



**United States**  
**Office of Government Ethics**  
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March 8, 2002  
DO-02-004

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Amy L. Comstock  
Director

SUBJECT: Changes in the Ethics Agreement Compliance System for  
Senate-Confirmed Presidential Appointees

During the last year, the executive branch ethics community processed and certified over six hundred financial disclosure reports and ethics agreements for nominees in the new Bush Administration. We are grateful for the effort expended and professionalism demonstrated by ethics officials during that process. Now, as the peak transition period has passed, the Office of Government Ethics (OGE) is involved in the process of ensuring that these Presidential appointees confirmed by the Senate (PAS) comply with the terms of their ethics agreements. In this regard, the recent influx of disclosure reports and nominee ethics agreements has given OGE an opportunity to reexamine our policies on tracking compliance with ethics agreements.

Subpart E Recusal Commitments

As you know, OGE currently requires agencies to provide "evidence of compliance" for specific recusals that arise only under 18 U.S.C. § 208. For example, once a nominee is confirmed, an agency must submit to OGE written documents (e.g., a copy of the appointee's recusal instrument listing and describing the specific matters or subjects to which the recusal applies and a memorandum describing the recusal screening process), within three months from a nominee's Senate confirmation date as evidence of action taken to comply with an appointee's ethics agreement. See 5 U.S.C. app. § 110; 5 C.F.R. § 2634.804.

After careful review, we have decided to expand OGE's current compliance system relating to the tracking of recusal commitments. Accordingly, for nominee forms processed after the date of this memorandum, agencies also must now provide OGE appropriate evidence of

compliance for certain recusals made by appointees under Subpart E of 5 C.F.R. part 2635. The changes we have identified below will enable OGE to more effectively monitor compliance with the recusal commitments that are made by appointees in their ethics agreements and assist agencies and appointees in effectively carrying out these recusal obligations.

There are essentially two types of Subpart E recusals that OGE will be formally tracking in its compliance program. First, agencies must provide evidence of compliance for all recusals under 5 C.F.R. § 2635.503, relating to the receipt by appointees of extraordinary payments from former employers. In addition, OGE is requiring agencies to submit evidence of compliance for certain recusals under section 2635.502 arising from personal or business relationships. Regarding the latter type of recusals, we have described below some of the more common recusal situations that will require agencies to submit evidence of compliance to OGE. These relationships will have already been identified in the employee's ethics agreement, and typically will include cases involving an entity (or person) with whom the employee has a covered relationship, and in which the entity (or person) involved:

(1) is a law firm that is "Washington D.C.-based" or otherwise provides legal services in the metropolitan Washington area, or is a law firm located outside the Washington, D.C. area providing legal services (including lobbying services) in an area of law that is directly related to the appointee's agency;

(2) engages in a trade or business that relates to the mission, programs, and operations of the appointee's employing agency (e.g., a Labor Department appointee who is a former trustee of the American Industrial Hygiene Association, which is involved in workplace health issues; an Environmental Protection Agency appointee who is a former officer of the Natural Resources Defense Council, which is involved in protecting the environment; or a Housing and Urban Development appointee who is a former officer of the Building Managers and Owners Association, which engages in lobbying efforts on behalf of its members);

(3) has matters currently or likely to be pending before the appointee's agency (e.g., appointee or his spouse is or was employed by a university that has or may apply for grants from the appointee's agency; appointee was formerly employed by an entity that is performing or may be bidding on a Government contract to provide services to the appointee's agency; or an appointee's spouse is an employee in a law firm that currently is representing a client in an EEO matter before the appointee's agency); or

(4) has some sort of continuing relationship or business association singled out for special treatment or coverage in the ethics agreement (e.g., appointee has book agreement with a publishing company that any new work on a book will be suspended until after appointee leaves Government service; or appointee has a right to receive compensation from a former client as a "finder's fee" if a future business transaction occurs).

We hope this memorandum captures most of the section 2635.502 recusal types that agency ethics officials should be tracking for compliance purposes. Determining whether other recusals under Subpart E will require an agency to submit compliance documents will largely depend upon the specific facts in each case. Accordingly, we expect that OGE reviewers will play an important role during the nominee SF 278 review process in helping to highlight for agency ethics officials those recusals that will be tracked under OGE's compliance system. The list of recusals identified above may be modified as other 2635.502 recusal situations of a general nature are identified for OGE tracking purposes. Again, please note that this expanded tracking requirement applies prospectively to nominees whose ethics agreements are finalized after the date of this memorandum.

#### Extensions of Time to Complete Ethics Agreements

OGE tracks compliance with all ethics agreements made by PAS employees. Ethics agreements specify that the individual must complete the actions which he or she has agreed to undertake within a period of time not to exceed three months from the date of Senate confirmation. Section 2634.802(b) allows exceptions to the three-month deadline in cases of unusual hardship, as determined by OGE for those ethics agreements submitted to it.

Our policy is to require PAS employees to complete their ethics agreements within the three-month period specified in their ethics agreement, unless another period of time has been specifically stated in the agreement. If the appointee finds that he or she cannot meet the three-month deadline, the agency should request an extension of time from OGE, showing good cause as to why an extension should be granted. Extensions of time for publicly traded stocks normally will not be granted as they usually can be divested very readily. A first extension for good cause shown generally will not exceed 60 days. Following this first extension, a second extension will normally not be granted except in cases of unusual hardship, and then typically only for an additional 30 days.

Finally, if an appointee wishes to obtain a Certificate of Divestiture from OGE, the Certificate should be requested by the agency

from OGE as soon as possible after confirmation. This is to enable the Certificate to be processed and still allow the appointee sufficient time within the three-month period to complete his or her ethics agreement. Please do not wait until the middle or end of the three-month period to request a Certificate, as the request for a certificate does not extend the three-month compliance period.

Points of Contact

We have all worked hard over the last year to forge ethics agreements that protect the integrity of the Government as well as the appointee. We must also continue to ensure that appointees comply with these agreements. If you have any questions about whether a recusal for a particular entity or person should be tracked by your agency for appointee ethics compliance purposes, please contact the OGE reviewer of the particular nominee form. If you have any other questions regarding compliance with ethics agreements or extensions of time, please contact Grace Clark at 202-208-8000, extension 1170, or Lorna Syme at extension 1141.