www.oge.gov](http://www.oge.gov).

<sup>20</sup> For additional information, you may want to review the Partnership for Public Service's Center for Presidential Transition online at <http://presidentialtransition.org/>.



conjunction with this project, OGE met separately with each of the two transition teams and provided additional technical information and training on establishing transition procedures and operating *Integrity*,<sup>21</sup> OGE's electronic public financial disclosure filing system. OGE also developed a page on its website dedicated to the Presidential transition, which is linked through a prominent banner on the homepage of its website.<sup>22</sup> OGE contributed other information and materials to websites operated by the General Services Administration, as well.<sup>23</sup>

*b. Will OGE recommend safeguards to protect federal officials from fear of reprisal in dealings with the Trump Organization?*

OGE believes that a strong ethical culture inherently depends on protecting whistleblowers. For this reason, OGE is supportive of the important work of the U.S. Office of Special Counsel, which is the agency authorized to investigate and administratively prosecute executive branch officials for whistleblower retaliation, and the U.S. Merit Systems Protection Board, which is the agency authorized to adjudicate claims of whistleblower retaliation.

*c. Will OGE take steps to ensure Trump Organization employees do not have privileged access to decision-makers or access to nonpublic government information?*

As an initial matter, it bears emphasizing that members of President-elect's Transition Team (PETT) will necessarily interact with executive branch officials, some of whom may have decision-making authority. Such interaction is not only permitted but encouraged by the authorities that establish processes for Presidential transitions.<sup>24</sup> Moreover, the PETT is not a federal agency and its members are not executive branch employees.<sup>25</sup> Therefore, the ethics restrictions applicable to federal employees are inapplicable to PETT members, and OGE has no authority over them.<sup>26</sup>

OGE is aware of a memorandum of understanding (MOU) between the Chief of Staff to the President and the Chair of the PETT that addresses the confidentiality of nonpublic government information. That agreement addresses the responsibilities of PETT members with regard to nonpublic information and related conflicts of interest.<sup>27</sup> The MOU also references a Code of Ethical Conduct for the transition, as well as the public disclosure requirements of the Presidential Transition Act, as amended.<sup>28</sup> OGE has no role in drafting either such an MOU or a

<sup>21</sup> Available online at <https://integrity.gov/efeds-login/> or simply [integrity.gov](https://integrity.gov).

<sup>22</sup> Available online at <https://www.oge.gov/web/oge.nsf/Resources/PRESIDENTIAL+TRANSITION>.

<sup>23</sup> Available online at <https://presidentialtransition.usa.gov/>.

<sup>24</sup> See Pub. L. No. 88-277 (1963), Pub. L. No. 94-499 (1976), Pub. L. No. 100-398 (1988), Pub. L. No. 106-293 (2000), Pub. L. No. 111-283 (2010), Pub. L. No. 114-136 (2016); Exec. Order 13,727 (May 6, 2016).

<sup>25</sup> See Pub. L. No. 88-277, § 3(a)(2) (1963); see also Applicability of 18 U.S.C. § 207(c) to President-Elect's Transition Team, Letter for the Director, Office of Government Ethics, 12 Op. O.L.C. 264, 265 n.1, (Nov. 18, 1988).

<sup>26</sup> See 5 U.S.C. app. § 402(a) (2012).

<sup>27</sup> See Mem. of Understanding between Denis R. McDonough, Chief of Staff to the President, and Michael R. Pence, Chair of the President-elect's Transition Team (Nov. 15, 2016), available online at <https://presidentialtransition.usa.gov/files/2015/11/16-11-15-Final-Signed-MOU.pdf>.

<sup>28</sup> See *id.* In addition, the disclosure provisions of the Presidential Transition Act, as amended, require the PETT, as a condition of receiving funds and services from the government, to make public (1) the names and most recent employment of all transition personnel who are members of agency transition teams, and (2) information regarding the sources of funding that support the transition activities of each transition team member. Presidential Transition



transition code of ethical conduct. The Office of Management and Budget or the PETT may be able to supply additional information about these documents.

It is OGE's understanding that the requirements set forth in the MOU and the Code of Ethical Conduct are contractual and cannot be enforced against PETT members using the mechanisms generally applicable to federal employees. Federal employees who interact with the PETT, however, continue to be subject to the full range of executive branch ethics laws, including restrictions on the use of nonpublic information and the use of public office for private gain established in the Standards of Conduct.<sup>29</sup> Accordingly, federal employees may not provide PETT members with nonpublic information unless the requirements of the MOU and the Presidential Transition Act, as amended, have been met. Their employing agencies have authority to impose disciplinary sanctions for violations of these authorities.<sup>30</sup>

With regard to other potential contacts between outside organizations, such as the one mentioned in your question, executive branch employees are subject to requirements in the Standards of Conduct related to impartiality, misuse of position, and release of nonpublic information.<sup>31</sup> To ensure that employees comply with these requirements, OGE will continue providing training and guidance to the nearly 4,500 agency ethics officials in the executive branch, who in turn will continue to provide training and guidance to the 2.7 million federal employees in their agencies. OGE similarly supports Offices of Inspectors General through training and guidance related to the enforcement of ethics laws and regulations.

*d. President-elect Trump reportedly intends to transfer control of the Trump Organization to his three oldest children. Does this transfer meet the standards of a qualified blind trust, as defined under the Ethics in Government Act?*

OGE does not have any independent knowledge of facts that would either support or refute the premise of this question. As to the question itself, the Ethics in Government Act prescribes specific requirements for establishing a qualified blind trust.<sup>32</sup> Transferring operational control of a company to one's children would not constitute the establishment of a qualified blind trust, nor would it eliminate conflicts of interest under 18 U.S.C. § 208 if applicable.<sup>33</sup>

---

Act of 1963, 3 U.S.C. § 102 note, Sec. 6(b)(1), *amended by* Edward 'Ted' Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015, Pub. L. No. 114-136, 130 Stat. 301.

<sup>29</sup> See 5 C.F.R. §§ 2635.702-2635.703 (2016). In addition, the MOU states that a government employee may not allow the improper use of nonpublic information to further his or her own private interest or that of another. This provision is enforceable, through normal disciplinary procedures, by the employing agency of any employee who violates it.

<sup>30</sup> See, e.g., 5 U.S.C. ch. 75 (2012).

<sup>31</sup> See 5 C.F.R. 2635, subparts E and G (2016).

<sup>32</sup> See 5 U.S.C. app. § 102(f) (2012).

<sup>33</sup> *Id.*

## QUESTION 2:

2. ***President-elect Trump's Financial Conflicts***—*President-elect Trump's previous financial disclosure reports reveal potential financial conflicts of interest in several areas of the economy and foreign relations. While Presidents are exempt from conflict of interest rules for constitutional reasons, Presidents of both parties, dating back to Lyndon Johnson, have taken significant steps to avoid the appearance of a conflict.*
- a. *Please identify the information that must be included in the President's annual financial disclosure, when a President must file his first disclosure, and whether the public will receive access to these disclosures.*

The President-elect's first annual public financial disclosure report will be due on or before May 15, 2018.<sup>34 35</sup> Traditionally, Presidents voluntarily file an annual financial disclosure report by May 15 during their first year in office, but OGE does not know whether the President-elect will choose to adhere to that tradition. Because the STOCK Act requires that his annual public financial disclosure report be posted online, it will be posted on either OGE's website or the White House's website.<sup>36</sup> The items below describe the information that a President is required to disclose in an annual public financial disclosure report (OGE Form 278e).<sup>37</sup>

- *Filer's Positions Held Outside United States Government*

Part 1 of the OGE Form 278e discloses positions that the filer held at any time during the reporting period (excluding positions with the United States Government). Positions are reportable even if the filer did not receive compensation. This section does not include the following: (1) positions with religious, social, fraternal, or political organizations; (2) positions solely of an honorary nature; (3) positions held as part of the filer's official duties with the United States Government; (4) mere membership in an organization; and (5) passive investment interests as a limited partner or non-managing member of a limited liability company.

---

<sup>34</sup> See 5 U.S.C. app. § 101(a) and (d) (2012).

<sup>35</sup> Note that in 2012 the STOCK Act amended the Ethics in Government Act, in part, by requiring Presidents to file periodic transaction reports in order to disclose each covered transaction. See 5 U.S.C. app. § 103(l) (2012). In the case of the President-elect, this requirement will apply only to transactions occurring on or after January 20, 2017. The deadline for disclosing each such transaction is "[n]ot later than 30 days after receiving notification of any transaction required to be reported under section 102(a)(5)(B), but in no case later than 45 days after such transaction." *Id.*

<sup>36</sup> See STOCK Act, Pub. L. No. 112-105, 126 Stat. 291, § 11(b) (2012), as amended by Pub. Law No. 113-7, § 1(b)(2) (2013). Note that the public posting requirement applies equally to periodic transaction reports. *Id.*

<sup>37</sup> 5 U.S.C. app. § 102 (2012); 5 C.F.R. part 2634, subpart C (2016).



- *Filer's Employment Assets & Income and Retirement Accounts*

Part 2 of the OGE Form 278e discloses the following:

- Sources of earned and other non-investment income of the filer totaling more than \$200 during the reporting period (e.g., salary, fees, partnership share, honoraria, scholarships, and prizes); and
- Assets related to the filer's business, employment, or other income-generating activities that (1) ended the reporting period with a value greater than \$1,000 or (2) produced more than \$200 in income during the reporting period (e.g., equity in business or partnership, stock options, retirement plans/accounts and their underlying holdings as appropriate, deferred compensation, and intellectual property, such as book deals and patents).

This section does not include assets or income from United States Government employment or assets that were acquired separately from the filer's business, employment, or other income-generating activities (e.g., assets purchased through a brokerage account). Note that the type of income is not required to be identified if the amount of income is \$0 - \$200 or if the asset qualifies as an excepted investment fund (EIF).

- *Filer's Employment Agreements and Arrangements*

Part 3 of the OGE Form 278e discloses agreements and arrangements that the filer had during the reporting period with an employer or former employer (except the United States Government), such as the following:

- Future employment;
- Leave of absence;
- Continuing payments from an employer, including severance and payments not yet received for previous work (excluding ordinary salary from a current employer);
- Continuing participation in an employee welfare, retirement, or other benefit plan, such as pensions or a deferred compensation plan; and
- Retention or disposition of employer-awarded equity, sharing in profits or carried interests (e.g., vested and unvested stock options, restricted stock, future share of a company's profits, etc.).



- *Spouse's Employment Assets & Income and Retirement Accounts*

Part 5 of the OGE Form 278e discloses the following:

- Sources of earned income (excluding honoraria) for the filer's spouse totaling more than \$1,000 during the reporting period (e.g., salary, consulting fees, and partnership share);
- Sources of honoraria for the filer's spouse greater than \$200 during the reporting period; and
- Assets related to the filer's spouse's employment, business activities, other income-generating activities that (1) ended the reporting period with a value greater than \$1,000, or (2) produced more than \$200 in income during the reporting period (e.g., equity in a business or partnership, stock options, retirement plans/accounts and their underlying holdings as appropriate, deferred compensation, and intellectual property, such as book deals and patents).

Information disclosed in Part 5 does not include assets or income from United States Government employment or assets that were acquired separately from the filer's spouse's business, employment, or other income-generating activities (e.g., assets purchased through a brokerage account). Note that the type of income is not required to be identified if the amount of income is \$0 - \$200 or if the asset qualifies as an EIF. Amounts of income are not required for a spouse's earned income (excluding honoraria).

- *Other Assets and Income*

Part 6 of the OGE Form 278e discloses each asset, not already reported, that (1) ended the reporting period with a value greater than \$1,000 or (2) produced more than \$200 in investment income during the reporting period. For purposes of the value and income thresholds, the filer aggregates the filer's interests with those of the filer's spouse and dependent children. This section does not include the following types of assets: (1) a personal residence (unless it was rented out during the reporting period); (2) income or retirement benefits associated with United States Government employment (e.g., Thrift Savings Plan); and (3) cash accounts (e.g., checking, savings, certificates of deposit, money market accounts, etc.) at a single financial institution with a value of \$5,000 or less (unless more than \$200 of income was produced). Additional exceptions apply. Note that the type of income is not required if the amount of income is \$0 - \$200 or if the asset qualifies as an EIF.

- *Transactions*

Part 7 of the OGE Form 278e discloses purchases, sales, or exchanges of real property or securities in excess of \$1,000 made on behalf of the filer, the filer's spouse or dependent child during the reporting period. This section does not include transactions that concern the following: (1) a personal residence, unless rented out; (2) cash accounts (e.g., checking, savings, certificates of deposit, money market accounts, etc.) and money market mutual funds; (3) Treasury bills, bonds, and notes; and (4) holdings within a federal Thrift Savings Plan account. Additional exceptions apply.

- *Liabilities*

Part 8 of the OGE Form 278e discloses liabilities over \$10,000 that the filer, the filer's spouse, or the filer's dependent child owed at any time during the reporting period. With regard to a President, this section does not include the following types of liabilities: (1) loans secured by a personal motor vehicle, household furniture, or appliances, unless the loan exceeds the item's purchase price; and (2) revolving charge accounts, such as credit card balances, if the outstanding liability did not exceed \$10,000 at the end of the reporting period. Additional exceptions apply.

- *Gifts and Travel Reimbursements*

Part 9 of the OGE Form 278e discloses:

- Gifts totaling more than \$375 that the filer, the filer's spouse, and dependent children received from any one source during the reporting period; and
- Travel reimbursements totaling more than \$375 that the filer, the filer's spouse, and dependent children received from any one source during the reporting period.

For purposes of this section, the filer need not aggregate any gift or travel reimbursement with a value of \$150 or less. Regardless of the value, this section does not include the following items: (1) anything received from relatives; (2) anything received from the United States Government or from the District of Columbia, state, or local governments; (3) bequests and other forms of inheritance; (4) gifts and travel reimbursements given to the filer's agency in connection with the filer's official travel; (5) gifts of hospitality (food, lodging, entertainment, etc.) at the donor's residence or personal premises; and (6) anything received by the filer's spouse or dependent children totally independent of their relationship to the filer. Additional exceptions apply.

Note that annual filers are not required to complete Part 4 of the OGE Form 278e. Part 4 discloses sources (except the United States Government) that paid more than \$5,000 in a



calendar year for the filer's services during any year of the reporting period. The filer discloses payments both from employers and from any clients to whom the filer personally provided services. The filer discloses a source even if the source made its payment to the filer's employer and not to the filer. The filer does not disclose a client's payment to the filer's employer if the filer did not provide the services for which the client is paying.

*b. What steps does OGE require a President to take if any conflicts of interest are apparent on the face of a financial disclosure?*

Congress amended 18 U.S.C. § 202 in 1989 to clarify that 18 U.S.C. § 208 does not apply to a President.<sup>38 39</sup> Even prior to that amendment, OGE did not construe 18 U.S.C. § 208 as applicable to a President.<sup>40</sup> Nevertheless, it has been the consistent policy of the executive branch that a President should conduct himself "as if" he were bound by this financial conflict of interest law.<sup>41</sup> Given the unique circumstances of the Presidency, OGE's view is that a President should comply with this law by divesting conflicting assets,<sup>42</sup> establishing a qualified blind trust,<sup>43</sup> or both. However, although every President in modern times has adopted OGE's recommended approach, OGE has no power to require adherence to this tradition.

*c. What steps will OGE require to prevent acquisition of new conflicts by President-elect Trump and his Trump Organization?*

Please refer to OGE's response to (2)(b), above.

QUESTION 3:

*3. Transition Team—President-elect Trump's three oldest children are members of the Presidential Transition team while continuing to serve as executives and officers in the Trump Organization. As leaders on the Transition team, his children will be party to*

<sup>38</sup> See Ethics Reform Act of 1989, Pub. L. No. 101-194, § 401 (1989); see also 18 U.S.C. § 202(c) (2012).

<sup>39</sup> Note that, as mentioned earlier, the STOCK Act separately imposes one limited conflict of interest restriction on the President. That law prohibits the President from participating in any particular matter directly and predictably affecting the financial interests of any person with whom he has, or is negotiating for, an agreement of future employment or compensation. STOCK Act, Pub. L. 112-105 at § 17. OGE has interpreted future employment or compensation as employment or compensation that will commence after a covered individual's government service has ended. See OGE LA-13-06 (Apr. 25, 2013); OGE LA-12-01 (Apr. 6, 2012). However, it is Congress, not OGE, that possesses authority to address violations of law by sitting Presidents. U.S. Const., art. II, § 4.

<sup>40</sup> See OGE Opinion 83 x 16 (Oct. 20, 1983). Setting aside constitutional arguments, the merits of which are the subject of differing views, the inapplicability of the prohibition under 18 U.S.C. § 208(a) stems from the statute's use of the terms "officer" and "employee," which are generally construed to have the meanings assigned in 5 U.S.C. §§ 2104-05. See Applicability of 18 U.S.C. § 207(c) to President-Elect's Transition Team, 29 Op. O.L.C. 127, 128 (Jul. 22, 2005) ("Title 18 does not define 'officer' or 'employee,' but we have found the definitions in title 5 to be the most obvious source of a definition for title 18 purposes" (internal quotation marks omitted)); see also Application of Conflict of Interest Rules to Appointees Who Have Not Begun Service, 26 Op. O.L.C. 32 (May 8, 2002) ("Because title 18 sets out no definition of 'officer' or 'employee,' we have looked to the definitions in title 5 as the most obvious source of a definition for title 18 purposes" (internal quotation marks omitted)).

<sup>41</sup> See OGE Advisory 83 x 16 (Oct. 20, 1983) (and authorities cited therein).

<sup>42</sup> In lieu of a blind trust, the proceeds could be reinvested in diversified mutual funds. See 5 C.F.R. § 2640.201(a) (2016).

<sup>43</sup> See 5 U.S.C. app. § 102(f) (2012).



*sensitive government information and empowered to discuss matters of government policy and operations with the leadership of several federal agencies.*

- a. *What guidance has OGE provided to agency ethics officials regarding the handling of non-transition business communications from Mr. Trump's children and the Trump Organization during the transition?*

As explained in response to Question 1(c), OGE lacks authority over the Presidential transition team and its members, but will continue to provide training and guidance to agency ethics officials regarding provisions of the Standards of Conduct related to impartiality, misuse of position, and release of nonpublic information.

QUESTION 4:

4. ***President-elect Trump's Oldest Children and Jared Kushner***—*President-elect Trump has reportedly expressed interest in obtaining security clearances for his three oldest children and his son-in-law, Jared Kushner.*

- a. *What guidance has OGE provided to President-elect Trump's oldest children and Mr. Kushner concerning the management of their conflicts of interest while participating in executive branch deliberations?*

To the best of OGE's knowledge, these individuals are private citizens who have not been appointed to positions as officers or employees of the federal executive branch. For this reason, the criminal conflicts of interest law, 18 U.S.C. § 208, is inapplicable to them. Please refer to OGE's response to Question 1(c) for discussion of documents governing their activities in the capacity of PETT members.

- b. *Does President-elect Trump have legal authority to appoint these individuals to government positions?*

The Constitution of the United States authorizes the President to appoint officers and employees in the executive branch.<sup>44</sup> Various statutes and regulations outside OGE's purview may address the exercise of that authority.<sup>45</sup> The U.S. Department of Justice, the U.S. Office of Personnel Management, the U.S. Office of Special Counsel, and the U.S. Merit Systems Protection Board may have some role in interpreting such authorities.

- c. *Are President-elect Trump's children and Mr. Kushner exempt from conflict of interest laws?*

Please refer to OGE's response to Question 4(a).

---

<sup>44</sup> U.S. Const., art. II, § 2, cl. 2.

<sup>45</sup> See, e.g., 5 U.S.C. § 3110 (2012).



- d. *Has OGE provided guidance to these individuals to ensure they disqualify themselves from matters in which they have financial interests and to prevent inadvertent disclosure of confidential government information?*

Please refer to OGE's response to Question 4(a).

QUESTION 5:

5. ***Ongoing Financial Disclosure Obligations***—*President-elect Trump has disclosed a large portfolio of financial interests that include securities interests in several investment companies. President-elect Trump will be under an ongoing obligation to file public reports of any securities transactions so that the public may understand his financial interests.*

- a. *What guidance has OGE provided to President-elect Trump to ensure he continues to file any required financial disclosures of securities transactions?*

OGE provides assistance to the PETT and the White House. As part of this effort, OGE will be providing the PETT and, after January 20, 2016, the White House assistance in complying with applicable financial disclosure requirements. OGE has also made information available on its website in the form of legal advisories, a public financial disclosure guide, and training materials.<sup>46</sup> In addition, OGE's electronic filing system is available to assist public filers with satisfying public financial disclosure requirements.<sup>47</sup> A President's public financial disclosure reports are filed with OGE.<sup>48</sup>

- b. *How often will President-elect Trump be required to file such disclosures?*

Annual public financial disclosure reports are filed annually on or before May 15 each year.<sup>49</sup> Periodic transaction reports are filed by the earlier of 45 days after the transaction or 30 days after receiving notification of the transaction.<sup>50</sup> Additional information regarding periodic

<sup>46</sup> OGE's legal advisories are available online at <https://www.oge.gov/Web/OGELegal.nsf/Legal%20Advisories>. OGE's online Public Financial Disclosure Guide is available online at <https://www.oge.gov/Web/278eGuide.nsf>. Examples of OGE's training materials are available online at <https://www.youtube.com/user/OGELInstitute> and <https://plus.google.com/+OGELInstitute>. Checklists for nominee financial disclosure reports, which would also be useful for a President's representatives, are available at [https://www.oge.gov/Web/OGEL.nsf/0/BC975C546E68A21C852580560045BE83/\\$FILE/Financial%20Disclosure%20Checklists.pdf](https://www.oge.gov/Web/OGEL.nsf/0/BC975C546E68A21C852580560045BE83/$FILE/Financial%20Disclosure%20Checklists.pdf). A guide for Presidential nominees and an appendix to that guide, both of which contain information that would be useful for a President's representatives are available at [https://www.oge.gov/Web/OGEL.nsf/0/908088E45E5A64778525801B00590DD5/\\$FILE/Final%20Nomination%20Guide%20Spreads%20Optimized%20Web.pdf](https://www.oge.gov/Web/OGEL.nsf/0/908088E45E5A64778525801B00590DD5/$FILE/Final%20Nomination%20Guide%20Spreads%20Optimized%20Web.pdf) and [https://www.oge.gov/Web/OGEL.nsf/0/0EA56347F998FFA78525801B0058E0F9/\\$FILE/Final%20Appendix%20Spreads%20Web%20.pdf](https://www.oge.gov/Web/OGEL.nsf/0/0EA56347F998FFA78525801B0058E0F9/$FILE/Final%20Appendix%20Spreads%20Web%20.pdf), respectively. A guide for the transition team is available online at [https://www.oge.gov/Web/OGEL.nsf/0/915128106F6180848525801B0059371D/\\$FILE/Transition%20Guide%20Spread.pdf](https://www.oge.gov/Web/OGEL.nsf/0/915128106F6180848525801B0059371D/$FILE/Transition%20Guide%20Spread.pdf).

<sup>47</sup> That system is available online at <https://integrity.gov/efeds-login/>.

<sup>48</sup> 5 U.S.C. app. § 103(b) (2012).

<sup>49</sup> 5 U.S.C. app. § 101(c) (2012).

<sup>50</sup> 5 U.S.C. app. § 103(l) (2012).



transaction reports can be found in OGE's legal advisories.<sup>51</sup> Termination financial disclosure reports are filed on or before the thirtieth day after terminating employment in a filing position.<sup>52</sup>

- c. Will OGE or the White House Counsel be responsible for assessing fines for any late filings?*

Having never encountered this issue, OGE does not currently know whether a sitting President can be assessed late filing fees.<sup>53</sup> If so, the Counsel to the President is responsible for collecting them.<sup>54</sup>

#### QUESTION 6:

6. ***Outside Fiduciary Positions***—President-elect Trump has disclosed that he serves as chairman or board member of hundreds of companies. As a board member or officer, he owes those entities and their investors legal fiduciary duties that have the potential to interfere with his duties as president.

- a. What guidance has OGE provided to President-elect Trump regarding his outside positions and the steps he should take to address potential conflicts of interest?*

The President-elect has indicated publicly that he will announce a plan for resolving his conflicts of interest on December 15, 2016. Although OGE offered to provide recommendations, OGE has not been involved in developing that plan. Please refer to Question 2(b) for discussion of OGE's views on conflicts of interest.

- b. What safeguards will OGE establish to prevent conflicts of interest between his legal fiduciary obligations to these companies and his legal obligations and duties as President?*

Please refer to Question 2(b).

7. ***Misuse of Image***—Longstanding White House policy across Administrations prohibits the use of the President's name or image in advertising or for the endorsement of any commercial product or service.

- a. What guidance has OGE provided to President-elect Trump regarding the use of his name and image for the endorsement of the Trump Organization or his children's businesses?*

The policy to which this question refers is outside OGE's purview. Furthermore, OGE is not familiar with that policy or its interpretation and application by the White House.

<sup>51</sup> See OGE LA-12-04 (Jun. 20, 2012); OGE LA-13-01 (Jan. 18, 2013).

<sup>52</sup> 5 U.S.C. app. § 101(e) (2012).

<sup>53</sup> See 5 U.S.C. app. § 104 (2012); cf. A Sitting President's Amenability to Indictment and Criminal Prosecution, 24 Op. O.L.C. 222 (Oct. 16, 2000).

<sup>54</sup> 5 U.S.C. app. § 104(d) (2012); 5 C.F.R. § 2634.704 (2016).



UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**



DEC 19 2016

The Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and Government Reform  
United States House of Representatives  
2236 Rayburn House Office Building  
Washington, D.C. 20515

Dear Mr. Chairman:

Please find attached a copy of the Annual Financial Report (AFR) for the U.S. Office of Government Ethics (OGE) for fiscal year 2016, as submitted to the Office of Management and Budget.

The AFR includes OGE's Management Discussion and Analysis of Results and OGE's Management Assurances and Audited Financial Statements.

If you need additional information with regard to this submission please contact Shelley Finlayson, OGE's Chief of Staff and Program Counsel, at 202-482-9314.

Sincerely,

Walter M. Shaub, Jr.  
Director

UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**



DEC 19 2016

The Honorable Elijah E. Cummings  
Ranking Member  
Committee on Oversight and Government Reform  
United States House of Representatives  
2230 Rayburn House Office Building  
Washington, D.C. 20515

Dear Representative Cummings:

Please find attached a copy of the Annual Financial Report (AFR) for the U.S. Office of Government Ethics (OGE) for fiscal year 2016, as submitted to the Office of Management and Budget.

The AFR includes OGE's Management Discussion and Analysis of Results and OGE's Management Assurances and Audited Financial Statements.

If you need additional information with regard to this submission please contact Shelley Finlayson, OGE's Chief of Staff and Program Counsel, at 202-482-9314.

Sincerely,

Walter M. Shaub, Jr.  
Director

UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**



DEC 19 2016

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
328 Hart Senate Office Building  
Washington, D.C. 20510

Dear Mr. Chairman:

Please find attached a copy of the Annual Financial Report (AFR) for the U.S. Office of Government Ethics (OGE) for fiscal year 2016, as submitted to the Office of Management and Budget.

The AFR includes OGE's Management Discussion and Analysis of Results and OGE's Management Assurances and Audited Financial Statements.

If you need additional information with regard to this submission please contact Shelley Finlayson, OGE's Chief of Staff and Program Counsel, at 202-482-9314.

Sincerely,

Walter M. Shaub, Jr.  
Director



UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**



DEC 19 2016

The Honorable Thomas R. Carper  
Ranking Member  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
513 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senator Carper:

Please find attached a copy of the Annual Financial Report (AFR) for the U.S. Office of Government Ethics (OGE) for fiscal year 2016, as submitted to the Office of Management and Budget.

The AFR includes OGE's Management Discussion and Analysis of Results and OGE's Management Assurances and Audited Financial Statements.

If you need additional information with regard to this submission please contact Shelley Finlayson, OGE's Chief of Staff and Program Counsel, at 202-482-9314.

Sincerely,

Walter M. Shaub, Jr.  
Director

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
MINORITY (202) 225-5051

<http://oversight.house.gov>

February 9, 2017

The Honorable Walter M. Shaub, Jr.  
Director  
U.S. Office of Government Ethics  
1201 New York Avenue NW  
Washington, D.C. 20005

Dear Mr. Shaub:

Counselor to the President Kellyanne Conway gave a public interview this morning that raised extremely serious concerns. During the interview, Conway advertised and endorsed a commercial line of products associated with President Trump's daughter, Ivanka Trump.<sup>1</sup> Conway was acting in her official capacity, was identified as "Counselor to President Trump," and gave the interview at the White House in front of the White House seal.<sup>2</sup> During the interview, Conway discussed the decision by some U.S. companies to cease sales of products from Ivanka's fashion line, which is named after Ivanka and in which she holds an ownership stake.<sup>3</sup>

In the course of the interview, Conway repeatedly and explicitly endorsed Ivanka Trump's products. She stated, "Go buy Ivanka's stuff is what I would tell you." Later, she said, "It's a wonderful line. I own some of it. I fully — I'm going to give a free commercial here. Go buy it today, everybody. You can find it online."<sup>4</sup> Conway's statements clearly violate the ethical principles for federal employees and are unacceptable. The White House's reported decision to counsel Conway supports this conclusion.<sup>5</sup>

Conway's statements appear to violate federal ethics regulations, which prohibit actions that imply a government endorsement of the "personal activities" of another person. Specifically, Office of Government Ethics (OGE) regulations state:

[A]n employee shall not use or permit the use of his Government position or title or any authority associated with his public office in a manner that

---

<sup>1</sup> *Fox & Friends* (Fox News television broadcast Feb. 9, 2017).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *E.g.*, Louis Nelson, *White House: Conway Has Been 'Counseled' for Urging People to Buy Ivanka's Products*, POLITICO, Feb. 9, 2017, available at <http://www.politico.com/story/2017/02/kellyanne-conway-ivanka-nordstrom-white-house-react-234856>.



could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another.<sup>6</sup>

\* \* \*

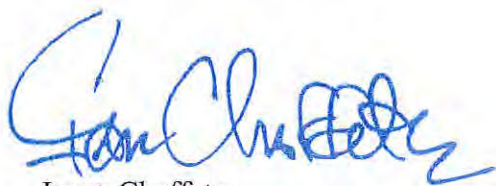
An employee shall not use or permit the use of his Government position or title or any authority associated with his public office to endorse any product, service or enterprise . . . .<sup>7</sup>

In this case, Conway's statements from the White House using her official title could appear to constitute an explicit endorsement and advertisement for Ivanka Trump's personal business activities.

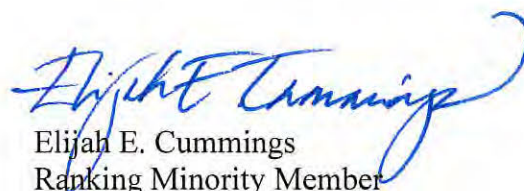
As the director of OGE, you have authority to review potential ethics violations and notify the employee's agency, which in this case is the White House. In this case, there is an additional challenge, which is that the President, as the ultimate disciplinary authority for White House employees, has an inherent conflict of interest since Conway's statements relate to his daughter's private business. For this reason, we request that you use authority Congress granted to you under the Ethics in Government Act of 1978, as amended, to "recommend to the head of the officer's or employee's agency that appropriate disciplinary action (such as reprimand, suspension, demotion, or dismissal) be brought against the officer or employee."<sup>8</sup>

We request you review Conway's statements and act promptly on the basis of your findings. We also ask you to report back to the Committee with your recommendation for disciplinary action, if warranted.

Sincerely,



Jason Chaffetz  
Chairman



Elijah E. Cummings  
Ranking Minority Member

cc: The Honorable Donald F. McGahn II, Counsel to the President  
The White House

---

<sup>6</sup> 5 C.F.R. § 2635.702(b) (2016).

<sup>7</sup> 5 C.F.R. § 2635.702(c) (2016).

<sup>8</sup> 5 U.S.C. Appendix—Ethics in Government Act of 1978, Title IV, § 402(f)(2).



UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

---

February 13, 2017

The Honorable Jason Chaffetz  
Chairman  
Committee on Oversight and Government Reform  
United States House of Representatives  
2157 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Elijah E. Cummings  
Ranking Member  
Committee on Oversight and Government Reform  
United States House of Representatives  
2471 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Chaffetz and Ranking Member Cummings:

I am in receipt of your letter dated February 9, 2017, requesting that the U.S. Office of Government Ethics (OGE) review statements made by Kellyanne E. Conway regarding the business interests of the President's daughter, act promptly on any findings, and report back to the Committee with a recommendation for disciplinary action if warranted.<sup>1</sup> Prior to receiving your letter, OGE had begun consulting with the White House regarding this matter, pursuant to OGE's regulations for addressing potential violations by individual employees of the executive branch.<sup>2</sup> This letter is to explain the applicable legal process and to confirm that OGE will take the actions you request in your letter.

As you know, Congress has not provided OGE with any actual investigative authority or resources for hiring investigators. Unlike the Committee, OGE cannot issue subpoenas, question witnesses, compel the production of documents, or take action against individuals who refuse to cooperate.<sup>3</sup> Unlike employing federal agencies, OGE cannot take disciplinary action against an executive branch employee other than an OGE employee.<sup>4</sup> Thus, OGE is limited with respect to the actions it can take.

When OGE has reason to believe that an employee may have violated the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct), the law

---

<sup>1</sup> OGE received a similar letter from Representative Ted W. Lieu, as well as a separate letter signed by 42 Members of Congress.

<sup>2</sup> See 5 C.F.R. part 2638, subpart E.

<sup>3</sup> See 5 U.S.C. app. § 402.

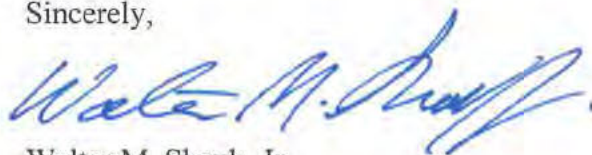
<sup>4</sup> See *id.*

authorizes OGE to make only an informal recommendation that the employing agency investigate the matter and consider taking disciplinary action against the employee.<sup>5</sup> In the enclosed letter to the Designated Agency Ethics Official for the White House, OGE exercises this authority and requests a response by February 28, 2017.

Only in the event that this informal process fails to resolve the matter does the law authorize OGE to recommend disciplinary action.<sup>6</sup> Even in that case, however, Congress limited OGE's authority by requiring that, before OGE may make a recommendation, OGE must provide the employee with written notice of the alleged violation and an opportunity to respond either orally or in writing.<sup>7</sup> Congress also required OGE to establish a formal procedure for the employee's response, which OGE has established through regulations that provide the employee 30 days to respond.<sup>8</sup> Thereafter, OGE's General Counsel is required to provide OGE's Director with written findings and recommendations, which the Director must carefully consider before issuing a nonbinding recommendation that the employing agency take disciplinary action against the employee.<sup>9</sup> OGE is also authorized to notify the President if the agency fails to take appropriate disciplinary action; however, such notice would be ineffective in this case because any decision not to take disciplinary action will have been made by the President.<sup>10</sup>

OGE will move deliberately to complete this process as expeditiously as possible. As explained above, however, completing the legal process that Congress established for OGE will likely take until late April or early May, due to the legally mandated timeframes involved. OGE will report back to you as promptly as possible thereafter.

Sincerely,



Walter M. Shaub, Jr.  
Director

Enclosure

<sup>5</sup> 5 U.S.C. app. § 402(f)(2)(A)(ii)(I); 5 C.F.R. § 2638.503.

<sup>6</sup> 5 U.S.C. app. § 402(f)(2)(B); 5 C.F.R. § 2638.504.

<sup>7</sup> 5 U.S.C. app. § 402(f)(2)(B)(ii)(I); 5 C.F.R. § 2638.504(b)(1).

<sup>8</sup> 5 U.S.C. app. § 402(f)(2)(B)(ii)(II); 5 C.F.R. § 2638.504(c).

<sup>9</sup> 5 U.S.C. § 402(f)(2)(A)(iv)(I); 5 C.F.R. § 2638.504(d), (e).

<sup>10</sup> 5 U.S.C. § 402(f)(2)(A)(iv)(II); 5 C.F.R. § 2638.504(e)(2).

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



May 4, 2017

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Russell Vought, who has been nominated by President Trump for the position of Deputy Director, Office of Management and Budget.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

DAVID APOL

Digitally signed by DAVID APOL  
DN c=US, o=U.S. Government, ou=Office of  
Government Ethics, cn=DAVID APOL,  
0.9.2342.19200300.100.1.1=95491002981870  
Date 2017.05.04 10:35:28 -0400

David J. Apol  
General Counsel

Enclosures





UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



JAN 14 2017

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by John Michael Mulvaney. President-Elect Trump has announced his intention to nominate Mr. Mulvaney for the position of Director, Office of Management and Budget.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Walter M. Shaub, Jr.  
Director

Enclosures

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



February 3, 2017

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510


Dear Mr. Chairman:

By letter dated January 14, 2017, the Office of Government Ethics (OGE) transmitted to the Committee the financial disclosure report and ethics agreement of John Michael Mulvaney in connection with his nomination for the position of Director, Office of Management and Budget. Enclosed are a letter from the Office of Management and Budget and a letter from John Michael Mulvaney supplementing John Michael Mulvaney's ethics agreement.

We have reviewed this additional submission and have also obtained advice from the Office of Management and Budget concerning any possible conflict in light of its functions and John Michael Mulvaney's proposed duties. Based on the information provided, OGE continues to believe that John Michael Mulvaney is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,  
**WALTER  
SHAUB**

Walter M. Shaub, Jr.  
Director

 Digitally signed by WALTER SHAUB  
DN c=US, o=U.S. Government, ou=Office of  
Government Ethics, cn=WALTER SHAUB,  
0.9.2342.19200300.100.1.1=95491000364655  
Date 2017.02.03 14 31 35 -05'00'

Enclosures



UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



May 19, 2017

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:


In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by William B. Long, who has been nominated by President Trump for the position of Administrator, Federal Emergency Management Agency, Department of Homeland Security.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,  
**WALTER  
SHAUB**

Walter M. Shaub, Jr.  
Director

 Digitally signed by WALTER SHAUB  
DN c=US, o=U.S. Government, ou=Office of  
Government Ethics, cn=WALTER SHAUB,  
0.9.2342.19200300.100.1.1=95491000364655  
Date 2017.05.19 15 49 01 -04'00'

Enclosures





UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

---



JAN 19 2017

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Carolyn N. Lerner, who has been nominated by President Obama for the position of Special Counsel, Office of Special Counsel.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

David J. Apol  
General Counsel

Enclosures



UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



JAN 09 2017

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by John F. Kelly. President-Elect Trump has announced his intention to nominate Mr. Kelly for the position of Secretary, Department of Homeland Security.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Walter M. Shaub, Jr.  
Director

Enclosures

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



February 7, 2017

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510


Dear Mr. Chairman:

By letters dated January 9, 2017, and January 19, 2017, the Office of Government Ethics (OGE) transmitted to the Committee the financial disclosure report, ethics agreement, a supplement to the financial disclosure report, and a supplement to the ethics agreement of John F. Kelly in connection with his nomination for the position of Secretary, Department of Homeland Security. Enclosed are a letter from the Department of Homeland Security and a letter from Secretary Kelly further supplementing Secretary Kelly's ethics agreement.

We have reviewed this additional submission and have also obtained advice from the Department of Homeland Security concerning any possible conflict in light of its functions and Secretary Kelly's proposed duties. Based on the information provided, OGE continues to believe that Secretary Kelly is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,  
**WALTER  
SHAUB**

Walter M. Shaub, Jr.  
Director

 Digitally signed by WALTER SHAUB  
DN c=US, o=U.S. Government, ou=Office of  
Government Ethics, cn=WALTER SHAUB,  
0.9.2342.19200300.100.1.1=95491000364655  
Date 2017.02.07 10:52:13 -05'00'

Enclosures





UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



March 1, 2017

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Elaine C. Duke, who has been nominated by President Trump for the position of Deputy Secretary, Department of Homeland Security.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

Walter M. Shaub, Jr.  
Director

Enclosures



UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



May 24, 2017

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Claire M. Grady, who has been nominated by President Trump for the position of Under Secretary for Management, Department of Homeland Security.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

DAVID APOL

Digitally signed by DAVID APOL  
DN: c=US, o=U.S. Government, ou=Office of  
Government Ethics, cn=DAVID APOL,  
0.9.2342.19200300.100.1.1=95491002981870  
Date: 2017.05.24 17:54:03 -0400

David J. Apol  
General Counsel

Enclosures



UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



JAN 10 2017

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Elizabeth A. Field, who has been nominated by President Obama for the position of Inspector General, Office of Personnel Management.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

A handwritten signature in blue ink, appearing to read "David J. Apol".

David J. Apol  
General Counsel

Enclosures



**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074  
MINORITY (202) 225-5051  
<http://oversight.house.gov>

April 7, 2017

The Honorable Walter Shaub, Jr.  
Director  
Office of Government Ethics  
1201 New York Avenue, N.W.  
Washington, D.C. 20005

Dear Director Shaub:

We are writing to request information about the ongoing relationship between Kellyanne Conway, Counselor to the President, and the Polling Company, Inc./WomanTrend (the Polling Company), a political consulting company Ms. Conway founded in 1995.<sup>1</sup> Past clients of the Polling Company include Altria, American Express, Boeing, Harris Teeter, Major League Baseball, and PayPal.<sup>2</sup>

Although Ms. Conway resigned as President and CEO of the Polling Company effective January 20, 2017, it appears that she has not divested her ownership interest. Given the opportunity to clarify Ms. Conway's current ownership interest in the Polling Company, the White House issued the following statement:

Kellyanne Conway resigned from the company and has had no management responsibility since before she was sworn in as Counselor to The President. Mrs. Conway, who has signed the Ethics Pledge, has been working with the Office of the White House Counsel to ensure she is fully compliant with her legal and ethical obligations in connection with her former company and her duties in the White House. While she is in the process of divesting her assets, like all White House employees in a similar situation, this process requires submission of ethics documentation to the Office of Government Ethics to obtain a Certificate of Divestiture from OGE prior to selling the asset. As is the case for many other employees, this process is still underway.<sup>3</sup>

---

<sup>1</sup> *Kellyanne Conway Biography*, Huffington Post (online at [www.huffingtonpost.com/author/kellyanne-conway](http://www.huffingtonpost.com/author/kellyanne-conway)) (accessed Mar. 27, 2017).

<sup>2</sup> The Polling Company, *Sampling of Former Corporate and Political Clients* (online at [www.pollingcompany.com/clients](http://www.pollingcompany.com/clients)) (accessed Mar. 27, 2017).

<sup>3</sup> *Is Kellyanne Conway Breaking the Law?*, Slate (Mar. 24, 2017) (online at [www.slate.com/articles/news\\_and\\_politics/politics/2017/03/is\\_kellyanne\\_conway\\_breaking\\_a\\_major\\_criminal\\_conflict\\_of\\_interest\\_statute.html](http://www.slate.com/articles/news_and_politics/politics/2017/03/is_kellyanne_conway_breaking_a_major_criminal_conflict_of_interest_statute.html)).

The Polling Company's most recent annual report, which was dated February 13, 2017, and filed with the Commonwealth of Virginia State Corporation Commission, lists Ms. Conway as "Director."<sup>4</sup> Ms. Conway filed a financial disclosure on March 13, 2017, reporting that she held the position of President and CEO of the Polling Company until January 2017.<sup>5</sup>

In response to a request to review any certificates of divestiture or ethics waivers issued to Ms. Conway, a spokesperson for your office stated that the Office of Government Ethics (OGE) "is at liberty to speak on what is available and received at OGE and we have not received any documents regarding Kellyanne Conway."<sup>6</sup> OGE has since received Ms. Conway's financial disclosure, but it is unclear whether any additional information has been provided to OGE.

You have previously explained that "regulations applicable to the White House Office provide that, 'Employees of the Executive Office of the President are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635.'"<sup>7</sup> Accordingly, 5 CFR part 2635.702, which precludes an executive branch employee from using "public office for his own private gain," would apply to Ms. Conway.

If Ms. Conway continues to have a financial stake in the Polling Company while employed as Counselor to the President, she has potential conflicts of interest that are unknown to the public because a complete client list for the Polling Company is not publicly available. In addition, because the White House has not released any ethics agreement or waivers of ethics requirements that they have with Ms. Conway, it is unclear how the White House is addressing these potential conflicts of interest.

For these reasons, we ask that you provide answers to the following questions, as well as the documents requested below:

---

<sup>4</sup> 2016 Annual Report, The Polling Company (Feb. 13, 2017) (online at [www.scribd.com/document/341757083/Polling-Company-2016-Report](http://www.scribd.com/document/341757083/Polling-Company-2016-Report)). The annual report also lists Ms. Conway as CEO, but on February 14, 2017, a representative from the Polling Company informed the Commonwealth of Virginia State Corporation Commission that Ms. Conway had been replaced as CEO. See *Is Kellyanne Conway Breaking the Law?*, Slate (Mar. 24, 2017) (online at [www.slate.com/articles/news\\_and\\_politics/politics/2017/03/is\\_kellyanne\\_conway\\_breaking\\_a\\_major\\_criminal\\_conflict\\_of\\_interest\\_statute.html](http://www.slate.com/articles/news_and_politics/politics/2017/03/is_kellyanne_conway_breaking_a_major_criminal_conflict_of_interest_statute.html)).

<sup>5</sup> Kellyanne Conway, Executive Branch Personnel Public Financial Disclosure Report (Mar. 13, 2017) (online at <http://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2017/04/01011234/Conway-Kellyanne.pdf>).

<sup>6</sup> *Is Kellyanne Conway Breaking the Law?*, Slate (Mar. 24, 2017) (online at [www.slate.com/articles/news\\_and\\_politics/politics/2017/03/is\\_kellyanne\\_conway\\_breaking\\_a\\_major\\_criminal\\_conflict\\_of\\_interest\\_statute.html](http://www.slate.com/articles/news_and_politics/politics/2017/03/is_kellyanne_conway_breaking_a_major_criminal_conflict_of_interest_statute.html)).

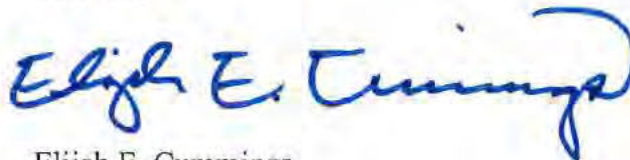
<sup>7</sup> Letter from Walter M. Shaub, Jr., Director, Office of Government Ethics, to Eric R. Bolinder, Counsel, Cause of Action Institute (Feb. 17, 2017). Director Shaub also cited 64 Fed. Reg. 12,881, acknowledging that 5 C.F.R. part 2635 "established uniform standards of ethical conduct that apply to all executive branch personnel."



- (1) Please describe the application process and procedural requirements for issuing certificates of divestiture, including the average time OGE takes to render decisions.
- (2) Once an executive branch employee becomes aware that divestiture may be necessary due to potential or actual conflicts of interest, what measures, including but not limited to recusal, must an employee take while the employee continues to own that asset?
- (3) Please describe the process by which an employee must seek recusal pending resolution of the employee's divestiture of an asset, including which official receives the recusal application and which official makes the final determination on the extent to which an employee should be recused.
- (4) Please provide a copy of Ms. Conway's financial disclosure form as certified by OGE when it becomes available.
- (5) What communications, including documents, has OGE received from White House officials, Ms. Conway, or her representatives regarding her ethics filings, ethical obligations, or potential divestiture from the Polling Company? Please provide copies of these documents and any OGE responses to these communications.
- (6) If OGE has received any documents regarding Ms. Conway's divestiture from the Polling Company, on what dates did OGE receive the documents?
- (7) Has a certificate of divestiture been issued for Ms. Conway?
- (8) Is OGE aware of any waivers that have been granted that would allow Ms. Conway to avoid recusal while continuing to have an ownership interest in the Polling Company?

Please provide a response to this request by April 18, 2017. If you have any questions please contact Kapil Longani with my staff at (b) (6). Thank you for your consideration of this request.

Sincerely,



Elijah E. Cummings  
Ranking Member

cc: The Honorable Jason Chaffetz, Chairman



UNITED STATES OFFICE OF  
GOVERNMENT ETHICS

---

March 9, 2017

The Honorable Jason E. Chaffetz  
Chairman  
Committee on Oversight and Government Reform  
United States House of Representatives  
2157 Rayburn House Office Building  
Washington, DC 20515

The Honorable Elijah E. Cummings  
Ranking Member  
Committee on Oversight and Government Reform  
United States House of Representatives  
2471 Rayburn House Office Building  
Washington, DC 20515

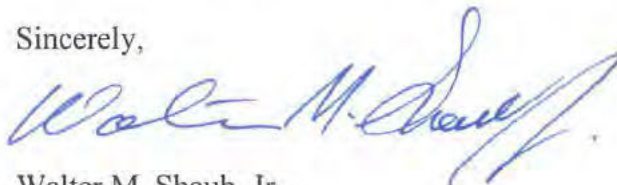
Dear Chairman Chaffetz and Ranking Member Cummings:

I am writing to update you regarding the conclusion of the matter you raised in your February 9, 2017, letter regarding Kellyanne E. Conway, Senior Counselor to the President. Enclosed is OGE's reply to the White House's February 28, 2017, response.

On February 13, 2017, I wrote to the White House and recommended that it consider taking disciplinary action against Ms. Conway. As you know, OGE cannot impose disciplinary action on an executive branch employee other than an OGE employee. When an agency declines to take disciplinary action against an employee in connection with an ethics violation, OGE's only recourse is to notify the President.<sup>1</sup> In this case, however, the White House's response makes clear that disciplinary action will not be taken.

Of greater concern, the White House's response includes assertions challenging the applicability of ethics rules and OGE's authority to oversee the ethics program for the entire executive branch. OGE disagrees with these assertions.

Sincerely,



Walter M. Shaub, Jr.  
Director

Enclosure

---

<sup>1</sup> See 5 U.S.C. § 402(f)(2)(A)(iv)(II).

UNITED STATES OFFICE OF  
GOVERNMENT ETHICS



April 21, 2017

The Honorable Elijah E. Cummings  
Ranking Member  
Committee on Oversight and Government Reform  
United States House of Representatives  
2471 Rayburn House Office Building  
Washington, DC 20515

Dear Ranking Member Cummings:

This letter responds on behalf of the U.S. Office of Government Ethics (OGE) to your letter dated April 7, 2017, regarding a senior White House appointee.

At the outset, it is necessary to describe the relevant financial disclosure and conflict of interest processes in order to provide context for OGE's response. Senior White House appointees are required to file new entrant public financial disclosure reports within 30 days of being appointed.<sup>1</sup> The White House is authorized to grant an extension, upon a showing of good cause, of up to 45 days and, upon a written showing of good cause, a second extension of up to 45 additional days.<sup>2</sup> The approval of a second extension must be in writing.<sup>3</sup> After appointees file their reports, the White House's ethics officials review the reports for compliance with financial disclosure requirements and substantive ethics requirements.<sup>4</sup> White House ethics officials are expected to work with an appointee to resolve any potential conflicts of interest that they identify through their review of the financial disclosure reports.<sup>5</sup>

Only after the White House has certified the appointee's financial disclosure report does the White House transmit the report to OGE.<sup>6</sup> OGE then conducts a second-level review.<sup>7</sup> As part of this review process, OGE advises White House ethics officials of any deficiencies in an appointee's compliance with financial disclosure requirements. In turn, the White House ethics officials work with the appointee who filed the report in order to resolve them. It is normal for an appointee to make changes to a financial disclosure report and to add information during this review process. After the report is revised, OGE seeks information about how the White House is addressing any potential conflicts of interest identified during the review process. OGE then

<sup>1</sup> 5 U.S.C. app. § 101(a).

<sup>2</sup> 5 C.F.R. § 2634.201(f).

<sup>3</sup> *Id.*

<sup>4</sup> 5 U.S.C. app. § 106(a); 5 C.F.R. § 2634.605.

<sup>5</sup> 5 U.S.C. app. § 106(a); 5 C.F.R. § 2634.605.

<sup>6</sup> 5 U.S.C. app. § 103(c).

<sup>7</sup> 5 U.S.C. app. § 106(a).





makes a determination regarding apparent compliance with financial disclosure and conflict of interest rules and either certifies or declines to certify the financial disclosure report.<sup>8</sup>

This process can take weeks and sometimes months. Until the process has been completed, OGE is not in a position to make the compliance determination discussed in the preceding paragraph. Preliminary communications and documents related to the review of financial disclosure reports are generally not releasable because they contain highly personal financial information that is subject to Exemption (b)(6) under the Freedom of Information Act.<sup>9</sup> The releasable information that feeds into OGE's determination is generally captured in the final revised financial disclosure report, which is publicly available.<sup>10</sup> Members of Congress and the public can obtain copies of the financial disclosure report by filing an OGE Form 201 with OGE or the White House.<sup>11</sup>

OGE recently received the financial disclosure report of the senior White House appointee identified in your letter. OGE has begun its review of this report, but the process is in its early stages. OGE is still gathering information and seeking any needed revisions to the report. OGE has not yet made the compliance determination discussed above as to this official or, for that matter, most other senior White House appointees. Nevertheless, it is possible to share an overview of applicable conflict of interest requirements and processes.

The primary criminal conflict of interest statute prohibits senior White House appointees and other executive branch employees from participating personally and substantially in particular matters directly and predictably affecting their financial interests.<sup>12</sup> Among other things, this prohibition extends to the financial interests of companies in which they have ownership interests.<sup>13</sup> It is important to note, however, that the criminal conflict of interest statute is not a prohibited holdings statute. Instead, it requires an appointee to refrain from participating in the matter affecting the appointee's financial interests or the financial interests of persons whose interests are imputed to the appointee.<sup>14</sup> Thus, the most common mechanism for resolving conflicts of interest is to recuse from particular matters that would affect the appointee's personal and imputed financial interests.

Recusal is not the only means for resolving conflicts of interest. Other remedies for resolving conflicts of interest can include reassignment, divestiture, waiver, or the establishment of a qualified blind or diversified trust.<sup>15</sup> In some cases, an employee can rely on an exemption to

---

<sup>8</sup> 5 U.S.C. app. § 106(b); 5 C.F.R. § 2634.605.

<sup>9</sup> 5 U.S.C. § 552(b)(6).

<sup>10</sup> 5 U.S.C. app. § 105.

<sup>11</sup> 5 C.F.R. § 2634.603.

<sup>12</sup> See 18 U.S.C. § 208(a).

<sup>13</sup> See, e.g., OGE Informal Advisory Opinion 92 x 2 (1992).

<sup>14</sup> See 18 U.S.C. § 208(a).

<sup>15</sup> See, e.g., Memo from Amy L. Comstock, Director, U.S. Office of Gov't Ethics, to Designated Agency Ethics Officials, *Nominee Ethics Agreements*, DO-01-013 (2001) (discussing remedies for conflicts of interest in the analogous case of Presidential nominees); 5 C.F.R. pt. 2634, subpt. D.



the criminal conflict of interest statute.<sup>16</sup> OGE and the Department of Justice have established regulatory exemptions for certain types of financial interests because the conflicts of interest they pose are too remote or inconsequential to be likely to affect the integrity of an employee's service to the government.<sup>17</sup>

The White House can direct an appointee to sell, or otherwise divest, an asset in order to avoid a conflict of interest or the appearance of one.<sup>18</sup> If selling the asset will result in a capital gain, the appointee may be eligible for a Certificate of Divestiture to offset the tax burden of complying with the government's conflict of interest requirements.<sup>19</sup> (Note, however, that a special government employee is not eligible for a Certificate of Divestiture.<sup>20</sup>) The appointee, the appointee's spouse, and the appointee's dependent or minor child are eligible to receive a Certificate of Divestiture.<sup>21</sup> A trustee is also eligible when the asset is held in a trust, except in certain cases in which ineligible persons are also beneficiaries of the trust.<sup>22</sup> The person requesting a Certificate of Divestiture must commit in writing to divesting the asset even if a Certificate of Divestiture is not issued.<sup>23</sup>

To request a Certificate of Divestiture, the appointee must contact the White House's ethics officials.<sup>24</sup> If the White House supports the appointee's request, the ethics officials will assemble the necessary documents and submit the request to OGE.<sup>25</sup> OGE will then review the submission to determine whether (1) the request meets applicable procedural requirements and (2) divestiture is reasonably necessary to avoid a conflict of interest.<sup>26</sup> OGE will either issue a Certificate of Divestiture to the appointee through the White House's ethics officials or notify the ethics officials that the request has been denied.<sup>27</sup> Over the past three years, this process has on average taken three weeks, except in cases when OGE has been asked to expedite the process.

The appointee is advised not to sell the asset until the agency ethics official provides the appointee with the Certificate of Divestiture or notifies the appointee that OGE has denied the request.<sup>28</sup> A Certificate of Divestiture is valid only if obtained before selling an asset.<sup>29</sup> Within 60 days of the sale, the appointee must reinvest the proceeds of the sale in "permitted property."<sup>30</sup> Permitted property is limited to United States government obligations (*i.e.*,

---

<sup>16</sup> 18 U.S.C. § 208(b)(2).

<sup>17</sup> See 5 C.F.R. pt. 2640, subpt. B.

<sup>18</sup> See 5 C.F.R. § 2635.403(b).

<sup>19</sup> 26 U.S.C. § 1043; 5 C.F.R. pt. 2634, subpt. J.

<sup>20</sup> 5 C.F.R. § 2634.1003.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> 5 C.F.R. § 2634.1005(a)(3).

<sup>24</sup> See Memo from Robert I. Cusick, Director, U.S. Office of Gov't Ethics, to Designated Agency Ethics Officials, *Procedures for Requesting a Certificate of Divestiture*, DO-06-030 (2006).

<sup>25</sup> See OGE Program Advisory PA-16-04 (2016).

<sup>26</sup> See *id.*

<sup>27</sup> See *id.*

<sup>28</sup> See *id.*

<sup>29</sup> See *id.*

<sup>30</sup> 5 C.F.R. § 2634.1006(a).

Treasuries), diversified mutual funds, and diversified exchange-traded funds.<sup>31</sup> For this purpose, “diversified” means that the fund does not have a stated policy of concentrating in any industry, business, single country other than the United States, or the bonds of a single state within the United States.<sup>32</sup> The appointee will need to pay the deferred capital gains when the appointee later sells the permitted property.<sup>33</sup>

Pending the divestiture, the appointee must recuse from particular matters in which the asset poses a conflict of interest. Recusal is achieved by not participating in a particular matter.<sup>34</sup> A White House appointee is not normally required to file a disqualification statement or other document regarding the recusal.<sup>35</sup> Thus, the important requirement is only that the appointee not participate.

In your letter, you indicate that a company’s most recent annual report is dated February 13, 2017, and lists this appointee as a “Director.”<sup>36</sup> Your letter also indicates that her financial disclosure report indicates that she terminated her positions as President and CEO in January 2017.<sup>37</sup> At this time, OGE does not know whether these two documents refer to different positions or whether one of these documents is potentially incorrect. If her financial disclosure report needs correction, OGE will ask her to update the report. It also is possible that she may have terminated all of her positions with the company in January 2017, in which case the company’s annual report may be somewhat imprecise as to the timing of her separation.

If, for some reason, she has retained a position as an officer or director, several ethics provisions must be considered. One criminal statute prohibits her from representing any person, including a business entity, before the government.<sup>38</sup> Another statute, which entails civil monetary penalties, prohibits her from receiving compensation for service as an officer or member of the board of any association, corporation, or other entity.<sup>39</sup> If her government salary is set above the level of pay associated with a GS-9 position, an Executive Order prohibits her from earning any income for services outside the government.<sup>40</sup> Therefore, it is unlikely that she is receiving compensation for any outside position with this company, and she has likely been advised to refrain from representing that company or its clients before the government. OGE has no information to indicate otherwise.

---

<sup>31</sup> 5 C.F.R. § 2634.1003.

<sup>32</sup> *Id.*; 5 C.F.R. § 2640.102(a).

<sup>33</sup> 26 U.S.C. § 1043(c).

<sup>34</sup> 5 C.F.R. § 2640.103(d).

<sup>35</sup> 5 C.F.R. § 2640.103(d)(2). *But see* Stop Trading on Congressional Knowledge Act of 2012, Pub. L. No. 112–105, § 17, 126 Stat. 291, 303–04 (requiring notice of recusal in the limited case of an appointee negotiating for post-government employment).

<sup>36</sup> Letter from Rep. Elijah E. Cummings, Comm. on Oversight and Gov’t Reform, House of Representatives, to Walter M. Shaub, Jr., Director, U.S. Office of Gov’t Ethics 2 (Apr. 7, 2017).

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

<sup>38</sup> See 18 U.S.C. § 205.

<sup>39</sup> 5 U.S.C. app. § 502(a)(4).

<sup>40</sup> Exec. Order No. 12,674, pt. 1, § 102 (Apr. 12, 1989), *modified by* Exec. Order No. 12,731 (Oct. 17, 1990).



Whether or not she retains a position with this company, a recent Executive Order prohibits her from participating for two years from the date of her appointment in any particular matter involving specific parties in which that company, or any client she served in the two-year period prior to her appointment, is a party or represents a party.<sup>41</sup> However, this recent Executive Order authorizes the White House to issue a waiver for any reason.<sup>42</sup> In addition, this recent Executive Order has eliminated a transparency provision that existed in the earlier Executive Order that it replaced.<sup>43</sup> As a result, OGE does not know whether she has received a waiver under this recent Executive Order.

She is also subject to the Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct).<sup>44</sup> The Standards of Conduct establish an additional recusal obligation as to any particular matter involving specific parties in which a former employer or client she served in the past year is a party or represents a party.<sup>45</sup> Notwithstanding this recusal obligation, the White House could authorize her to participate in such a matter under certain circumstances.<sup>46</sup> Unlike a waiver under the Executive Order, an authorization under this Standards of Conduct provision is available only if she meets a certain legal standard. The authorization is made in writing only at the discretion of the issuing official or upon request by the employee, and copies of such authorizations are not usually provided to OGE.

As your letter points out, the Standards of Conduct would also prohibit misuse of position to benefit this company, its clients, or her former clients.<sup>47</sup> However, OGE is not aware of information that would suggest she has misused her position to benefit any of them or provide them access to White House officials.

In response to your question regarding a Certificate of Divestiture, a Certificate of Divestiture has not been issued to this appointee. Although this circumstance may suggest that she has not divested her interest in her company, it is not conclusive. An appointee is not required to obtain a Certificate of Divestiture when divesting any asset. An appointee is, however, required to file a periodic transaction report (OGE Form 278-T) within 30 days of any sale of a covered asset, such as this company, and that report is ultimately transmitted to OGE for review and second-level certification.<sup>48</sup> As of this date, OGE has not received from the White House a periodic transaction report reflecting the sale of this asset. It is possible that she filed one and the White House has not yet completed its review of that report.

---

<sup>41</sup> Exec. Order No. 13,770, § 1, par. 6 (Jan. 28, 2017).

<sup>42</sup> *Id.* § 3(a).

<sup>43</sup> Compare Exec. Order No. 13,490, § 4(c)(5) (Jan. 21, 2009), with Exec. Order No. 13,770, § 4(c). See also U.S. OFFICE OF GOV'T ETHICS, ANNUAL REPORT ON EXECUTIVE ORDER 13490, at 10 (2010) ("All waivers are made publicly available on either the OGE website or the White House website when issued."), <https://goo.gl/iX1otZ>.

<sup>44</sup> See 5 C.F.R. pt. 2635.

<sup>45</sup> 5 C.F.R. § 2635.502.

<sup>46</sup> 5 C.F.R. § 2635.502(d).

<sup>47</sup> 5 C.F.R. § 2635.702.

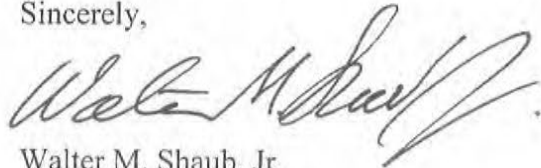
<sup>48</sup> 5 U.S.C. app. § 103(f).



The Honorable Elijah E. Cummings  
Ranking Member  
Committee on Oversight and Government Reform  
Page 6

I hope this explanation addresses the issues your letter raises. If your staff has questions, OGE's Chief of Staff, Shelley K. Finlayson, is available to assist them. She can be reached at 202-482-9292.

Sincerely,

A handwritten signature in black ink, appearing to read "Walter M. Shaub, Jr.", with a stylized flourish at the end.

Walter M. Shaub, Jr.  
Director

cc: The Honorable Jason E. Chaffetz  
Chairman  
Committee on Oversight and Government Reform  
United States House of Representatives  
2157 Rayburn House Office Building  
Washington, DC 20515