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PROGRAM ADVISORY

TO: Designated Agency Ethics Officials

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SUBJECT: Summary of Changes to 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 their conflicts of interest and comply with relevant ethics laws and regulations. To support this important element of the nominee program, OGE has published a revised *Guide to Drafting Nominee Ethics Agreements* (Guide),<sup>1</sup> which updates the 2020 edition. This Program Advisory summarizes the most significant revisions to the prior edition and includes, as an attachment, a chart that notes the sample paragraphs in the Guide that OGE revised, added, moved, or removed. The revised Guide is effective October 1, 2024. Language from the updated Guide should be used in ethics agreements drafted after October 1, 2024. Ethics agreements that have been signed by prospective nominees before this date will not need to be updated. Therefore, for a period after the effective date, some nominee ethics agreements will include language from the previous Guide and others the language from the updated Guide, based on the agreement signature date.

OGE has made several significant additions and revisions in the 2024 version of the Guide. The Guide now includes language addressing virtual currency, supplements to reports already submitted to the Senate, legal expense funds, and various consulting arrangements of the prospective nominee. OGE also made a number of clarifying changes to language already in the Guide, including: (1) revising language to reflect the recent changes to the impartiality regulations at 5 C.F.R. § 2635.503 regarding covered payments and qualifying programs;<sup>2</sup> (2) replacing the word “minor” for “dependent” children when stating the prohibition on repurchasing divested assets; and (3) deleting the commitment by the PAS nominee’s spouse to not communicate with the PAS nominee’s prospective agency on behalf of their employer for the duration of the PAS nominee’s appointment, except in rare cases when there are significant

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<sup>1</sup> U.S. OFF. OF GOV’T ETHICS, ETHICS AGREEMENT GUIDE (2024), [https://www.oge.gov/web/OGE.nsf/0/3CE31096F4576AD585258BA800601103/\\$FILE/2024%20Guide%20to%20Drafting%20Nominee%20Ethics%20Agreements.docx](https://www.oge.gov/web/OGE.nsf/0/3CE31096F4576AD585258BA800601103/$FILE/2024%20Guide%20to%20Drafting%20Nominee%20Ethics%20Agreements.docx).

<sup>2</sup> See 89 Fed. Reg. 43,686, 43,691 (May 17, 2024), <https://www.govinfo.gov/content/pkg/FR-2024-05-17/pdf/2024-10339.pdf>.



concerns. In addition, OGE has revised the Guide to ensure it reflects the principles of diversity, equity, inclusion, and accessibility.

As part of its educational series on election readiness, OGE will host an online session in October 2024 on drafting ethics agreements, which will include a summary of the changes to the Guide. Agency ethics officials may also contact their OGE Desk Officers if they have questions about the revised Guide.

Attachment

## ATTACHMENT – 2024 Revisions to the Guide to Drafting Nominee Ethics Agreements

The table below describes the sections revised relative to the October 2020 version of the Guide.

### Revised Sample Paragraphs

Sample Number	Title
1.0.0	Sample ethics agreement
1.2.0	Language to include at the end of certain PAS nominee agreements regarding public posting on OGE’s website
1.3.0	Language to include at the end of certain political PAS nominee agreements regarding initial ethics briefings
1.4.0	Language to include in certain PAS nominee agreements regarding the use of managed accounts
2.1.0	Basic 208 recusal
2.3.2	208 recusal for a former employer when retaining a financial interest tied to the employer’s profits
2.4.0	Limited 208 recusal related to contractual arrangements
2.4.1	Limited 208 recusal related to defined benefit plans
3.1.0	Language regarding Certificates of Divestiture
3.1.1	Language regarding not repurchasing divested assets
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
4.3.2	Advised that authorization will be granted pursuant to 5 C.F.R. § 2635.502(d)
6.1.0	Sample of a complex executive severance and equity package
6.3.0	Severance payment pursuant to a standard employer policy
6.4.0	Outstanding bonus pursuant to a standard employer policy
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
7.3.0	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
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)
8.6.0	Converting a paid outside position to a non-paid outside position when the PAS nominee is appointed to a full-time Federal position
8.6.1	Retention of an executor position and converting the paid position to non-paid
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
9.1.3	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
9.2.1	Entity formed to manage the assets of the PAS nominee's family that does not pay the PAS nominee for services to 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
10.3.0	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
11.2.0	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
12.2.0	Arrangement to write a book in the future
12.3.1	The PAS nominee has an arrangement with a former employer regarding royalties from a patent
A.1.0	Language regarding E.O. 13989 for a new PAS nominee
A.1.1	Language regarding E.O. 13989 for a current presidential appointee who has already signed the Ethics Pledge

## New Sample Paragraphs

Sample Number	Title
3.2.6	Interim 208 recusal pending divestiture of multiple sector mutual funds that do not qualify for the <i>de minimis</i> exemption at 5 C.F.R. § 2640.201(b)
3.2.7	Interim 208 recusal pending divestiture of virtual currency
3.5.0	Sale of private company for a note
5.2.3	Prior resignation from a position within the past year
6.5.1	Acceleration of vesting of restricted stock units (RSUs)
6.6.0	Covered payment recusal under 5 C.F.R. § 2635.503 that addresses payment coming after assuming the duties of the position
6.7.0	Ongoing employment benefit that raises impartiality concerns
7.7.0	The PAS nominee has an interest in a contingency fee case that will continue after appointment
7.7.1	The PAS nominee has an interest in a contingency fee case that will continue after appointment – consultation required
7.7.2	The PAS nominee has an interest in a contingency fee case that will be forfeited
7.7.3	The PAS nominee has an interest in a contingency fee case that will be fixed at the time of resignation from the firm
10.6.0	The PAS nominee’s spouse has business before the nominee’s office
12.1.1	Correcting a PAS nominee’s submission to the Senate: supplement of the financial disclosure report and submission of a supplemental ethics agreement
12.2.2	Arrangements regarding payments for digital content
12.4.0	The PAS nominee serves as an expert witness
12.5.0	The PAS nominee has an executive branch legal expense fund
12.5.1	The PAS nominee has a non-executive branch legal expense fund that is being terminated
13.5.0	Interim 208 recusal for an investment fund when the fund and capital commitment are being divested
14.1.0	Resignation from a salaried position with a consulting firm in which the PAS nominee does not have a financial interest
14.2.0	The refund of a capital account (or other equity stake) after resignation will occur before the PAS nominee begins Federal service
14.2.1	The refund of a capital account (or other equity stake) after resignation may occur after the PAS nominee begins Federal service
14.3.0	The PAS nominee is a sole owner who will place the consulting firm in an inactive status

14.4.0	The PAS nominee will have outstanding accounts receivable after appointment
14.4.1	A consulting firm will owe the PAS nominee an outstanding partnership share after appointment
A.1.2	Language regarding E.O. 13989 for a current presidential appointee who has already signed the Ethics Pledge and has served two years in the current Administration

**Moved Sample Paragraphs**

Sample Number	Title
3.2.5 (previously 13.0.0)	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)
13.1.0 (previously 2.3.3)	208 recusal for a former employer when retaining a passive investment interest in a partnership
13.1.1 (previously 2.3.4)	208 recusal for a former employer when retaining a passive membership in a limited liability corporation

**Removed Sample Paragraphs**

Sample Number	Title
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
2.4.3	Limited 208 recusal related to other continuing employee benefits
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
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