Note: For more updated information on the Certification of Ethics Agreement Compliance, see Program Advisory PA-26-04.

November 25, 2024
PA-24-06

PROGRAM ADVISORY

TO: Designated Agency Ethics Officials

FROM: Dale A. Christopher, Jr.
Deputy Director for Compliance

SUBJECT: Updates to Certification of Ethics Agreement Compliance

This Program Advisory describes recent updates to the Certification of Ethics Agreement Compliance (Certification) required to be filed with the U.S. Office of Government Ethics (OGE) by Presidential appointees (PAS) following their confirmation by the Senate.[1] (*See* attached.) OGE is making these updates based on experience gained from over seven years of collecting the Certification, as well as input received from ethics officials since its implementation. Updates include clarifying the deadlines for timely compliance, adding a certification option related to divestitures that do not require the filing of a periodic transaction report, revising one of the recusals regarding spousal interests, and amending the Privacy Act Statement to address the recodification of the Ethics in Government Act of 1978 (EIGA). A detailed summary of these updates follows.

Summary of Updates

The updated sections of the of the Certification are described below and restated in italics, with the new language underlined.

First, OGE has revised Section 1f. of the Certification to highlight the date the certification is due to OGE. This date is generally seven days after the *latest* compliance deadline(s) of a PAS official's ethics agreement.

1f. Due Date <u>for Submission of</u> Certification of Ethics Agreement Compliance <u>to OGE.</u>

Second, OGE revised Section 3a. to specify that the PAS official not only completed all divestitures but did so within the time period specified by their ethics agreement. Additionally, Section 3a. clarifies that the divested assets may not be reacquired by any means, not only by repurchasing them.

[1] *See* 5 U.S.C. § 13111 (S*ee* also OGE Program Advisory PA-17-03 (May 11, 2017) and OGE Program Advisory PA-21-01 (February 25, 2021.))

3a. I completed all of the divestitures indicated in my ethics agreement within the time period specified. I understand that I may not reacquire these assets during my appointment without OGE's prior approval.

Third, OGE has updated the Certification to allow PAS officials to certify to the completion of divestitures that do not require the filing of a periodic transaction report. PAS officials can comply with divestiture requirements in ways other than selling their assets, such as gifting an asset. In these cases, the filing of a periodic transaction report would not be required. Therefore, OGE added Section 3c. to allow PAS officials to certify to the completion of a divestiture that did not require the filing of a periodic transaction report.

3c. I completed the divestiture through a means not requiring a periodic transaction report (OGE Form-278T).

Fourth, OGE has revised the language of one of the recusal requirements on the Certification. Specifically, OGE revised Section 6b. to include a recusal from a spouse's employer or current client.

6b. I am recusing from particular matters in which any former employer or client of mine for whom I provided services to in the past year, or in which my spouse's employer or a current client is a party or represents a party, unless I have been authorized under 5 C.F.R. § 2635.502(d).

Lastly, OGE has updated the Privacy Act Statement on the final page of the Certification to include the recodification of EIGA.

5 U.S.C. § 13111 requires the reporting of this information.

OGE will continue to complete the first part of the Certification form and send it to the appropriate agency ethics official via email when a Presidential nominee is confirmed by the Senate. General questions concerning the Certification should be sent to eacompliance@oge.gov. Questions about this Program Advisory or those in need of immediate response should be directed to the Chief of OGE's Program Review Branch, Stephanie Bonhomme, at (202) 482-9288.

Attachment

ETHICS AGREEMENT COMPLIANCE CERTIFICATION

Senate Confirmed Presidential Appointee

1. Appointee's Information	
a. Appointee's Name:	to be completed by OGE
b. Position Title:	to be completed by OGE
c. Agency:	to be completed by OGE
d. Date Ethics Agreement Signed:	to be completed by OGE
e. Date Confirmed:	to be completed by OGE
f. Due Date for Submission of Certification of Ethics Agreement Compliance to OGE:	to be completed by OGE
2. Resignations	
I completed all of the resignations indicated in my ethics agreement before I assumed the duties of my current government position.	◯ Yes ◯ No ◯ N/A
3. Divestures	
a. I completed all of the divestitures indicated in my ethics agreement within the time period specified. I understand that I may not reacquire these assets during my appointment without OGE's prior approval.	◯ Yes ◯ No ◯ N/A
b. I have filed a periodic transaction report, or periodic transaction reports (OGE Form 278-T) to disclose the completion of these agreed upon divestitures.	◯ Yes ◯ No ◯ N/A Filing Date(s) of OGE Form 278-T Report (s):
c. I completed the divestiture through a means not requiring a periodic transaction report (OGE Form 278-T).	◯ Yes ◯ No ◯ N/A

4. Managed Accounts	
If I have a managed account or use the services of an investment professional, I have notified the manager or professional of the limitations indicated in my ethics agreement. In addition, I am continuing to monitor purchases to ensure compliance with these limitations.	◯ Yes ◯ No ◯ N/A
5. Interim Recusals	
I have complied with my interim recusal obligations pending the divestitures required by my ethics agreement.	◯ Yes ◯ No ◯ N/A
6. Recusals (Note: These factual statements describe the appointee' current status. They are not intended to modify ethics agreement commitments or create new recusal obligations.)	
a. As required by 18 U.S.C. § 208, I will continue to recuse from particular matters in which I know I have a personal or imputed financial interest directly and predictably affected by the matter, unless I receive a waiver or qualify for a regulatory exemption.	◯ Yes ◯ No
b. I am recusing from particular matters in which any former employer or client of mine for whom I provided services to in the past year, or in which my spouse's employer, or a current client is a party or represents a party, unless I have been authorized under 5 C.F.R. § 2635.502(d).	◯ Yes ◯ No ◯ N/A
c. I am recusing from particular matters in which any former employer or client I served in the two years prior to my appointment is a party or represents a party, unless I have received a waiver under Executive Order 13989.	◯ Yes ◯ No ◯ N/A

7. Waivers and Authorizations (Consult with your agency's DAEO if uncertain under what authority a waiver or authorization was granted.)	
a. I received a waiver pursuant to 18 U.S.C. § 208.	◯ Yes ◯ No
If yes, indicate the date of the waiver and indicate the financial interest covered by the waiver.	Date: Financial Interest:
b. I received a waiver pursuant to Executive Order 13989.	◯ Yes ◯ No
If yes, indicate the date of the waiver and the subject of the waiver (i.e., applicable paragraph of the ethics pledge, parties, particular matters, specific issue areas, as applicable).	Date: Subject:
c. I received an authorization pursuant to 5 C.F.R. § 2635.502(d).	◯ Yes ◯ No
If yes, indicate date of authorization and identify the covered person(s) as to whom you have been authorized (e.g., former employer, former client, spouse's employer, spouse's current client, etc.).	Date: Covered person(s):
d. I received a waiver pursuant to 5 C.F.R. § 2635.503(c).	◯ Yes ◯ No
If yes, indicate the date of the waiver and identify the former employer or payer.	Date: Former employer or payer:

8 . Payments, Accelerations, or Divestitures Required to be Completed Prior to Entering Government Service		
☐ Mark this box if not applicable	a. If I committed that I would forfeit a financial interest or payment, unless it was received or accelerated prior to my assumption of the duties of the government position:	◯ I received it (or it was accelerated) prior to my assumption of the duties of the position. ◯ I received it (or it was accelerated after my assumption of the duties of the position. ◯ I forfeited it.
	b. Financial interest or payment at issue:	

9. Requirements for Regular Appointees	
I have completed my initial ethics briefing, pursuant to 5 C.F.R. § 2638.305. If you are a Special Government Employee (SGE) or career Foreign Service Officer (FSO), select N/A.	◯ Yes ◯ No ◯ N/A
I have signed the ethics pledge pursuant to Executive Order 13989. If you are a SGE or career FSO or previously signed the pledge, select N/A.	◯ Yes ◯ No ◯ N/A
10. Additional Ethics Agreement Requirements	
to be completed by OGE	to be completed by appointee I am complying with these requirements as described in the adjacent box. ◯ Yes ◯ No ◯ N/A
11. Comments of Appointee	
12. Certification- **Any intentionally false or misleading statement or response provided in this certification is a violation of law punishable by a fine or imprisonment, or both, under 18 U.S.C. § 1001.**	
I certify that the information I have provided is complete and accurate.	
Appointee's Signature:	Date:

A. Privacy Act Statement

5 U.S.C. § 13111 requires the reporting of this information. The primary use of the information on this report is for review by Government officials to determine an appointee's compliance with applicable Federal laws and regulations, and the appointee's Ethics Agreement. Failure to provide the requested information may result in notification of lack of compliance to the Senate and the head of the appointee's agency, or the White House, and/or could result in OGE declining to certify the appointee's financial disclosure reports. The appointee could also be required to recuse from matters based on uncertainty as to whether they have divested or resigned from a matter determined to raise potential conflicts.

This information will be publicly posted to the OGE website at www.oge.gov in accordance with OGE/GOVT-1, Executive Branch Personnel Public Financial Disclosure Reports and Other Name-Retrieved Ethics Program Records (routine use "k."). Please see OGE/GOVT-1 for more information about the maintenance and disclosure of this information.

B. Filing the Certification of Ethics Agreement Compliance

Your position as one of our government's most senior leaders brings with it extraordinary responsibilities. One of those responsibilities is to serve as a role model for all executive branch employees by demonstrating a commitment to ethical principles and actively seeking to avoid conflicts of interest. This includes compliance with the ethics agreement you signed prior to and as a condition of your confirmation. By signing this Certification of Ethics Agreement Compliance (Certification) you certify that you have complied with the terms of your ethics agreement. The information below is intended to help you timely meet your obligation to complete and submit this form to the U.S. Office of Government Ethics (OGE).

You are required to comply with the provisions of your ethics agreement within three months of the date of your confirmation, unless otherwise specified. Please:

- Review your ethics agreement carefully.
- If your ethics agreement requires you to resign from an outside position, please note that resignations are generally required "upon confirmation."
- Identify any provisions of your ethics agreement that may require coordination with an account manager or other third party.
- Initiate any necessary action early enough to timely comply with your ethics agreement.
- If you qualify for and wish to request a Certificate of Divestiture, please submit your request as soon as possible through your agency's Designated Agency Ethics Official (DAEO).

If your ethics agreement specifies that you have more than three months to comply with a particular provision, you must still comply with the remaining provisions within the standard

three-month period and submit a Certification (through your agency's DAEO) within seven days thereafter. If you have not complied with a provision of your ethics agreement, please provide an explanation in Box 11, Comments of Appointee. You will be provided with an additional Certification to complete and submit to OGE to certify that you have complied with all provisions of your ethics agreement.

Extensions: OGE may grant an extension of time for complying with a provision of your ethics agreement if, in its sole discretion, it determines that an unusual hardship has/will prevent you from complying timely. Generally, waiting for an account manager to sell an interest, not being able to locate records, or waiting for OGE to process a request for a Certificate of Divestiture are not considered unusual hardships. As noted in the Privacy Act Statement above, not submitting your Certification may result in notification of lack of compliance to the Senate, the head of your agency, or the White House. OGE may also decline to certify your financial disclosure reports. You may also be required to recuse from matters based on uncertainty as to whether you have completed required divestitures and resignations. OGE may also post a notice on its website, in place of your Certification, stating that you have not yet submitted the required certification.

While it is your personal responsibility to take the steps necessary to comply with your ethics agreement, your agency's DAEO is available to assist you in completing this Certification and submitting it to OGE. Any questions you may have should be directed to your agency's DAEO.