

# TRANSITION GUIDE



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# 1

INTRODUCTION



## A MESSAGE FROM OGE'S DIRECTOR

*Our pledge to you is that together,  
OGE and the Presidential Transition Team will get the new  
administration off to a strong ethical start.*

One of the great traditions of our nation is the peaceful transition of power. History is made every four or eight years when our government turns over the reins of power from one Presidential administration to the next.

At the same time, the work of a Presidential transition is a monumental undertaking. In just over ten weeks between the election and the inauguration, the President-elect must prepare to take control of a government comprising more than 130 agencies, hundreds of subcomponents, and millions of civilian and uniformed personnel.

The U.S. Office of Government Ethics (OGE) recognizes that the 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 works in partnership with the Presidential Transition Team to make sure that prospective nominees are free of conflicts of interest, so that top leadership positions can be filled quickly.

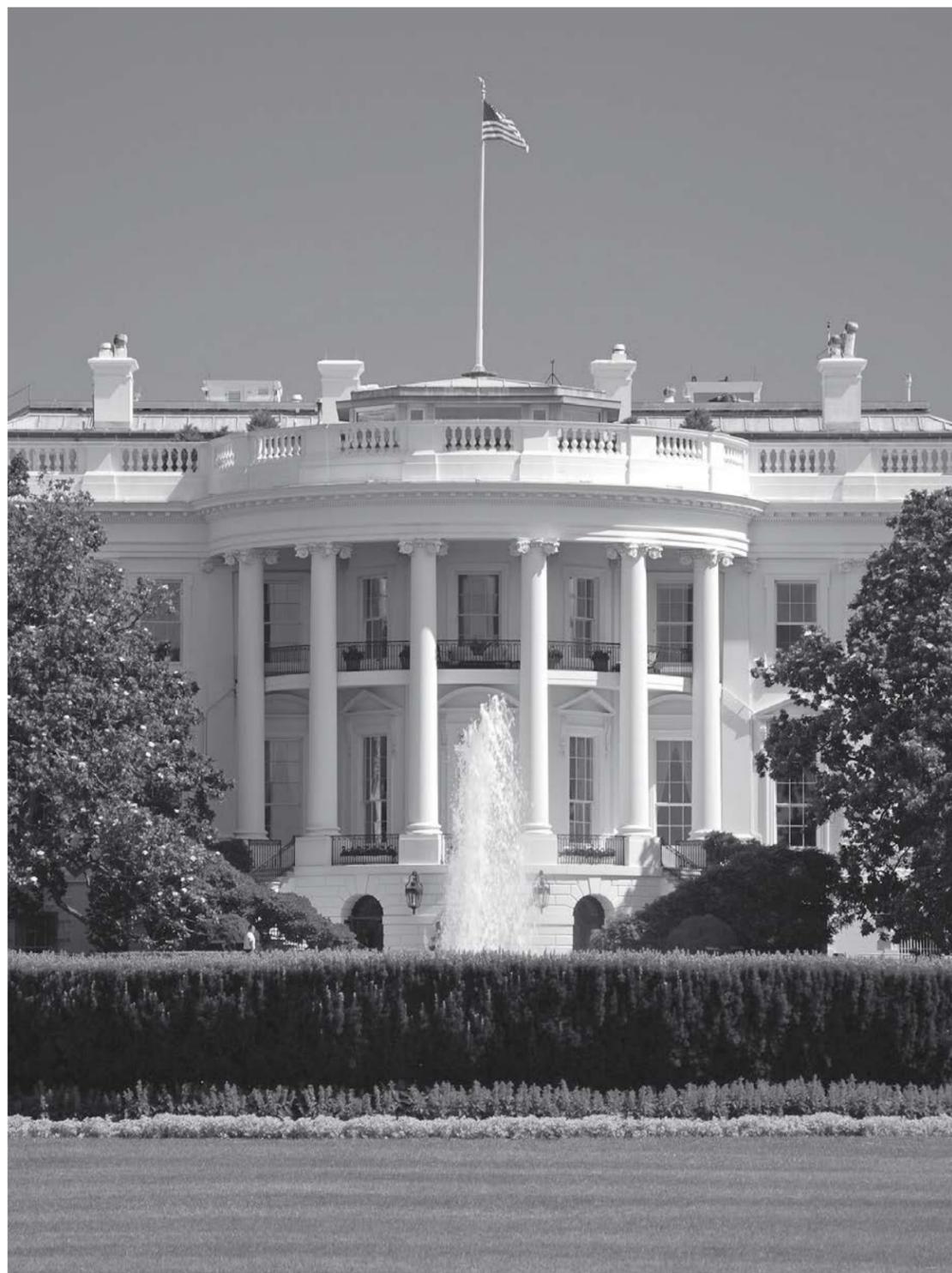
The demands on the Presidential Transition Team will be extreme, but achieving an effective transition is vital to the nation's interests. Success depends largely on investing the resources, time, and effort needed to achieve an effective transition.

The Presidential Transition Team needs to be well-organized and knowledgeable about the process. This guide identifies ways OGE can help, explains the nominee ethics process, and provides strategies for establishing a strong ethical culture in the new Presidential administration. At the end of the guide, we also provide useful reference materials.

Our pledge to you is that together, OGE and the Presidential Transition Team will get the new administration off to a strong ethical start. The President-elect and the American people deserve nothing less.

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



# HOW OGE CAN HELP WITH THE TRANSITION

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OGE is ready to assist the Presidential Transition Team in navigating the transition and laying the groundwork for a strong ethical culture in the new administration. OGE can also assist in establishing a strong White House ethics program. The following section highlights some of the ways OGE can help.

# 1 BRIEFINGS BEFORE & AFTER THE ELECTION

It is important to establish lines of communication with OGE before the election. Please contact OGE's Director in August to schedule briefings for campaign officials engaged in planning Presidential transition activities. We recommend that you send representatives to the initial briefing who are at a high enough level in the campaign to be able to agree to procedures for interactions with OGE. In the briefings, we can provide detailed information on the following:

- The Presidential nomination process
- Communications with OGE staff
- Communications with agency ethics officials
- Financial disclosure requirements
- Electronic filing of financial disclosure reports
- "Blind" review of sensitive financial disclosure reports
- Informal pre-screening of prospective nominees
- Ethics agreements and how they are used to prevent conflicts of interest
- Ethics laws and regulations that will apply to the President-elect's appointees
- OGE's ability to provide technical assistance on ethics initiatives
- Best practices for expediting the ethics review for nominees

# 2 ETHICS REVIEW OF NOMINEE FINANCIAL DISCLOSURE REPORTS

The financial disclosure vetting process for a potential nominee can take weeks and sometimes months. Nominees often have complex financial investments and employment arrangements that are difficult to untangle. We will help you work through those issues effectively and efficiently. We also recommend that you collect draft financial disclosure reports from nominees and provide them to OGE as soon as possible, in order to avoid delays in the nomination process.

*The financial disclosure vetting process for a potential nominee can take weeks and sometimes months.*

### 3 PRELIMINARY CONSULTATIONS ON PROSPECTIVE NOMINEES

OGE can provide preliminary consultations regarding a nominee's potential conflicts of interest. These consultations are useful when you need to know whether the nominee's financial interests would make nomination for one or more possible positions impracticable. For example, one obstacle may be a nominee's unwillingness or inability to divest a specific financial interest. Without identifying the individual, you can describe the financial interest and the type of position being considered. OGE can then provide a tentative assessment as to whether that financial interest would likely pose a conflict of interest for a nominee in that position.

*These consultations are useful when you need to know whether the nominee's financial interests would make nomination for one or more possible positions impracticable.*

### 4 "BLIND" REVIEWS OF NOMINEE REPORTS

We recognize that there may be certain circumstances when you are not ready to provide a particular nominee's financial disclosure report to OGE. This may happen when you have not made a decision as to the specific position to which you will nominate the individual or the individual's identity is sensitive.

In these instances, you can redact information about the individual's identity or the position and agency. OGE can then conduct a "blind" review of the report for technical compliance with financial disclosure requirements. OGE will not be able to perform a conflicts of interest analysis without knowing what position the potential nominee is going to, but resolving technical reporting issues will greatly reduce the time needed for the ethics review when you later make a decision about the nominee.

We recommend that you limit requests for these "blind" reviews to only nominees receiving serious consideration in order to avoid diverting resources that OGE would otherwise devote to your other nominees. In addition, OGE will not be able to coordinate directly with the anonymous nominee. Therefore, you will need to assign someone to serve as an intermediary to communicate OGE's comments and questions regarding the financial disclosure report.

## 5 DRAFTING ETHICS AGREEMENTS

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

## 6 TECHNICAL ASSISTANCE WITH ETHICS INITIATIVES

If the President-elect intends to issue an executive order or other instructions regarding government ethics, OGE is available to assist in the drafting process. OGE will explain any consequences of policy decisions or specific language and can identify a variety of options to achieve the President-elect's objectives.

## 7 TRAINING AND GUIDANCE ON GOVERNMENT ETHICS

On January 20, 2017, newly appointed White House staff will need to respond immediately to countless urgent matters of national importance. The terrain will be fraught with ethical landmines that can lead to criminal, civil, and administrative penalties for individual appointees and to embarrassment for the new administration.

OGE can help prevent problems by conducting government ethics training for new White House officials, either before or after January 20, 2017. OGE also stands ready to support the new White House Counsel's Office (WHCO) by providing guidance when issues arise. In addition, OGE can assist you in establishing an organized and effective ethics program in the Executive Office of the President and the Office of the Vice President.

## 8 TRAINING ON THE ELECTRONIC FILING SYSTEM, INTEGRITY

Nominees file their financial disclosure reports through the executive branch's electronic filing system, which is named *Integrity*. Although *Integrity* is a "smart" system that guides nominees through the process of filing their reports, before any of your potential nominees can have access to the system, OGE will need to train at least two members of your staff to serve important roles in the system.

## 9 COORDINATING CONTACTS WITH AGENCIES

During the Presidential transition and in the first days of the new administration, it can be hard to know who to call in the government. OGE can help you reach the right people. OGE oversees a network of over 4,500 agency ethics officials spanning every agency in the executive branch. We can leverage this network to connect you with the right people to assist you with a wide variety of issues.

2

PRESIDENTIAL NOMINEES



## OGE'S ROLE IN PRESIDENTIAL NOMINATIONS

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

OGE's staff works in concert with agency ethics officials to review nominees' draft financial disclosure reports. Then, agency ethics officials work directly with nominees or their representatives to assist them in revising their draft reports.

*OGE's staff appreciates that the ethics review must be, at once, both thorough and expeditious.*

Agency ethics officials also supply knowledge regarding their agency's missions and activities that is crucial to analyzing potential conflicts of interest. Together, OGE's staff and agency ethics officials identify potential conflicts of interest and draft ethics agreements in order to resolve them. The commitments that nominees make in their ethics agreements ensure that they will be able to carry out their duties as Presidential appointees effectively and honorably.

OGE brings to this job a wealth of expertise and experience. OGE's staff appreciates that the ethics review must be, at once, both thorough and expeditious. The goals are to ensure compliance with ethics and disclosure requirements and, whenever possible, to reduce the burden on the nominee.

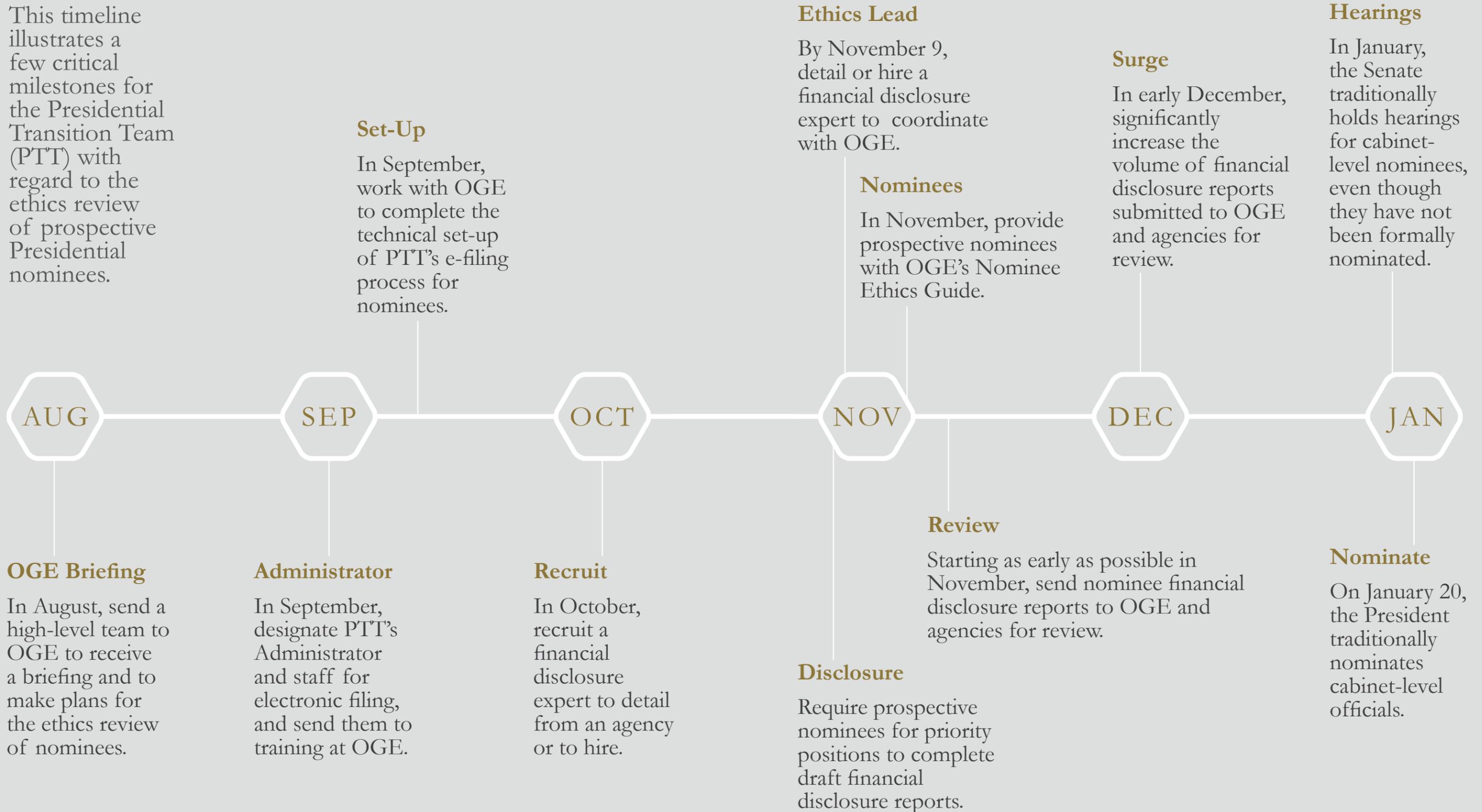
OGE has also developed a number of useful tools and resources, all of which are available on OGE's website. These tools include a nominee ethics guide, a comprehensive financial disclosure guide, an ethics agreement guide, and numerous legal advisories.

The process requires skillful coordination between the Presidential Transition Team, OGE, the agency, the nominee, and in some cases the nominee's representative.



# CRITICAL MILESTONES

This timeline illustrates a few critical milestones for the Presidential Transition Team (PTT) with regard to the ethics review of prospective Presidential nominees.

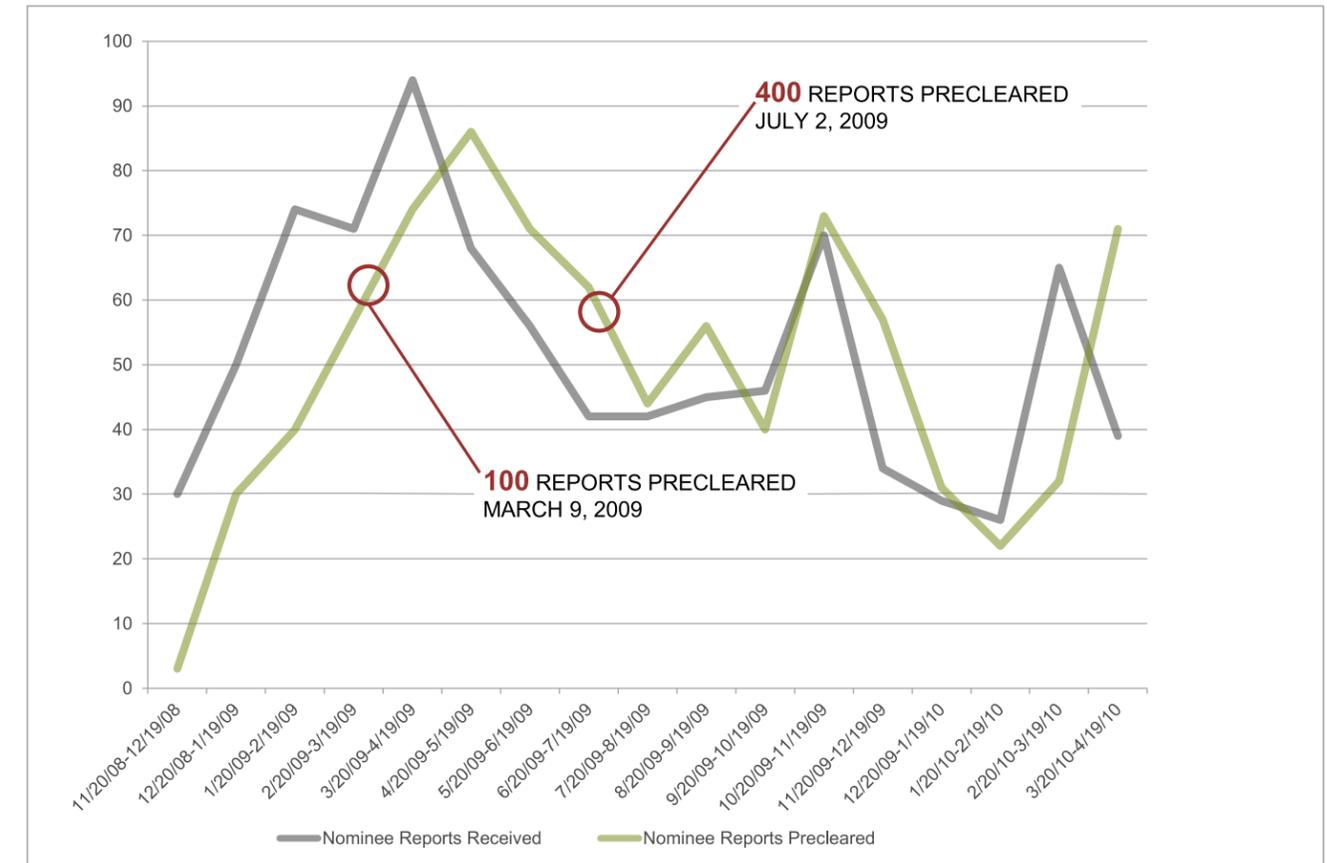


# INPUT DETERMINES OUTPUT

The new President will need to fill nearly 1,100 Senate-confirmed civilian positions in the executive branch. This is no small undertaking. The average time for the ethics review of a financial disclosure report, including development of an ethics agreement, is 43 days. OGE can expedite individual reports upon request, but the trade-off is that expediting one report may cause another one to take longer.

The graph on the opposite page illustrates the volume of reports that OGE reviewed in the last Presidential transition in 2009. The grey line represents the number of reports OGE received each month. The green line represents the number of reports OGE pre-cleared (i.e., tentatively approved for nomination) each month. The key takeaway from the graph is that while OGE's nominee process is highly efficient, OGE can't review financial disclosure reports it hasn't received. The sooner OGE receives reports, the sooner OGE can clear them.

By all accounts, the 2009 Presidential transition was a highly successful one. This upcoming transition, however, can be more successful if the Presidential Transition Team releases draft nominee financial disclosure reports to OGE sooner. In order to achieve the President-elect's goals for filling leadership positions, we encourage you to invest the resources needed to move this graph to the left in late 2016 and 2017.



*In order to achieve the President-elect's goals for filling leadership positions, we encourage you to invest the resources needed to move this graph to the left in late 2016 and 2017.*

# NOMINEE RESPONSE TIME MATTERS

The single biggest factor affecting the time it takes to review a nominee's financial disclosure report is the responsiveness of the nominee. Multiple rounds of questions and revisions are usually needed before a report can be finalized—the financial disclosure requirements in the Ethics in Government Act are just that complex.

Delays can occur whenever a nominee is slow in:

- Gathering documents needed to complete the financial disclosure report;
- Responding to questions from OGE or agency ethics officials;
- Contacting a source of needed information, such as a brokerage firm, a financial advisor, an employer's human resources office, a partner, etc.; or
- Wrapping up negotiations to plan for things like the dissolution of a partnership, the sale of a company, the termination of an employment relationship, etc.

Delays can also occur whenever a nominee is reluctant to agree to the steps legally required to resolve conflicts of interest, such as resignation, divestiture, or recusal.

Here are three simple ways you can reduce nominee response time:

- Provide nominees with OGE's Nominee Ethics Guide,
- Emphasize the importance of nominees responding when OGE or agency ethics officials request additional information or corrections to the financial disclosure report, and
- Warn nominees in advance that ethics laws and regulations may require them to make changes to their financial holdings.

# WHAT TO TELL NOMINEES

Nominees should respond promptly to questions from ethics officials in order to avoid delays. They also need to be aware that ethics laws and regulations will require them to take certain actions to avoid conflicts of interest. Below is some suggested language that you can email to nominees:

*1. It is imperative that you respond promptly to questions from agency ethics officials.*

*2. When directed to revise your financial disclosure report, revise the report and notify agency ethics officials as quickly as possible.*

*3. Be prepared for the unfortunate reality that the vetting and Senate confirmation processes can be burdensome and intrusive.*

*4. Be prepared for the possibility that conflict of interest laws may necessitate changes in your personal finances, potentially including the divestiture of assets and resignation from business or volunteer positions.*

*5. Be aware that conflict of interest laws also apply to the financial interests of your spouse and minor child. For this reason, they too may need to divest assets.*

*6. Be sure to review OGE's Nominee Ethics Guide at the beginning of the ethics process. Let us know if you have not received a copy of the guide.*

## PRE-CLEARANCE

Pre-clearance is the pivotal point in the nominee process when the Presidential Transition Team receives staff-level assurance from OGE that the nominee report is ready to be certified. OGE developed the pre-clearance process decades ago to ensure that ethics issues are resolved before a Presidential nomination is announced. This process protects the President in exercising the constitutional authority to nominate individuals to senior leadership positions in the government. It also protects the privacy of private citizens who may choose to withdraw from consideration before being nominated publicly.

While pre-clearance is not a final commitment by OGE to certify a nominee's report as is, OGE will expedite efforts to work with the nominee to resolve any issues if the final report is later determined not to be ready for certification. In high profile cases or ones that raise unusual issues, OGE's Director and General Counsel will be involved at the pre-clearance stage to prevent future delays.

*This process protects the President in exercising the constitutional authority to nominate individuals to senior leadership positions in the government.*

## INTEGRITY, THE ELECTRONIC FILING SYSTEM

As mentioned previously, Presidential nominees in the executive branch file public financial disclosure reports through *Integrity*, the executive branch electronic financial disclosure system. *Integrity* is a secure web-based system accessed through [www.integrity.gov](http://www.integrity.gov). *Integrity* employs a combination of smart data-entry tables and context-dependent questions to guide nominees through the complex financial disclosure requirements.

*Integrity* is hosted in a secure government cloud and has successfully undergone a full, independent security assessment. It leverages the advanced authentication system of the Office of Management and Budget's Budget Formulation and Execution Line of Business. Both *Integrity*'s authentication provider and host are authorized under GSA's Federal Risk and Authorization Management Program (FedRAMP).

In developing *Integrity*, OGE was aware that the Presidential Transition Team would need a firewall separating the outgoing President's nominees from the President-elect's nominees. For that reason, the current White House will be unable to access any data entered by the Presidential Transition Team. In fact, even OGE and the nominee's agency will be unable to access that data until the Presidential Transition Team releases it to OGE.

# 3

ESTABLISHING PROCEDURES



# INVESTING IN THE NOMINEE PROCESS

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The Presidential Transition Team’s nominee program is a high stakes operation. An ineffective nomination process can cause delays in getting the President’s leadership team in place. Unresolved conflicts of interest can derail a nomination or ultimately expose Presidential appointees to potential criminal, civil, or administrative penalties for inadvertent violations of law. More broadly, these problems can spell trouble for a new Presidential administration. This section provides some relatively detailed information to assist in establishing effective procedures. The information in this section is intended primarily for Presidential Transition Team members who are directly involved in nominations.

## OBTAINING NEEDED EXPERTISE

It is important to have a government ethics expert on the Presidential Transition Team. In the past, transition teams have detailed senior ethics officials from the executive branch. If needed, OGE can either provide a detailee or recommend ethics officials from other agencies. Alternatively, you can secure the services of an expert from outside the government.

In either case, this individual can coordinate with OGE, manage the release of nominee reports to OGE, and relay OGE's comments on nominees' drafts in connection with an initial "blind" review of reports. In this regard, it would help if the individual has previously used the electronic filing system, *Integrity*.

OGE recommends that you send at least two—and preferably more—individuals to OGE for training on the use of *Integrity*. By sending additional individuals to OGE for training, you can ensure that you have consistent coverage of functions. At least one individual will need to serve as the Presidential Transition Team's *Integrity* Administrator. Another individual will need to release financial disclosure reports to OGE through *Integrity*. (Due to security protocols, the *Integrity* Administrator cannot release reports to OGE.)

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*The Presidential Transition Team's nominee program is a high stakes operation.*

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## INITIATING REPORTS IN INTEGRITY

As discussed in the previous section, nominee reports are processed through *Integrity*, the executive branch electronic filing system. *Integrity* is configured for a seamless handoff from the Presidential Transition Team to the new White House. In order to accomplish this handoff, the Presidential Transition Team needs to establish procedures that parallel the procedures the new White House will use after the inauguration.

After the inauguration, the White House's Presidential Personnel Office (PPO) will manage the nominee process. The White House PPO will collect and release a nominee's financial disclosure report to the White House Counsel's Office (WHCO). Then, WHCO will be responsible for releasing the nominee's report to OGE and the nominee's agency.

*Integrity* is configured to accommodate this White House process, with separate user roles for PPO and WHCO. For this reason, prior to the inauguration the Presidential Transition Team needs to assign members of its staff to serve temporarily in the *Integrity* roles of PPO and WHCO.

# SEQUENCE OF THE PROCESS

The nominee process prior to inauguration flows in this sequence:

**Transition Team:** The transition team provides the nominee with a copy of OGE’s Nominee Ethics Guide.

**Transition Team:** A transition team member assigned to the “PPO” role in *Integrity* registers the nominee in *Integrity* and initiates a financial disclosure report. *Integrity* automatically emails the nominee a notice with instructions.

**Nominee:** The nominee completes a draft financial disclosure report in *Integrity* and submits it to the transition team by clicking the “submit” button.

**Transition Team:** The transition team member assigned to the “PPO” role in *Integrity* releases the report to the transition team member assigned to the “WHCO” role in *Integrity*.

**Transition Team:** The transition team member assigned to the “WHCO” role in *Integrity* releases the report through *Integrity* to OGE and the nominee’s agency.

**OGE/Agency/Nominee:** OGE and agency ethics officials work with the nominee to perfect the report and prepare an ethics agreement. This work takes multiple rounds. OGE then “preclears” the report in *Integrity*.

**Transition Team:** The transition team reviews the ethics package, the FBI’s background investigation report, and other vetting materials. If a favorable decision is made, the name of the intended nominee is released publicly.

The remainder of this sequence assumes that the Senate will hold a hearing in advance of the inauguration. The Senate will likely hold advance hearings for nominees to several cabinet-level positions before January 20, 2017. For other nominees, the following steps will occur when the President makes formal nominations only after having been sworn into office.

**Agency/Nominee:** The agency instructs the nominee to formally file the report in *Integrity* and to sign the ethics agreement. After the nominee takes these actions, the agency certifies the report and sends the ethics agreement to OGE.

**OGE:** OGE’s Director certifies the report in *Integrity* and then transmits both the report and the ethics agreement to the appropriate Senate committee.

**Agency/Nominee:** Within 5 days of the Senate hearing, the nominee provides the agency with a letter containing updated information about earned income. The agency sends copies of the letter to OGE and the Senate.

**Senate/President:** Committee staffers meet with the nominee. Then, the committee holds a hearing. After being sworn into office, the President makes the formal nomination. The Senate then votes on the nomination.

**President:** If the Senate confirms the nominee, the President can appoint the nominee.

## VARIATIONS

There are three types of positions in the executive branch for which the process varies slightly:

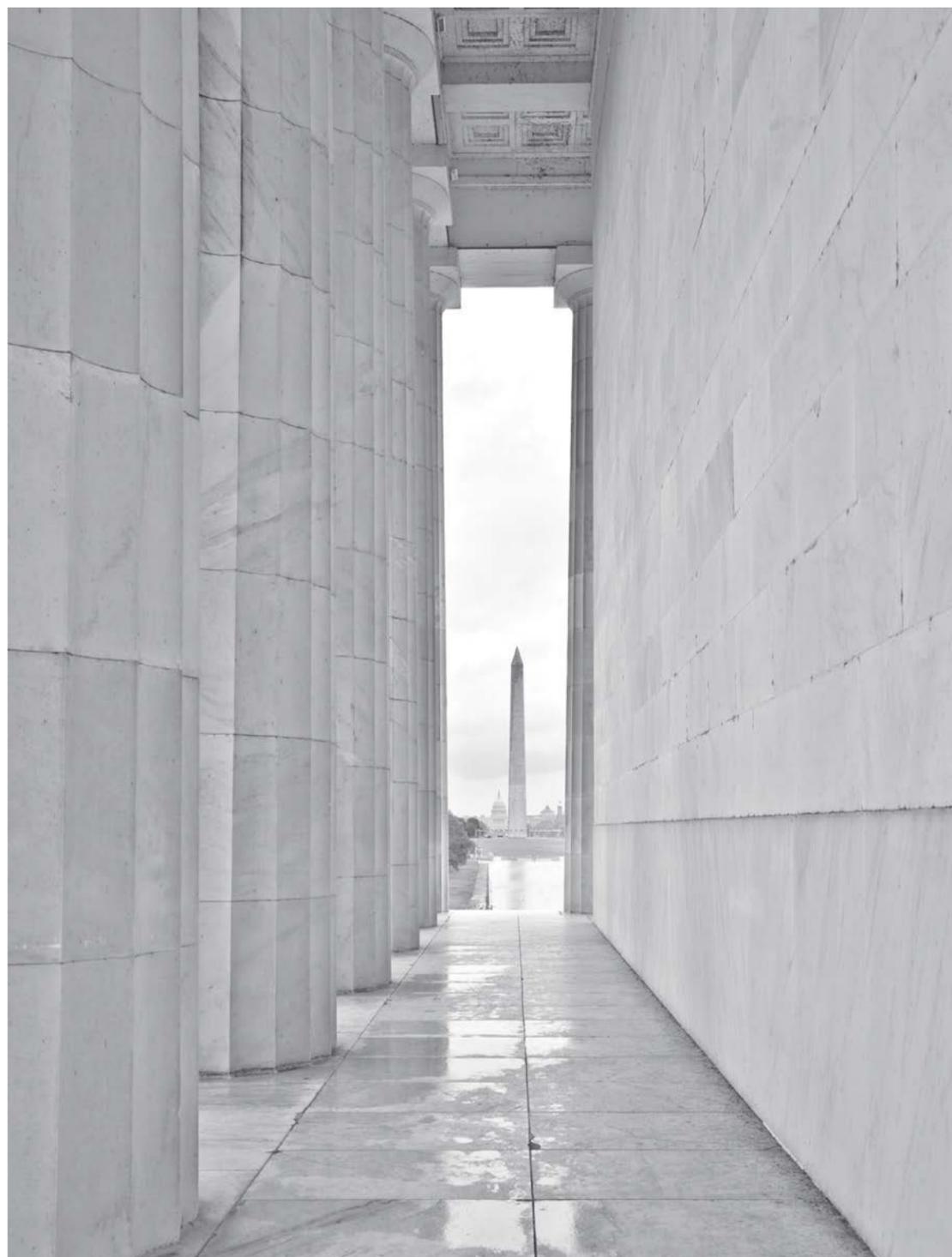
1. Ambassadors who are career Foreign Service Officers
2. U.S. Attorneys
3. U.S. Marshals

The Department of State traditionally initiates the process in *Integrity* for Ambassadors who are career Foreign Service Officers. The Department of Justice traditionally initiates the process in *Integrity* for both U.S. Attorneys and U.S. Marshals.

During the transition, both of these departments serve in the “PPO” role in *Integrity*, while the Presidential Transition Team serves only in the “WHCO” role in *Integrity*. Accordingly, the Presidential Transition Team will be unable to view these financial disclosure reports until the departments release them through *Integrity*. After the departments release these reports, the Presidential Transition Team will then release the reports to OGE.

# 4

ETHICS IN THE NEW  
ADMINISTRATION



## SETTING THE TONE

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The Presidential Transition Team plays an essential role in setting the tone for the early days of the new administration. (The same will be true for the White House's Presidential Personnel Office after the inauguration.) The message that ethics matters should be communicated right from the beginning of the nominee process and repeated throughout an appointee's public service.

At the heart of the executive branch ethics program is the principle that public service is a public trust. Government officials must put the public's interests before their own interests. This bedrock principle is an easy one to appreciate, but the complex ethics requirements that flow from it are not necessarily intuitive. They represent numerous policy choices by Congress, Presidents, and federal agencies over the years. Presidential appointees will need to build a working knowledge of these requirements, so they can spot potential issues and seek help from their agency's ethics officials when they need it.

You can emphasize to nominees and appointees that serving as a federal leader comes with responsibilities. Let them know that they must carry out their obligations under the ethics laws and regulations, as well as under their individual ethics agreements. Beyond these legal requirements, you can charge them with building ethical organizational cultures to make ethics a priority in their agencies.

*At the heart of the executive branch ethics program is the principle that public service is a public trust. Government officials must put the public's interests before their own interests.*

## CONCRETE STEPS

The five items below describe concrete steps you can take to communicate this important message and get the new administration off to a strong ethical start.

### 1 NOMINEE ETHICS GUIDE

You can distribute OGE's Nominee Ethics Guide to nominees early in the process. In addition to guidance on the nominee process, the guide provides a valuable introduction to key requirements of government ethics laws and regulations. You can reinforce this message by directing nominees to read the section of the guide addressing substantive ethics requirements.

### 2 ETHICS AGREEMENTS

Government ethics laws and regulations apply to Presidential appointees as soon as they begin their federal service. For that reason, the ethics agreements that OGE and agency ethics officials draft are designed to prevent problems from arising. A good ethics agreement is meaningless, however, if the appointee does not follow through on the commitments made in that agreement. You can emphasize to nominees the importance of complying with ethics agreements once appointed, and you can let them know that OGE and their agencies' ethics offices will be tracking their compliance.

## 3 INITIAL ETHICS BRIEFING

Nominees will be well-served if you emphasize the importance of scheduling ethics briefings with their agency's ethics officials. Ideally, every nominee should receive an ethics briefing on the first day or first week in government. Adopting a policy of requiring early ethics briefings for Presidential appointees could go a long way toward preventing the types of ethics issues that can embarrass a new Presidential administration.

## 4 ETHICS TRAINING AND ONGOING FINANCIAL DISCLOSURE

You can explain to nominees that, once in their government positions, they will have to comply with ongoing requirements that include: (a) participating in new employee ethics training; (b) participating in annual ethics training; (c) promptly reporting certain financial transactions, such as stock purchases and sales; and (d) filing annual financial disclosure reports. It is important to set the tone that compliance with these requirements is an obligation of public service and important to ensuring public confidence in government decision-making.

## 5 ETHICAL LEADERSHIP

You can emphasize to nominees that as senior leaders they will play key roles in their agency's ethical culture. Here are a few ways you can suggest that they go about making ethics a priority:

- Start off on the right foot by scheduling an initial ethics briefing from the agency's ethics office in the first week—or first day—in the job
- Comply with ethics agreements on time
- File financial disclosure reports on time
- Complete new employee and annual ethics training on time
- Continuously monitor financial interests, and remain vigilant for possible conflicts of interest in all official activities
- Ensure that the agency's ethics office has the leadership support and the staffing resources it needs
- Invite ethics officials to present on government ethics—even if only for 5 minutes—at the beginning of each senior staff meeting
- Hold subordinates accountable for knowing and following the ethics rules, and take decisive action if ethics rules are violated
- Prevent retaliation against employees who report wrongdoing
- Communicate the agency's core values and work to sustain an ethical culture in which employees put the interests of the public first
- Model the importance of ethics training by attending the training in person and with subordinates

# 5

RESOURCES

## KEY ONLINE RESOURCES

Several key resources are available to Presidential Transition Team members involved in the ethics component of the nominee process:



OGE's official website has a wealth of resources that will be useful to PTT staff members.

### ■ Public Financial Disclosure Guide

OGE's online Public Financial Disclosure Guide, found under the "Public Financial Disclosure" section of OGE's website, offers helpful instructions, illustrations of sample language, definitions, and answers to frequently asked questions in plain language.

### ■ Integrity User Manual

The online user manual for the executive branch electronic filing system, *Integrity*, provides useful explanations of the system's features. A user name and password is required to access both *Integrity* and its user manual.

### ■ Nominee Checklists

The appendix to OGE's Nominee Ethics Guide contains detailed checklists for: (1) nominees generally; (2) nominees who are attorneys; (3) nominees who are corporate officers, employees, or directors; (4) nominees who are university professors or deans; and (5) nominees who are investment fund managers.

### ■ Forms

The OGE Form 278e is available in Excel format under the "Forms" section on OGE's website. A section 508-compliant version of that form is available in PDF format. The OGE Form 450 is also available.

### ■ Ethics Agreement Guide

The drafting of ethics agreements for nominees in the executive branch necessarily begins with the standardized language provided in OGE's PAS Nominee Ethics Agreement Guide, which is available on OGE's website.

### ■ Government Ethics Statutes and Regulations

PTT staff can access relevant government ethics statutes and regulations applicable to Presidential nominees and appointees through the "Laws and Regulations" section on OGE's website.

### ■ Online Presidential Transition Compilations

GSA maintains the federal government's official Presidential Transition Directory at <https://presidentialtransition.usa.gov>.

The Partnership for Public Service has published its own helpful compilation at <http://presidentialtransition.org>.

## SOME RELEVANT OGE ISSUANCES

Presidential Transition Team members involved in the ethics component of the nominee process may also find a number of OGE issuances helpful. OGE documents listed below can be obtained by entering the document number in the “search” field of OGE’s website at [www.oge.gov](http://www.oge.gov).

### TRANSITION ISSUES

#### ■ Temporary appointment pending nomination

This document (*[Ethical Requirements Applicable to Potential PAS Appointees Employed as “Advisors” or “Counselors”](#)*) explains that potential Senate-confirmed Presidential appointees hired as advisors or counselors prior to confirmation are employees of the United States and are subject to federal ethics laws and regulations. (Search “DO-01-009”)

#### ■ Former high-level government officials in the transition

This document (*[Statutory Exception for Representation of Candidates and Specified Political Entities by Former Senior and Very Senior Employees](#)*) explains that 18 U.S.C. § 207(j)(7) provides an exception to the 1-year no-contact ban for former senior employees and the 2-year no-contact ban for very senior employees. In limited circumstances, these categories of former employees do not violate the statute if a communication or appearance is on behalf of a candidate or one of the specified political entities. (Search “DO-08-011”)

#### ■ Videos on the transition

OGE has posted online recordings of 3 panel sessions from its 2016 National Government Ethics Summit on the OGE YouTube Channel:

- o *[Presidential Transition](#)* – OGE Director Walter M. Shaub, Jr. speaks with a panel of experts about experiences with Presidential transitions.

Panel members include Lisa Brown (former Co-Chair of Agency Review for the Obama-Biden Transition Project), Clay Johnson (former Executive Director, Bush-Cheney Transition), and Max Stier (President and CEO, Partnership for Public Service).

- o *[Transition is Coming: Preparing for Success](#)* – OGE Chief of Staff Shelley Finlayson speaks with a panel of transition service providers about the work underway to prepare for a successful Presidential transition. Panel members include Mary Gibert (GSA Director of Presidential Transition), Martha Kumar (Director of the White House Transition Project), Lee Lofthus (Assistant Attorney General for Administration, Department of Justice), Kristine Simmons (Vice President of Government Affairs, Partnership for Public Service), and Gary Stern (General Counsel, National Archives and Records Administration).

- o *[Ethics Recommendations for a New Administration](#)* – OGE Director Walter M. Shaub, Jr. speaks with a panel of experts about their diverging recommendations to the next Presidential administration regarding government ethics. Panel members include Norman L. Eisen, Ambassador (Ret.) (Brookings Institution, Former Special Counsel to President Barack Obama), Craig Holman, Ph.D (Government Affairs Lobbyist, Public Citizen), Sean Moulton (Open Government Program Manager, Project On Government Oversight), Richard W. Painter, Professor (University of Minnesota School of Law, Reporter for the ALI Project on Government Ethics, Former Associate Counsel to President George W. Bush), Gregory S. Walden (Senior Counsel, Akin Gump Strauss Hauer & Feld LLP; Former Associate Counsel to President George H. W. Bush).

- o *[Proposed Regulatory Amendments & Issues for the Transition](#)* – In this session, OGE’s General Counsel David Apol and Assistant Counsel Chris Swartz discuss OGE’s proposed amendments to Subpart B of the Standards of Conduct and consider various gift issues related to the transition. This session focuses on the proposed regulations, published at 80 FR 74004 (Nov. 27, 2015), and updates on the status of the regulations going forward. Mr. Apol and

Mr. Swartz also discuss gifts issues that are unique to Presidential Transitions, such as: the extent to which employees may accept gifts given during the inauguration; how to analyze gifts given by members of the transition team; and, when the exemption at 5 C.F.R. 2635.204(f), for gifts permitted by the Hatch Act, is available.

## FINANCIAL DISCLOSURE REQUIREMENTS

### ■ Reviewing financial disclosure reports

This document (*Seeking Additional Information from Nominee Filers*) discusses the need to seek additional information when a financial disclosure report is incomplete. (Search “DO-08-002”)

### ■ Mortgages

This document (*Mortgage Reporting Requirements*) explains changes to the reporting exception for mortgages with respect to certain filers who are nominees to or appointees in Senate-confirmed positions. (Search “LA-12-02”)

## CONFLICT OF INTEREST LAWS

### ■ Determining when an appointee becomes subject to criminal conflicts of interest laws

This document (*Commencement of Officer or Employee Status for Purposes of Conflict of Interest Requirements*) provides a link to an opinion issued by the Department of Justice’s Office of Legal Counsel concerning timing of when an individual becomes subject to the federal conflict of interest laws and regulations. (Search “DO-02-014”)

### ■ Types of matters covered by 18 U.S.C. § 208

This document (*“Particular Matter Involving Specific Parties,” “Particular Matter,” and “Matter”*) provides guidance on the meaning of 3 terms used in the criminal conflict of interest statutes and OGE’s implementing regulations to describe the types of matters covered by 18 U.S.C. § 208. (Search “DO-06-029”)

### ■ Waivers under 18 U.S.C. § 208

This document (*Waivers under 18 U.S.C. §§ 208(b)(1) and (b)(3)*) provides guidance on issues that should be considered when deciding whether to grant a waiver under 18 U.S.C. §§ 208(b)(1) or (b)(3). (Search “DO-07-006”)

### ■ Exemption for non-profit positions under 18 U.S.C. § 208

This document (*18 U.S.C. § 208(b)(2) Exemption for Official Participation in Nonprofit Organizations*) discusses the history and scope of the exemption for official participation in nonprofit organizations at 5 C.F.R. § 2640.203(m). (Search “LA-13-05”)

### ■ Summary of 18 U.S.C. § 209

This document (*18 U.S.C. § 209 Guidance*) summarizes 18 U.S.C. § 209, which prohibits the supplementation of government salary by outside sources. (Search “DO-02-016”)

## INVESTMENT FUNDS

### ■ Determining whether a mutual fund is a sector fund

- 2000 issuance: This OGE document ([\*Diversified and Sector Mutual Funds\*](#)) provides guidance concerning the distinction between diversified and sector mutual funds for purposes of certain regulatory exemptions under 5 C.F.R. part 2640. (Search “DO-00-030”)
- 2015 issuance: This OGE document ([\*Diversified and Sector Real Estate Funds \(Exemption under 5 C.F.R. § 2640.201\)\*](#)) provides guidance as to which real estate mutual funds qualify as diversified funds and which qualify as sector funds for the purposes of certain regulatory exemptions under 5 C.F.R. part 2640. (Search “LA-15-09”)

### ■ What to do if a filer cannot disclose the underlying holdings of a private investment fund

- 2008 issuance: This OGE document ([\*Financial Disclosure Requirements for Pooled Investment Funds\*](#)) requires divestiture in certain circumstances when a filer cannot disclose the underlying holdings of an investment fund. (Search “DO-08-022”)
- 2014 issuance: This OGE document ([\*Financial Disclosure Requirements for Pooled Investment Funds\*](#)) clarifies the 2008 issuance by distinguishing circumstances in which divestiture is required from circumstances in which divestiture is not required. (Search “LA-14-05”)

## PENSION PLANS

### ■ Defined benefit pension plans

This OGE document ([\*18 U.S.C. § 208 and Defined Benefit Pension Plans\*](#)) updates and refines previous guidance on the circumstances in which an employee has a conflict of interest in matters affecting the sponsor of the employee’s defined benefit plan. (Search “DO-99-015”)

## TRUSTS & TRUSTEES, ESTATES & EXECUTORS

### ■ Financial disclosure issues involving trustees and estate executors

This OGE document ([\*Financial Disclosure Issues Concerning Trustees, Executors, and Administrators\*](#)) provides guidance on reporting trusts and estates when an employee is serving as a trustee or executor. (Search “DO-02-008”)

### ■ Applicability of the conflicts of interest law to trustees

This OGE document ([\*Office of Legal Counsel \(OLC\) Opinion Concerning Status of Trustees of a Private Trust under 18 U.S.C. § 208\*](#)) provides a link to an opinion issued by the Department of Justice’s Office of Legal Counsel concerning the application of 18 U.S.C. § 208 to individuals serving as trustees of private trusts. (Search “DO-01-029”)

### ■ Revocable living trusts

This OGE document ([\*Revocable Living Trusts\*](#)) explains OGE’s approach to revocable living trusts for purposes of both 18 U.S.C. § 208 and financial disclosure. (Search “DO-02-015”)

### ■ Discretionary trusts (sprinkling trusts)

- 2008 issuance: This OGE document ([\*Discretionary Trusts\*](#)) explains OGE’s approach to certain interests in discretionary trusts for purposes of both 18 U.S.C. § 208 and financial disclosure. (Search “DO-08-024”)
- 2013 issuance: This OGE document ([\*Reporting Requirements for Discretionary Trusts\*](#)) modifies the analysis previously announced in the 2008 issuance regarding financial disclosure requirements for certain interests in discretionary trusts. (Search “LA-13-04”)

## ATTORNEYS & OTHER REPRESENTATIVES

### ■ Contingency Fees

This OGE document (*Contingency Fees and 18 U.S.C. § 203*) discusses the implications of 18 U.S.C. § 203 for a prospective government employee, such as an attorney or other representative, who has an interest in a pending contingency fee case. (Search “DO-99-042”)

### ■ Compensation in matters affecting the government

This OGE document (*Clarification of Interpretation of 18 U.S.C. § 203*) explains that 18 U.S.C. § 203 is applicable only in situations involving compensation in exchange for the provision of representational services to a third party, rendered either by the employee or another. (Search “DO-99-049”)

### ■ Confidential clients

This OGE document (*Scope of Public Financial Disclosure Reporting Exception for Compensation from an Individual with Whom the Filer is in a Privileged Relationship*) clarifies that the scope of the nondisclosure exception for confidential clients is narrowly construed. Attorneys generally must disclose clients. (Search “DO-06-011”; also refer to the section on confidential clients in OGE’s online Public Financial Disclosure Guide)

## SPECIAL GOVERNMENT EMPLOYEES (SGE)

### ■ Summary

This OGE document (*Summary of Ethical Requirements Applicable to Special Government Employees*) summarizes the government ethics requirements applicable to special government employees. (Search “00x1”)

### ■ Day counting

This OGE document (*Opinion of Office of Legal Counsel on SGE Day-Counting*) discusses an opinion from the Department of Justice’s Office of Legal Counsel regarding the counting of days of service for special government employees. (Search “07x3”)

### ■ Financial disclosure

This OGE document (*Financial Disclosure Reporting Requirements for Special Government Employees*) explains the financial disclosure filing criteria for special government employees and uses scenarios to illustrate how the criteria should be implemented. (Search “DO-03-021”; also refer to the section on special government employees in OGE’s online Public Financial Disclosure Guide)

### ■ 60-Day Thresholds

This OGE document (*60-Day Thresholds for SGEs*) explains that a special government employee is always prohibited from representing others in connection with particular matters involving specific parties in which the SGE has participated personally and substantially. The 60-day standard is a threshold for the stricter prohibition in relation to matters pending at the employee’s agency in which the SGE has not participated personally and substantially. (Search “03x7”)

## BOOK DEALS

### ■ Requirements for book deals

This OGE document (*Book Deals Involving Government Employees*) discusses the ethics rules that pertain to book deals involving government employees. (Search “DO-08-006”)

## CERTIFICATES OF DIVESTITURE

### ■ Summary

This OGE document (*[Certificate of Divestiture Reference Guide](#)*) discusses requirements for requesting Certificates of Divestiture. This issuance is intended to be shared with nominees and employees who are considering requesting Certificates of Divestiture. (Search “PA-16-04”)

### ■ Procedures

This OGE document (*[Procedures for Requesting a Certificate of Divestiture](#)*) outlines the information and documents that an agency must include in a request for a Certificate of Divestiture. (Search “DO-06-030”)

### ■ Format of request

This OGE document (*[Suggested Format for Requesting a Certificate of Divestiture](#)*) provides a suggested format for agencies to use when requesting Certificates of Divestiture. This format is intended to be used only by agency ethics officials. (Search “DO-07-035”)

*OGE documents can be obtained by entering the document number in the “search” field of OGE’s website at [www.oge.gov](http://www.oge.gov).*

# PAS POSITION SPREADSHEETS

The official source for identifying political positions in the executive branch is the publication titled, “United States Government Policy and Supporting Positions.” This publication, commonly known as the Plum Book, is published alternately by the Senate and the House committees after each Presidential election. An online version of the 2012 Plum Book is available at <https://m.gpo.gov/plumbook>.

As explained earlier in this guide, however, the Presidential Transition Team will need to begin identifying possible nominees well before the election. To assist you in this process, OGE has compiled an unofficial Excel workbook listing the civilian Presidentially appointed, Senate-confirmed (PAS) positions traditionally subject to OGE’s review in the nomination process. OGE can provide this Excel workbook to you upon request. The workbook contains a separate table for each of the four categories of civilian PAS nominees described below.

## 1 REGULAR PAS POSITIONS

The first table lists PAS positions that are:

- (a) Not subject to term limitations,
- (b) Not in the uniformed services, and
- (c) Not special government employee positions.

## 2 TERM REGULAR PAS POSITIONS

The second table lists PAS positions that are:

- (a) Term appointments (e.g., 5 years, 14 years, etc.),
- (b) Not in the uniformed services, and
- (c) Not special government employee positions.

Appointees in term regular PAS positions carry over from one Presidential administration to the next, expiring at the end of a term of years. The expiration of a term can, depending on the position or the status of the individual in the position, have three different consequences:

(a) *Carry-over appointment* – In some cases the agency’s organic statute provides for a carry-over period of a specified length. For example, the Special Counsel who leads the Office of Special Counsel can continue to serve in that position for up to one year after expiration of the term.

(b) *Option to appoint to acting status (career Senior Executive Service members)* – In rare cases, the agency’s organic statute does not provide a carry-over period, but the individual in the position happens to be a career federal employee. If that career federal employee served in the Senior Executive Service, the law requires the Office of Personnel Management to place the individual in a career position upon expiration of the term. In such cases, the Presidential Personnel Office can designate that individual to serve in an acting capacity in the PAS position for a period of time until the President reappoints that individual or appoints another individual to the PAS position. The Vacancies Reform Act of 1998 imposes limits on the length of time an individual can serve in an acting capacity.

(c) *Termination* – In some cases, the agency’s organic statute does not provide a carry-over period. If the individual in the position is not a career federal employee and does not have placement rights, the individual’s government service ceases at the end of the term.

To assist the Presidential Transition Team with its planning, OGE has attempted in the term regular PAS table to identify the date on which the individual currently in the position was confirmed. The following limitations apply to the information provided:

(a) *Overtaken by events* – If the individual was reappointed or a new individual was appointed after the date of publication of this guide, the information may be out of date.

(b) *Appointment date unknown* – We have provided the confirmation date because that date is readily available in many instances. The individual’s term runs, however, from the date of appointment, not the date of confirmation. Therefore, when calculating the expiration of the term, you should be aware that using the confirmation date will provide only an approximate expiration date.

(c) *Staggered terms* – In the case of some boards and commissions terms are staggered. If an individual resigns before the end of a staggered term, another individual may be appointed to serve out the end of that staggered term. In such cases, it is not possible to determine when the individual’s term ends based on the length of the term, the confirmation date, or the appointment date. It is also necessary to know the timing of the specific staggered term the individual is serving. To obtain this information, you will need to contact officials at the board or commission.

### 3 SPECIAL GOVERNMENT EMPLOYEE PAS POSITIONS

The third table lists PAS positions in which appointees are special government employees. The following criteria apply to these positions:

- (a) At the time of appointment, (i) the agency anticipates that the appointee will serve in the position for not more than 130 days during any period of 365 consecutive days or (ii) the position is specifically designated by statute as a special government employee position; and
- (b) The position is not in the uniformed services.

Nominees for these positions are subject to varying financial disclosure requirements:

- (a) The Ethics in Government Act excludes from public financial disclosure requirements individuals who serve in their government positions for 60 days or less in a calendar year. Most PAS-level special government employees serve for 60 days or less each year.

As a result, nominees for many of these positions are not required to file public financial disclosure reports. By regulation, they are required to file confidential financial disclosure reports (OGE Form 450). These financial disclosure reports are not available to the public.

(b) The Senate Foreign Relations Committee has determined that it would like to receive more information than the OGE Form 450 collects. For this reason, the committee requires nominees to complete the same form that OGE uses for public financial disclosure reports, the OGE Form 278e. Although these SGE nominees must complete the OGE Form 278e, their reports remain confidential and are not available to the public.

(c) In rare cases, nominees for PAS-level special government employee positions may typically serve in their positions for more than 60 days in a calendar year. The Ethics in Government Act requires them to complete public financial disclosure reports (OGE Form 278e). Their financial disclosure reports are available to the public upon request.

(d) There is an additional variation in the case of nominees to the Internal Revenue Service Oversight Board. The board’s organic statute expressly requires members and nominees to file public financial disclosure reports, even though they normally serve for 60 days or less in a calendar year. Their financial disclosure reports are available to the public upon request.

### 4 NON-FEDERAL PAS POSITIONS

The fourth table lists PAS positions in which appointees are not employees of the federal government. Nominees for Non-Federal PAS positions file confidential financial disclosure reports, using the OGE Form 450.

# OGE CONTACT INFORMATION

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## 2 STREET ADDRESS AND FAX NUMBER

The preferred method for transmitting documents to OGE electronically is by scanned attachment via email. If you need to send documents by fax, however, you may use the following fax number: 202.482.9237. Please note that the fax machine is in a common area in OGE’s office suite and is accessible to all members of OGE’s staff.

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

## 3 STAFF DIRECTORY

A current staff directory is available on OGE’s website at [www.oge.gov](http://www.oge.gov). To access the directory, click on the “ABOUT” tab at the top of the home page, then click on “Contact Us.”

## 4 CONTACT INFORMATION FOR NOMINEE TEAM

The following list provides contact information for all OGE staff available to support OGE's Presidential nominee review team as needed. All phone numbers are in the 202 area code.

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UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**



Preventing Conflicts of Interest  
in the Executive Branch