



April 27, 2017

The Honorable Claire McCaskill
Ranking Member
Committee on Homeland Security
and Governmental Affairs
United States Senate
503 Hart Senate Office Building
Washington, D.C. 20510

Dear Ranking Member McCaskill:

This letter responds on behalf of the U.S. Office of Government Ethics (OGE) to your letter dated March 23, 2017. Your letter poses several questions about Executive Order 13770, the Presidential transition, and ethics education in the White House. The following responses seek to address the questions posed in your March 23, 2017, letter. I have also enclosed a flash drive with copies of relevant documents.

As an initial matter, I thank you for granting an extension of time for OGE's response to your letter. OGE is heavily engaged in its most significant cyclical endeavor, the Presidential transition. Any Presidential transition presents a formidable challenge for OGE and the executive branch ethics program. Following the election, OGE manages a significantly increased workload of Presidential nominees and works expeditiously to make sure that prospective candidates are free of conflicts of interest, so that top leadership positions can be filled quickly.¹ In addition to performing this ongoing and vital role in supporting the Presidential transition, OGE resources have been further strained by unprecedented interest and demands by external stakeholders and Congress.² These demands diminish OGE's ability to focus on its mission-critical work. OGE continues to strive to be responsive and to take steps to make information available but may increasingly be forced to make tradeoffs while prioritizing its mission-critical work.

QUESTION 1

1. Were OGE officials consulted by White House staff regarding President Trump's Executive Order entitled "Ethics Commitments by Executive Branch Appointees" and ethics pledge prior to its issuance on January 28, 2017?

Both before and after the election, OGE offered to assist the Administration with any new ethics initiatives, including any new Executive Order establishing an ethics pledge. OGE communicated this offer verbally and in writing. In a guide that OGE prepared for the Presidential Transition Team, OGE wrote:

¹ See U.S. OFFICE OF GOVERNMENT ETHICS, *Nominee Status as of April 25, 2017* (Apr. 27, 2017), <https://goo.gl/O9bv0J>.

² See U.S. OFFICE OF GOVERNMENT ETHICS, *External Contacts Q1 and Q2 Comparison* (Apr. 27, 2017), <https://goo.gl/0qL558>.



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.³

However, the Administration did not take OGE up on its offer. OGE was not consulted and received no advance notice of its issuance. In fact, OGE first learned of the issuance of Executive Order 13770 from media reports on Saturday, January 28, 2017.

Subsequent to the issuance of Executive Order 13770, OGE consulted with the Office of the Counsel to the President and issued two legal advisories to assist executive branch agencies in implementing the ethics pledge. The first of these legal advisories provided agency ethics officials with a copy of the ethics pledge to be signed by covered appointees, instructed agency ethics officials to collect supplemental ethics agreements addressing ethics pledge requirements from nominees whose packages had already been transmitted to the Senate, and advised agency ethics officials that they may continue to rely on OGE's prior guidance regarding Executive Order 13490 to the extent that such guidance addresses language common to both orders.⁴ OGE then transmitted the supplemental ethics agreements collected pursuant to this legal advisory to the relevant Senate Committees.⁵ The second of these legal advisories provided a table cross-referencing specific sections of past OGE guidance on Executive Order 13490 that are applicable to Executive Order 13770, guidance that OGE received from the Counsel to the President's office regarding the meaning of the term "specific issue area," and guidance on new post-government employment lobbying restrictions.⁶ OGE also conducted training on Executive Order 13770 for approximately 200 agency ethics officials on April 27, 2017.⁷

QUESTION 2

- 2. In a February 28, 2017, letter to you, the White House Counsel's Office noted that the White House has "been providing specialized training to individual components within the Executive Office of the President on disclosure issues, conflicts of interest, gifts, travel, the Presidential Records Act, the STOCK Act, use of official resources and position (personal and political), the Hatch Act, outside income, and post-employment issues." For the issues falling within OGE's purview, were OGE officials consulted by the White House regarding any such specialized training?**

³ U.S. OFFICE OF GOVERNMENT ETHICS, *Transition Guide*, 14 (2016), <https://goo.gl/Ddj0ui>.

⁴ OGE Legal Advisory, LA-17-02 (2017), <https://goo.gl/49IgoF>.

⁵ See, e.g., Ethics Agreement of Rex Tillerson, <https://goo.gl/rXIVEL> (supplemental ethics agreement dated February 9, 2017, appears at page 10).

⁶ OGE Legal Advisory, LA-17-03 (2017).

⁷ U.S. OFFICE OF GOVERNMENT ETHICS, *Transition Readiness Series: Executive Order 13770 – The "New Ethics Pledge"* (Apr. 27, 2017), <https://goo.gl/1NuWYx>.

Both before and after the election, OGE offered to assist the Administration by providing ethics training to White House ethics officials, White House appointees, or both. OGE's offer to train White House ethics officials was communicated verbally. OGE's offer to train White House appointees was communicated both verbally and in writing. For example, OGE's Transition Guide includes the following language:

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

However, the Administration did not take OGE up on these offers.

The White House did not consult with OGE regarding the development of its training, and OGE does not have information regarding the substance of the training. However, White House appointees are covered by the government ethics training requirements established in 5 C.F.R. part 2638, subpart C. Under that regulation, new White House appointees must receive initial ethics training within 90 days of appointment.⁹ In addition to other subjects Designated Agency Ethics Official deems relevant, the minimum requirement is that the training cover the following subjects: financial conflicts of interest, impartiality, misuse of position, and gifts.¹⁰ Regulatory content requirements for government ethics training is discussed further in response to Questions 8 through 11, below.

QUESTIONS 3 AND 7

- 3. In the same letter, the White House Counsel's Office noted that the office "has also issued written guidance to all employees of the Executive Office of the President on a number of issues including the Standard of Conduct's prohibition on using one's official position to endorse any product, service, or enterprise." Were OGE officials consulted by the White House regarding any such guidance?**

⁸ U.S. OFFICE OF GOVERNMENT ETHICS, *Transition Guide*, 14-15 (2016), <https://goo.gl/Ddj0ui>.

⁹ 5 C.F.R. § 2638.304(b) (as revised effective Jan. 1, 2017).

¹⁰ 5 C.F.R. § 2638.304(e) (as revised effective Jan. 1, 2017).

7. Please provide copies of any memoranda or other documents provided by OGE officials to the White House regarding recommended areas of recusal for applicable White House staff on or after January 20, 2017.

The Ethics in Government Act vests OGE with responsibility for providing “overall direction of executive branch policies related to preventing conflicts of interest.”¹¹ OGE is the “supervising ethics office” for a decentralized executive branch ethics program established by the Ethics in Government Act.¹² The day-to-day provision of ethics advice to the nearly 2.7 million civilian executive branch employees is necessarily carried out by the more than 4,500 ethics officials in over 130 agencies and the White House.¹³

The Act does not give OGE’s 71 employees direct supervisory control over these agency ethics officials.¹⁴ OGE issues ethics regulations and interpretive guidance that define the contours of their work. OGE oversees a financial disclosure system covering approximately 26,000 public filers and 380,000 confidential filers. OGE also provides ethics officials with ongoing training to promote consistency and uniformity in the application of these regulations to the millions of federal employees across the executive branch. In addition, OGE maintains a Desk Officer program to support agency ethics officials when they need assistance resolving novel or unusually complex ethics issues. However, agency ethics officials, including White House ethics officials, are not required to consult OGE regarding each piece of advice they provide to every appointee on an ongoing basis across a President’s four-year term. They are also not required to obtain OGE approval of all training they conduct.

Therefore, OGE was not consulted on the development of the guidance mentioned in Question 3, above. It is not clear whether the statement in the quoted letter refers to written materials provided in connection with individualized counseling of appointees regarding their personal circumstances or refers to standardized written materials provided generally in connection with ethics training.¹⁵ In either case, OGE would not typically be consulted, except when an agency ethics official requests OGE’s assistance. In addition, OGE’s role does not include preparation of the type of individualized memorandum described in Question 7 for White House appointees or any other executive branch employees.

OGE is, of course, available to assist White House ethics officials. Prior to the inauguration on January 20, 2017, OGE verbally offered to assist the White House in resolving conflicts of interest for senior White House appointees. Representatives for a few individual appointees took OGE up on this offer and obtained some guidance on general approaches to

¹¹ 5 U.S.C. app. § 402.

¹² 5 U.S.C. app. § 109(18)(D).

¹³ For more on OGE and the executive branch ethics program, you may want to review OGE’s agency profile. See OFFICE OF GOVERNMENT ETHICS, *Agency Profile* (2017), <https://goo.gl/t2F11L>.

¹⁴ See 5 U.S.C. app. § 402.

¹⁵ See Letter from Stefan C. Passantino, Deputy Counsel to the President and Designated Agency Ethics Official, to Walter M. Shaub, Jr., Director, U.S. Office of Government Ethics (Feb. 28, 2017), <https://goo.gl/7YGFKK>.

addressing potential conflict of interest issues. Most such communications were verbal. Certain relevant written communications have been posted on OGE's website.¹⁶

OGE has provided support in other ways. Prior to the inauguration, OGE assigned an experienced attorney, who had previously served in the Administration of President George W. Bush, to support the Presidential Transition Team through both onsite and remote interactions. He provided real-time verbal advice on setting up an ethics program. After the inauguration, OGE began sending successive detailees to the White House to assist with the collection of financial disclosure reports. OGE's General Counsel, White House Desk Officer, and I have likewise remained available to assist the office of the Counsel to the President as needed.

OGE will also be supporting the White House with respect to these appointees in another way. OGE provides a second-level review of the financial disclosure reports of senior White House appointees, specifically Assistants to the President and Deputy Assistants to the President. These senior White House appointees are required to file new entrant financial disclosure reports within 30 days of being appointed.¹⁷ 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.¹⁸ The approval of a second extension must be in writing.¹⁹ After appointees file their reports, the White House's ethics officials review the reports for compliance with financial disclosure requirements and substantive ethics requirements.²⁰ 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.²¹ Only after the White House has certified the appointee's financial disclosure report does the White House transmit the report to OGE.²²

OGE then conducts a second-level review.²³ 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 staff and White House ethics officials discuss how the White House is addressing any potential conflicts of interest identified during the review process. OGE then 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.²⁴ This process can take an extended period of time. Until the process has been completed, OGE is not in a position to make this compliance determination.

¹⁶ U.S. OFFICE OF GOVERNMENT ETHICS, *Electronic Reading Room*, <https://goo.gl/6e35vH>.

¹⁷ 5 U.S.C. app. § 101(a).

¹⁸ 5 C.F.R. § 2634.201(f).

¹⁹ *Id.*

²⁰ 5 U.S.C. app. § 106(a); 5 C.F.R. § 2634.605.

²¹ 5 U.S.C. app. § 106(a); 5 C.F.R. § 2634.605.

²² 5 U.S.C. app. § 103(c).

²³ 5 U.S.C. app. § 106(a).

²⁴ 5 U.S.C. app. § 106(b); 5 C.F.R. § 2634.605.

OGE is currently in the early stages of reviewing approximately 50 White House reports. It will be several weeks or, depending on how promptly the appointees respond to OGE's questions and instructions, several months before this process is completed. After the process is completed, OGE will make the final product of these efforts publicly available.

QUESTIONS 4 AND 5

- 4. Does OGE currently have legal authority to request copies of signed ethics pledge documents from applicable White House staff?**

- 5. Does OGE currently have legal authority to request copies of any waivers provided to White House staff from provisions of the ethics pledge?**

Executive Order 13770 incorporates much of the language of Executive Order 13490 but lacks a transparency provision requiring OGE to collect data regarding compliance with the ethics pledge contained in Executive Order 13490.²⁵ Nevertheless, OGE has authority to collect information with regard to agency and appointee compliance with the ethics pledge requirements of Executive Order 13770. The Ethics in Government Act provides statutory authority for “requiring such reports from executive agencies as the Director deems necessary.”²⁶ In carrying out this authority, the Ethics in Government Act directs OGE to prescribe regulations under which each executive agency is required to submit an annual report containing ethics program information.²⁷ This annual report takes the form of responses to OGE's Annual Agency Ethics Program Questionnaire. The questionnaire generally requires agencies to provide summary data and not the underlying documents. OGE posts agencies responses to its website.²⁸

OGE is currently in the process of finalizing the questions for its Annual Agency Ethics Program Questionnaire for calendar year 2017. Among other information, the questionnaire will request (1) aggregated data regarding the rate of compliance with the requirement to sign the ethics pledge, pursuant to section 1 of Executive Order 13770, by individuals appointed in 2017 and (2) the names of all appointees who received waivers of ethics pledge requirements, pursuant to section 3 of Executive Order 13770 in 2017.²⁹ Agencies, including the White House, will be required to respond by February 1, 2018.

²⁵ Compare Exec. Order No. 13490, § 4(c)(5) (Jan. 21, 2009), with Exec. Order No. 13770, § 4(c) (Jan. 28, 2017).

²⁶ 5 U.S.C. app. § 402(b)(10).

²⁷ 5 U.S.C. app. § 402(e); 5 C.F.R. § 2638.207 (as revised effective Jan. 1, 2017).

²⁸ See, e.g., Annual Agency Ethics Program Questionnaire Responses (CY15) (Sep. 22, 2016), <https://goo.gl/zrudXW>.

²⁹ Although the White House's Designated Agency Ethics Official (DAEO) recently sent OGE a letter questioning the applicability of many of OGE's regulations to the Executive Office of the President, OGE anticipates that the White House will timely respond to this annual data call, just as every past Administration's White House has responded to it. See Letter from Stefan C. Passantino, Deputy Counsel to the President and Designated Agency Ethics Official, to Walter M. Shaub, Jr., Director, U.S. Office of Government Ethics (Feb. 28, 2017), <https://goo.gl/7YGFKK>; see, e.g., THE WHITE HOUSE, *Response to the Annual Agency Ethics Program Questionnaire for Calendar Year 2015* (Feb. 3, 2016), <https://goo.gl/2tz5Qm>. In response to the White House DAEO's letter, OGE explained that the legal theory on which his extraordinary assertion rests—that the White House is not an “executive agency” for certain limited purposes under 5 U.S.C. § 105—has never been applied to the Ethics in Government Act. See Letter from Walter M. Shaub, Jr., Director, U.S. Office of Government Ethics, to Stefan C. Passantino, Deputy Counsel to the President and Designated Agency Ethics Official (Mar. 9, 2017), <https://goo.gl/GuEHlr>. Questions regarding the White House's status as an agency have been resolved in different ways depending on the contexts in which they have arisen. For example, the White House has been found not to be an “executive agency” for purposes of a certain employment

Your letter requests copies of the ethics pledges signed by appointees in the White House. OGE has not collected copies of these signed ethics pledges in this Administration under Executive Order 13770, nor did OGE collect the signed ethics pledges from the thousands of appointees in the previous Administration under Executive Order 13490. Under Executive Order 13490, the previous Administration required agency ethics officials to collect ethics pledges from appointees at their agencies and retain them in each appointee's Official Personnel File.³⁰ The same requirements are contained in Executive Order 13770 for the current Administration's appointees.³¹ The relevant difference, however, is that Executive Order 13490 specifically provided for OGE to issue an annual report on ethics pledge compliance, waivers, and enforcement.³² Executive Order 13770 contains no such requirement.³³ As discussed above, however, OGE will be collecting the same information through a different mechanism. We will share the results by posting the responses of agencies, including the White House, on OGE's website.

Your letter also requests copies of any waivers of ethics pledge requirements that have been issued to appointees in the White House. OGE does not currently have copies of these waivers because the current Administration has not adopted the previous Administration's practice of automatically providing OGE with copies for contemporaneous posting on OGE's website.³⁴ In addition to posting all ethics pledge waivers under Executive Order 13490 contemporaneously, OGE included copies of the waivers in an appendix to its annual ethics pledge report. As noted above, Executive Order 13770 omits this annual reporting requirement.³⁵ However, in the immediate future OGE will be issuing a data call for all waivers issued under Executive Order 13770.³⁶ OGE will post the responses of agencies, including the White House, on its website.

discrimination law. *Haddon v. Walters*, 43 F.3d 1488 (D.C. Cir. 1995) (per curiam). In contrast, the White House has been found to be an "executive agency" for purposes of 18 U.S.C. § 603. *Application of 18 U.S.C. § 603 to Contributions to the President's Re-Election Committee*, 27 Op. O.L.C. 118, 119 (2003) (Office of Legal Counsel opinion finding that, under the statutory scheme of the Hatch Act Reform Amendments, the White House Office should be treated as an "executive agency" under title 5, notwithstanding *Haddon*). In addition, the White House has routinely relied on a certain statutory authority available only to an "executive agency" that authorizes acceptance of outside reimbursements for official travel. See 31 U.S.C. § 1353(c)(1) (restricting authority to accept such reimbursements only to an "executive agency" as defined under 5 U.S.C. § 105); see also White House Office, *Semiannual Report of Payments Accepted From a Non-Federal Source for April 1, 2016 through September 30, 2016*, OGE Form 1353, <https://goo.gl/BTUpBw>. Thus, the White House is an "executive agency" for some purposes and arguably not for others. However, its status as an "executive agency" for purposes of the Ethics in Government Act is not in doubt.

³⁰ Exec. Order No. 13490, § 4(e) (Jan. 21, 2009).

³¹ Exec. Order No. 13770, § 4(e) (Jan. 28, 2017).

³² Exec. Order No. 13490, § 4(c)(5) (Jan. 21, 2009).

³³ See Exec. Order No. 13770, § 4(c) (Jan. 28, 2017).

³⁴ 5 U.S.C. app. § 402(b)(10).

³⁵ See OFFICE OF GOVERNMENT ETHICS, *Executive Branch Agency Ethics Pledge Waivers*, <https://goo.gl/Yw16wQ>.

³⁶ See Exec. Order No. 13770, § 4(c) (Jan. 28, 2017).

³⁷ See 5 U.S.C. app. §§ 402(b)(10), 403(a)(2).

QUESTION 6

6. Please provide copies of any forms or disclosures describing divestments and resignations from boards, partnerships, etc., that OGE has received from applicable White House staff on or after January 20, 2017.

There is no general requirement for executive branch employees to file forms when they divest assets or resign positions, nor is there a form for them to use. In the case of Presidential nominees for Senate-confirmed positions, OGE works with agency ethics officials to establish ethics agreements, which often provide for divestitures and resignations, and then tracks compliance.³⁷ There is no comparable process for White House appointees who, unlike nominees, are not required to obtain OGE's clearance before commencing government service.

White House appointees and other employees may choose to request Certificates of Divestiture for certain divestitures.³⁸ It is important to note that an appointee is not required to seek a Certificate of Divestiture and can divest an asset without requesting one, unless the appointee wants to defer capital gains. For White House appointees, the potential need for a Certificate of Divestiture arises if the White House directs an appointee to sell, or otherwise divest, an asset in order to avoid a conflict of interest.³⁹ 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.⁴⁰ (Note, however, that a special government employee is not eligible for a Certificate of Divestiture.⁴¹) The appointee, the appointee's spouse, and the appointee's dependent or minor child are eligible to receive a Certificate of Divestiture.⁴² 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.⁴³ The person requesting a Certificate of Divestiture must commit in writing to divesting the asset even if a Certificate of Divestiture is not issued.⁴⁴

To request a Certificate of Divestiture, the appointee must contact the White House's ethics officials.⁴⁵ If the White House supports the appointee's request, the ethics officials will assemble the necessary documents and submit the request to OGE.⁴⁶ 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.⁴⁷ OGE will either issue a Certificate of Divestiture to the appointee through the White House's ethics officials or notify the

³⁷ See, e.g., Ethics Agreement of Betsy DeVos (Jan. 19, 2017), <https://goo.gl/tTOVjT>.

³⁸ See 26 U.S.C. § 1043; 5 C.F.R. pt. 2634, subpt. J.

³⁹ See 5 C.F.R. § 2635.403(b).

⁴⁰ 26 U.S.C. § 1043; 5 C.F.R. pt. 2634, subpt. J.

⁴¹ 5 C.F.R. § 2634.1003.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ 5 C.F.R. § 2634.1005(a)(3).

⁴⁵ 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).

⁴⁶ See OGE Program Advisory PA-16-04 (2016).

⁴⁷ See *id.*

ethics officials that the request has been denied.⁴⁸ 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.⁴⁹ A Certificate of Divestiture is valid only if obtained before selling an asset.⁵⁰ Within 60 days of the sale, the appointee must reinvest the proceeds of the sale in “permitted property.”⁵¹ Permitted property is limited to United States government obligations (*i.e.*, Treasuries), diversified mutual funds, and diversified exchange-traded funds.⁵² 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.⁵³ The appointee will need to pay the deferred capital gains when the appointee later sells the permitted property.⁵⁴

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.⁵⁵ A White House appointee is not normally required to file a disqualification statement or other document regarding the recusal.⁵⁶ Thus, the important requirement is only that the appointee not participate.

Certificates of Divestiture have traditionally been available to the public upon request.⁵⁷ OGE recently took steps to increase transparency by listing the Certificates of Divestiture it has issued on its website and by establishing a mechanism for submitting requests of copies of Certificates of Divestiture online.⁵⁸

QUESTIONS 8, 9, 10 AND 11

- 8. Please provide copies of all documents and communications between OGE officials and President Trump’s nominees for any politically-appointed, Senate confirmed positions, or their representatives, regarding the provision of ethics training or guidance between November 9, 2016, and the present.**
- 9. Please provide copies of all documents and communications between OGE officials and the Trump Presidential Transition Team regarding the provision of**

⁴⁸ *See id.*

⁴⁹ *See id.*

⁵⁰ *See id.*

⁵¹ 5 C.F.R. § 2634.1006(a).

⁵² 5 C.F.R. § 2634.1003.

⁵³ *Id.*; 5 C.F.R. § 2640.102(a).

⁵⁴ 26 U.S.C. § 1043(c).

⁵⁵ 5 C.F.R. § 2640.103(d).

⁵⁶ 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).

⁵⁷ 5 C.F.R. § 2634.1008.

⁵⁸ *See* U.S. OFFICE OF GOVERNMENT ETHICS, *Certificates of Divestiture issued by OGE*, <https://goo.gl/RCld8Z>.

ethics training or guidance to incoming Trump Administration appointees between November 9, 2016, and the present.

- 10. Please provide copies of all documents and communications between OGE officials and the White House regarding the provision of ethics training or guidance to Trump Administration appointees between January 20, 2017, and the present.**
- 11. Please provide copies of all documents and communications between OGE officials and the White House, Ivanka Trump or her representatives regarding any ethics training or guidance provided to Ms. Trump regarding her role in the White House between January 20, 2017, and the present.**

Presidential nominees do not receive government ethics training prior to being confirmed and appointed to their new government positions. After they commence their government service, OGE's regulations require agency ethics officials to promptly provide them with an initial ethics briefing. These briefings must meet the following specified content requirements:

(f) *Content.* The ethics briefing must include the following activities.

(1) If the individual acquired new financial interests reportable under section 102 of the Act after filing the nominee financial disclosure report, the agency ethics official must appropriately address the potential for conflicts of interest arising from those financial interests.

(2) The agency ethics official must counsel the individual on the basic recusal obligation under 18 U.S.C. 208(a).

(3) The agency ethics official must explain the recusal obligations and other commitments addressed in the individual's ethics agreement and ensure that the individual understands what is specifically required in order to comply with each of them, including any deadline for compliance. The ethics official and the individual must establish a process by which the recusals will be achieved, which may consist of a screening arrangement or, when the DAEO deems appropriate, vigilance on the part of the individual with regard to recusal obligations as they arise in particular matters.

(4) The agency ethics official must provide the individual with instructions and the deadline for completing initial ethics training, unless the individual completes the initial ethics training either before or during the ethics briefing.⁵⁹

In addition to the initial ethics briefing, Senate-confirmed Presidential appointees must complete initial ethics training, within the first three months of their appointments.⁶⁰ White House appointees, including the individuals mentioned in Question 10, are also subject to this training requirement.⁶¹ Members of the Presidential Transition Team mentioned in Question 9 are not executive branch employees and, therefore, are not subject to this requirement or to government ethics laws and regulations.⁶²

Like the initial ethics briefing, initial ethics training is conducted by agency ethics officials, rather than by OGE. The agency's training must satisfy the following regulatory requirements:

(e) *Content.* The following content requirements apply to initial ethics training.

(1) *Training presentation.* The training presentation must focus on government ethics laws and regulations that the DAEO deems appropriate for the employees participating in the training. The presentation must address concepts related to the following subjects:

- (i) Financial conflicts of interest;
- (ii) Impartiality;
- (iii) Misuse of position; and
- (iv) Gifts.

(2) *Written materials.* In addition to the training presentation, the agency must provide the employee with either the following written materials or written instructions for accessing them:

⁵⁹ 5 C.F.R. § 2638.305(e) (as revised effective Jan. 1, 2017).

⁶⁰ 5 C.F.R. § 2638.304 (as revised effective Jan. 1, 2017).

⁶¹ *Id.*

⁶² See Presidential Transition Act of 1963, Pub. L. No. 88-277, § 3(a)(2) (1964), amended by Edward “Ted” Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015, Pub. L. No. 114-136 (2016). (members of the Presidential Transition Team are not generally executive branch employees); see also OFFICE OF LEGAL COUNSEL, U.S. DEP’T JUSTICE, *Applicability of 18 U.S.C. § 207(c) to President-Elect’s Transition Team*, 12 Op. O.L.C. 264, 265 (1988) (“The Act also makes clear that such staff members are not federal employees except for limited provisions not relevant here. Act, § 3(a)(2).”).

(i) The summary of the Standards of Conduct distributed by the Office of Government Ethics or an equivalent summary prepared by the agency;

(ii) Provisions of any supplemental agency regulations that the DAEO determines to be relevant or a summary of those provisions;

(iii) Such other written materials as the DAEO determines should be included; and

(iv) Instructions for contacting the agency's ethics office.⁶³

Thereafter, these appointees must comply with annual government ethics training requirements. As with other types of training, the training is provided by agency ethics officials. The training must satisfy the following specified regulatory content requirements:

(f) *Content.* The following content requirements apply to annual ethics training for employees covered by this section.

(1) *Training presentation.* The training presentation must focus on government ethics laws and regulations that the DAEO deems appropriate for the employees participating in the training. The presentation must address concepts related to the following subjects:

(i) Financial conflicts of interest;

(ii) Impartiality;

(iii) Misuse of position; and

(iv) Gifts.

(2) *Written materials.* In addition to the training presentation, the agency must provide the employee with either the following written materials or written instructions for accessing them:

(i) The summary of the Standards of Conduct distributed by the Office of Government Ethics or an equivalent summary prepared by the agency;

⁶³ 5 C.F.R. § 2638.304(e) (as revised effective Jan. 1, 2017).

(ii) Provisions of any supplemental agency regulations that the DAEO determines to be relevant or a summary of those provisions;

(iii) Such other written materials as the DAEO determines should be included; and

(iv) Instructions for contacting the agency's ethics office.⁶⁴

Each of these education activities is subject to a tracking requirement. First, as to the initial ethics briefing for Senate-confirmed Presidential appointees, agencies must track each individual appointee's completion of the briefing.⁶⁵ Second, as to initial ethics training, agency ethics officials, including White House ethics officials, must institute reasonable procedures to ensure that initial ethics training is being delivered generally to all new employees and appointees.⁶⁶ Third, as to annual ethics training, agency ethics officials, including White House ethics officials, must track each individual employee's and appointee's completion of the training.⁶⁷

OGE supports agency ethics officials who conduct these education activities in a variety of ways. For example, OGE has prepared a variety of training modules and tools for them to use, many of which are available for public viewing on OGE's website.⁶⁸ OGE also conducts training made available to agency ethics officials, including White House ethics officials, in order to ensure they have the necessary skills to conduct training for their agencies' employees. OGE instructs agency ethics officials on such topics as reviewing financial disclosure reports, analyzing potential conflicts of interest, providing advice and counseling on the Standards of Ethical Conduct for Employees of the Executive Branch, applying other ethics laws and regulations, conducting training for their own agencies' employees on applicable ethics obligations, and managing risk by promoting an ethical agency culture.

Since my appointment in January 2013, OGE has pursued an aggressive reinvention of its traditional approach to delivering training. OGE has leveraged technology to steadily increase its reach. As a result, annual training registrations grew from 1,200 in fiscal year 2012 to more than 7,200 by fiscal year 2016. OGE also posts its written, audio, and video training materials online and on an internal government platform (MAX.gov). Agency ethics officials, including White House ethics officials, can now access over 100 OGE-produced courses on demand.⁶⁹

With regard to individualized advice on specific ethics issues, most communications with the Presidential Transition Team and the White House have been verbal. However, OGE's website contains a number of relevant written materials.⁷⁰ In addition, OGE's website contains a section on the Presidential transition that makes the most substantive materials provided to the

⁶⁴ 5 C.F.R. § 2638.308(f) (as revised effective Jan. 1, 2017).

⁶⁵ 5 C.F.R. § 2638.305(g).

⁶⁶ 5 C.F.R. § 2638.304(f) (as revised effective Jan. 1, 2017).

⁶⁷ 5 C.F.R. § 2638.308(g) (as revised effective Jan. 1, 2017).

⁶⁸ Available at <https://www.oge.gov/web/oge.nsf/Education+Resources+for+Ethics%20Officials>.

⁶⁹ Available at <https://www.youtube.com/user/OGEInstitute> and <https://plus.google.com/+OGEInstitute>.

⁷⁰ See OFFICE OF GOVERNMENT ETHICS, *Electronic Reading Room*, <https://goo.gl/6e35vH>.

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Ranking Member
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Presidential Transition Team and the White House available to the public.⁷¹ OGE released these materials online prior to the election in order to make the transition process as transparent to the public as possible. All of the materials found on that page were also provided in hard copy during pre-election and post-election briefings. A summary of the timeline of the briefings and materials provided is included among other documents on the enclosed flash drive. A number of informal communications and presentation slides have also been included in the enclosed flash drive for your convenience.

I hope this explanation addresses the issues your letter raises. If members of your staff have questions, OGE's Chief of Staff, Shelley K. Finlayson, is available to assist them. She can be reached at 202-482-9292.

Sincerely,



Walter M. Shaub, Jr.
Director

Enclosure

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

⁷¹ Available at <https://goo.gl/jLLJfi>.