



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

January 21, 1997
DO-97-007

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Stephen D. Potts Director

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

In the Spring 1996 edition of the Ethics Newsgram, the Office of Government Ethics (OGE) announced future changes to improve the administration of the ethics agreement compliance system for Presidential appointees confirmed by the Senate. This DAEOgram provides more details on those changes and how they will affect the system at executive branch agencies.

BACKGROUND

In February 1996, OGE completed a single issue review of the ethics agreement compliance system. While the review was undertaken in response to indications that many ethics agreements were not being satisfied within the required three-month compliance period, the resulting findings failed to confirm the earlier indications. To the contrary, the review clearly showed that actual compliance by appointees has most often been timely. The rather bleak picture of compliance suggested by the preliminary data was attributed in large part to late notifications of compliance to both the agencies and OGE.

Notwithstanding the statutory requirement (5 U.S.C. app. § 110) that notification of compliance actions taken must be made within three months of the ethics agreement date, tracking ethics agreement compliance by only notification dates has tended to paint a more negative picture of compliance than is actually the case. The situation is further aggravated by the common agency practice of not notifying OGE until all terms of a particular agreement have been satisfied. The latter practice has been consistent with OGE's policy of not considering an agreement satisfied until all agreed upon actions have been taken.

The review also identified other areas of the process which warrant improvement. The fairly common problem of untimely notifications, combined with lax monitoring and follow-up procedures noted during the review at many agencies, demonstrate the need for more formal follow up on unsatisfied ethics agreements. Few agencies perform systematic monitoring and follow up during the three-month compliance period. During the review, several agencies indicated a reliance on OGE's telephone call to prompt agency follow up with appointees. They

also cited difficulties in getting busy appointees to devote the proper attention to the ethics agreement process.

CHANGES TO THE SYSTEM

To improve the accuracy of data produced by its automated ethics agreement tracking system, OGE is expanding the system to incorporate compliance-based information. In the future, the system will collect, monitor, and document actual compliance dates as well as OGE notification dates. OGE will also begin tracking compliance with individual ethics agreement elements (divestiture, waiver, etc.). These changes will make the system more consistent with the regulatory requirement at 5 C.F.R. § 2635.802(b) that actual compliance by appointees must occur within three months of confirmation. They will also result in a more up-to-date and realistic picture of compliance by appointees. Accordingly, agencies are advised of the slightly different reporting requirements imposed by the expanded ethics agreement tracking system.

To assure timely compliance by appointees and agency notifications to OGE, we are initiating a more formalized process for following up on unsatisfied agreements. Two formal follow ups will now be performed -- the first letter will be mailed to arrive at an agency 45 days following the appointee's confirmation; the second, approximately 80 days following confirmation, when the three-month regulatory time limit is about to expire.

Agencies are reminded of their responsibility to systematically monitor compliance and follow up with appointees to ensure compliance within the three-month period. This includes ensuring that appointees are made fully aware of the requirement to notify their agencies when compliance actions have been taken. Several agencies indicated during the review that busy appointees often respond more promptly to "pro forma" forms and standardized memorandums than to open-ended requests for compliance information. A sample of one agency's form is attached for your consideration. In addition, model "recusal" and "18 U.S.C. § 208(b)(1) waiver" letters can be found in your Public Financial Disclosure: A Reviewer's Reference, Part III, appendixes, sections 14.5 and 14.6. Other sample letters and suggestions may be obtained from Grace A. Clark, of my staff, at 202-208-8000, extension 1170. Agencies are also reminded of the availability of OGE-approved "hardship" extensions pursuant to 5 C.F.R. § 2634.802(b).

With respect to required forms of documentation, agencies are advised that signed statements from appointees that they have complied with divestitures and resignations, and that include the dates of such actions, are satisfactory evidence of compliance, particularly when more formal evidence proves too difficult and time-consuming to obtain. It is emphasized, however, that whatever form of written evidence is required, the ultimate accountability for assuring that compliance has actually occurred rests with the responsible agency ethics officials. OGE will be adding information to each OGE nominee opinion letter, which clearly delineates ethics agreement compliance and notification time frames. Agencies can share copies of these letters with appointees, thereby notifying them that an oversight agency collects compliance information. This may provide more leverage to ethics officials in dealing with appointees throughout the process.

Please ensure that the appropriate members of your staff are made aware of these changes. If you have any questions, please contact Tom Zorn of the Financial Disclosure Division at 208-8000, extension 1123.