

UNITED STATES OFFICE OF GOVERNMENT ETHICS



July 31, 2020
PA-20-05

PROGRAM ADVISORY

TO: Designated Agency Ethics Officials

FROM: David J. Apol
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SUBJECT: Revised *Guide to Drafting Nominee Ethics Agreements*

Ethics agreements are a vital part of the nominee financial disclosure process because they explain how each nominee will resolve his or her conflicts of interests and may only be changed with both the agency’s and OGE’s approval. To support this important process, OGE is releasing a revised *Guide to Drafting Nominee Ethics Agreements* (Guide)¹, updating the 2014 edition. This program advisory summarizes the most significant revisions to the prior edition and includes an attachment of sample language that has been changed or moved. The revised Guide will be effective on September 1, 2020. For a period after the effective date, there will be ethics agreements in both the previous and new formats based on the ethics agreement signature date.

The most significant revision in the 2020 version of the Guide is the revised sample ethics agreement. The sample agreement has been reformatted to include more section titles that can be adapted to a nominee’s individual circumstances and reorganized to include most of the general commitments in a section at the beginning. In addition, OGE made a number of clarifying changes. OGE revised the paragraph that addresses the Ethics Pledge to provide further clarity to the nominee. OGE also added statements clarifying: 1) the nominee’s responsibility to understand and comply with commitments outlined in the agreement; 2) the nominee’s agreement not to modify the ethics agreement without approval from the agency ethics official and OGE; and 3) the nominee’s commitment not to repurchase any asset the nominee was required to divest without approval from the agency ethics official and OGE.

To assist ethics officials in navigating the changes to the Guide, OGE has created a list of changes to the sample language, which is attached to this advisory. In addition, OGE will soon post a training video on the Institute for Ethics in Government learning portal, <http://www.oge.gov/IEGApp> and host related question and answer sessions. OGE will send a listserv announcement providing information about how to register for a session. Agency ethics officials may also contact their OGE Desk Officers if they have questions about the revised Guide.

¹ [https://www.oge.gov/web/OGE.nsf/0/46FF80CC02EB5A9E852585B600460999/\\$FILE/Ethics Agreement Guide 2020.docx](https://www.oge.gov/web/OGE.nsf/0/46FF80CC02EB5A9E852585B600460999/$FILE/Ethics%20Agreement%20Guide%202020.docx)



ATTACHMENT

Table of Revisions – Guide for Drafting Nominee Ethics Agreements

Revised Samples

Sample Number	Title
1.0.0	Sample ethics agreement
1.1.0	General language
1.2.0	Language to include at the end of certain PAS nominee agreements regarding public posting on OGE’s website
2.1.0	Basic 208 recusal
2.2.2	208 recusal for specific bonds that pose only a remote risk of a conflict
2.2.3	208 recusal for specific bonds that pose a likely conflict
2.4.2	Limited 208 recusal related to state or local government defined benefit plans
3.2.0	Interim 208 recusal pending divestiture of a single asset
3.2.1	Interim 208 recusal pending divestiture of multiple assets
3.2.2	Interim 208 recusal for a former employer when divesting the employer’s stock
3.2.3	Interim 208 recusal for a former employer when divesting the employer’s stock options
3.2.4	Interim 208 recusal pending divestiture of bonds
3.4.0	Sale of privately-traded employer stock back to the employer
4.1.1	Reliance on <i>de minimis</i> exemptions for interests in sector mutual funds
4.3.0	Plan to request authorization pursuant to 5 C.F.R. § 2635.502(d)
4.3.1	Plan to request authorization pursuant to 5 C.F.R. § 2635.502(d) subject to a limitation
5.1.0	General 2635.502 recusal
5.2.0	One-year 2635.502 recusal for a former employer
5.2.1	One-year 2635.502 recusal for multiple former employers
5.2.2	One-year recusal for a former employer in which the PAS nominee has a financial interest
5.3.0	One-year 2635.502 recusal for former clients
5.4.0	Recusal from particular matters involving specific parties in which the PAS nominee previously participated in connection with the PAS nominee’s prior non-Federal employment
5.4.1	Recusal from certain particular matters in which the PAS nominee previously participated in connection with the PAS nominee’s prior non-Federal employment
6.1.0	Sample of a complex executive severance and equity package
6.2.0	Extraordinary payment recusal under 5 C.F.R. § 2635.503 that addresses a discretionary severance payment
6.4.0	Outstanding bonus pursuant to a standard employer policy

6.4.1	Outstanding bonus pursuant to a standard employer policy, when the employer will prorate the amount of the bonus
6.4.2	Outstanding bonus is contingent on when the PAS nominee resigns from the employer
6.4.3	Bonus is not pursuant to a standard policy and will be forfeited if not received prior to appointment
7.1.0	Resignation from a salaried position with a law firm in which the PAS nominee does not have a financial interest
7.2.0	The refund of a capital account after resignation will occur before the PAS nominee begins Federal service
7.2.1	The refund of a capital account after resignation may occur after the PAS nominee begins Federal service
7.2.2	A portion of a capital account refund may be withheld by the law firm for account reconciliation and tax payments
7.3.0	The PAS nominee is a sole practitioner who will place the law practice in an inactive status
7.3.1	The PAS nominee is a sole practitioner who will place the law practice in an inactive status and who may receive a referral fee from another attorney
7.4.0	The PAS nominee will have outstanding accounts receivable after appointment
7.4.1	A law firm will owe the PAS nominee an outstanding partnership share after appointment
7.5.0	The PAS nominee's name appears in the name of the firm
7.6.0	The PAS nominee has an equity interest in an investment partnership created by a law firm
8.1.1	Retention of a position as a board member of an organization when the PAS nominee qualifies for the exemption at 5 C.F.R. § 2640.202(e)
8.1.2	Retention of a position equivalent to a board member position with a university when the PAS nominee qualifies for the exemption at 5 C.F.R. § 2640.202(e)
8.2.0	Resignation from a position as a board member of an organization
8.4.0	Retention of a position as an "active participant" in an organization
8.5.0	Leave of absence from an institution of higher learning
8.6.0	Converting a paid outside position to a non-paid outside position when a PAS nominee is appointed to a full-time Federal position
9.1.0	The PAS nominee is retaining a passive ownership interest in a family farm or family business
9.1.1	The PAS nominee is resigning from a position with a family farm or family business but is retaining a passive financial interest

9.1.2	The PAS nominee is resigning from a position with a family farm or family business and is divesting a financial interest in the entity
9.2.2	The PAS nominee is resigning from a position with an S Corp, but the spouse will continue to be the owner of the business
10.1.0	The employer of the PAS nominee's spouse pays the spouse a fixed salary and bonus tied to the spouse's performance: 2635.502 recusal only
10.1.1	The employer of the PAS nominee's spouse pays the spouse a fixed salary and bonus tied to the spouse's performance: 208 recusal and 2635.502 recusal
10.1.2	The employer of the PAS nominee's spouse pays the spouse a fixed salary, but the ethics agreement addresses appearances regarding the PAS nominee's impartiality: 208 recusal, 2635.502 recusal and additional commitment regarding communications
10.3.0	The PAS nominee's spouse is an attorney whose compensation is not based on the profitability of the spouse's law firm, and the spouse does not have an equity interest in the law firm
10.3.1	The PAS nominee's spouse is an equity partner with a law firm
10.4.0	The PAS nominee's spouse is a salaried employee of an agency contractor
11.1.1	A special Government employee will continue to practice as an attorney
11.2.0	18 U.S.C. § 203 and 18 U.S.C. § 205: seeking advice in the event that a special Government employee unexpectedly serves more than 60 days in a 365-day period
12.1.0	Correcting a PAS nominee's submission to the Senate: correction of the financial disclosure report and submission of a supplemental ethics agreement
12.2.0	Arrangement to write a book in the future
12.2.1	Arrangement with a publisher regarding royalties
A.1.0	Language regarding E.O. 13770 for a new PAS nominee
A.1.1	Language regarding E.O. 13770 for a current Presidential appointee who has already signed the Ethics Pledge

New Samples

Sample Number	Title
1.3.0	Language to include at the end of certain political PAS nominee agreements regarding initial ethics briefings
1.3.1	Language to include at the end of PAS nominee agreements for special Government employees regarding initial ethics briefings
1.4.0	Language to include in certain PAS nominee agreements regarding the use of managed accounts
1.4.1	Language to include in certain PAS nominee agreements regarding the use of managed accounts in cases in which municipal bonds could be problematic
1.5.0	Language to include regarding the nominee agreeing not to modify the ethics agreement without approval from the agency and OGE

4.3.2	Advised that authorization will be granted pursuant to 5 C.F.R. § 2635.502
6.5.0	Acceleration of the vesting of restricted stock
6.6.0	5 C.F.R. § 2635.502 impartiality language
9.1.3	The PAS nominee is resigning from a position with a family farm or family business and is divesting a financial interest in the entity and receiving a note as payment
10.5.0	The PAS nominee’s spouse serves as a consultant with no fixed employer or clients
10.5.1	The PAS nominee’s spouse has a consulting sole proprietorship
12.1.0	Correcting a PAS nominee’s submission to the Senate: correction of the financial disclosure report and submission of a supplemental ethics agreement
12.3.0	PAS nominee owns a right to a patent
12.3.1	PAS nominee has an arrangement with a former employer regarding royalties from a patent
13.1.0	Interim 208 recusal for an investment fund when the fund is being divested due to potential conflicts of interest
13.3.0	Interim 208 recusal for an investment fund when the fund and a carried interest in the fund are being divested
13.4.0	Interim 208 recusal for an investment fund when the fund can only be divested on a quarterly basis

Sample that Moved Chapters

Sample Number	Title
13.0.0 (previously 3.6.0)	Interim 208 recusal pending divestiture of a single sector mutual fund that does not qualify for the <i>de minimis</i> exemption at 5 C.F.R. § 2640.201(b)
13.2.0 (previously 3.4.0)	Divestiture due to inability to disclose assets of a non-excepted investment fund that is the subject of a confidentiality agreement