



July 19, 2019  
PA-19-09

PROGRAM ADVISORY

TO: Designated Agency Ethics Officials

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Director

SUBJECT: Reminder: Modifications to Presidentially appointed, Senate-confirmed Officials' Ethics Agreements Require Prior Approval from the U.S. Office of Government Ethics

This Program Advisory is to remind ethics officials that the U.S. Office of Government Ethics (OGE) must approve any proposed modification to an ethics agreement of an executive branch official who was appointed by the President and confirmed by the Senate (PAS official). Modifications include substantive changes to the ethics agreement and any extensions of the previously agreed-upon time periods to comply with the ethics agreement.

The Ethics in Government Act requires that OGE be a part of the system that ensures PAS officials resolve any conflict of interest issues.<sup>1</sup> As part of its statutory responsibilities and to ensure the integrity of the ethics agreement process, OGE has long required that OGE approve any modification to a PAS official's ethics agreement after confirmation. This long-standing requirement was formalized when OGE recently revised the executive branch regulations governing financial disclosure.<sup>2</sup>

PAS officials have a responsibility to comply with the terms of their ethics agreement as provided to the Senate during their confirmation process.<sup>3</sup> This includes both the substantive terms and the timeframes to comply.

If an agency ethics official believes that a modification to the substantive terms of a PAS official's ethics agreement is necessary after confirmation, the ethics official must contact OGE to discuss the matter before agreeing to any revision with the PAS official.<sup>4</sup> Once notified, OGE

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<sup>1</sup> 5 U.S.C. app. §§ 103(c), 106(b).

<sup>2</sup> 5 C.F.R. § 2634.803(a)(4); *see also* 83 Fed. Reg. 33,980 (July 18, 2018), <https://bit.ly/2HQCvXj>; U.S. OFFICE OF GOV'T ETHICS, ETHICS AGREEMENT GUIDE 4 (2014), <https://bit.ly/2EneGTX>.

<sup>3</sup> 5 U.S.C. app. § 110; 5 C.F.R. § 2634.804.

<sup>4</sup> Prior to confirmation, contact the OGE nominee reviewer about any proposed revision. After confirmation, contact OGE's Chief of the Presidential Nominations Branch if a proposed revision is contemplated.



will consult with the ethics official to determine if an amended ethics agreement is appropriate.<sup>5</sup> If appropriate, a formal amendment must be requested by the PAS official, approved by the agency ethics official, and then approved by OGE.<sup>6</sup> Once approved, any substantive amendment to the ethics agreement will be transmitted by OGE to the Senate committee of jurisdiction and will be made publicly available as part of the PAS official's ethics agreement.

Likewise, if an agency ethics official believes that a modification to the timeframes of a PAS official's ethics agreement is necessary after the PAS official's confirmation, the ethics official must contact OGE to discuss the matter before agreeing to any extension with the PAS official.<sup>7</sup> Generally, PAS officials have three months from confirmation to comply.<sup>8</sup> Once notified of a request for an extension, OGE will consult with the ethics official to determine if the PAS official faces an unusual hardship that would warrant OGE granting an extension.<sup>9</sup> If OGE determines that an extension is warranted, an extension must be requested by the PAS official, approved by the agency ethics official, and then approved by OGE.<sup>10</sup> All extensions or cases of late compliance, irrespective of length, will also be made publicly available as part of the PAS official's Certification of Ethics Agreement Compliance.<sup>11</sup> Additionally, OGE will notify the Senate committee of jurisdiction of any extension or late compliance of more than 30 days.

The ethics agreement communicates a PAS official's specific commitments to resolve potential conflicts of interest and a timeframe for executing those commitments, not mere aspirations. PAS officials must timely comply and personally certify compliance with their ethics agreement.<sup>12</sup> If a PAS official does not comply with either the substantive terms or the timeframes of their ethics agreement, the Director of OGE may decline to certify the official's annual public financial disclosure report.<sup>13</sup> In addition, the Director may send a letter to the agency head or the White House, as appropriate, highlighting the PAS official's failure to timely comply with their ethics agreement.

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<sup>5</sup> Examples of modifications OGE has approved include changes due to inadvertently omitted outside positions or assets and changes related to the disposition of an asset. *See* U.S. OFFICE OF GOV'T ETHICS, ETHICS AGREEMENT GUIDE 73 (2014).

<sup>6</sup> *See* 5 C.F.R. § 2634.803(a)(4).

<sup>7</sup> If requesting a proposed modification to the dates for compliance with a PAS official's ethics agreement, contact OGE's Chief of the Program Review Branch.

<sup>8</sup> 5 U.S.C. app. § 110(a); 5 C.F.R. § 2634.802(b). Longer timeframes should be discussed with OGE during the nominee financial disclosure report review process and must be specified in the ethics agreement.

<sup>9</sup> 5 C.F.R. § 2634.802(b). OGE considers the unusual hardship threshold to be generally higher than the threshold for granting extensions of the financial disclosure report filing deadlines.

<sup>10</sup> *See* 5 C.F.R. § 2634.803.

<sup>11</sup> *See* OGE Program Advisory PA-17-03, at 2 (2017) ("OGE will post the Certification, which OGE deems an addendum to the ethics agreement demonstrating the individual's compliance, on OGE's website for public viewing.").

<sup>12</sup> 5 C.F.R. § 2634.804(a) (requiring that the PAS official's DAEO promptly notify OGE and the Senate committee of actions taken to comply with the official's ethics agreement).

<sup>13</sup> *See* OGE Program Advisory PA-19-06, at 2 (2019) ("OGE may also decline to certify any 2019 annual report for other reasons, including the filer's unresolved potentially conflicting holding or position, non-compliance with applicable ethics rules, or continued non-compliance with the ethics agreement."); *see also* U.S. OFFICE OF GOV'T ETHICS, ETHICS AGREEMENT GUIDE 1 (2014) ("OGE's approval of the language of the ethics agreement is a precondition for certification of the PAS nominee's financial disclosure report.").