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LEGAL ADVISORY

TO: Designated Agency Ethics Officials

FROM: Emory A. Rounds, III
Director

SUBJECT: Clarification of the Meaning of “Political Entity” for Financial
Disclosure Purposes

The Ethics in Government Act (EIGA) requires public financial disclosure filers to report the positions they hold with various organizations, but exempts certain positions from reporting, including positions held with a “political entity.” *See* 5 U.S.C. app. § 102(a)(6)(A). The U.S. Office of Government Ethics (OGE) has extended this reporting requirement and reporting exemption to confidential financial disclosure filers. *See* 5 C.F.R. § 2634.907(e). The term “political entity,” however, is not defined in either the EIGA or 5 C.F.R. part 2634, OGE’s regulations regarding financial disclosure. This Legal Advisory is being issued to clarify the meaning of what constitutes a “political entity” for financial disclosure purposes.

As noted above, the EIGA does not define “political entity,” and there is no discussion or debate regarding the meaning of the term in the legislative history. Over the years, OGE has advised filers that they are required to report their positions with law firms that provide advice on campaign laws, political consulting firms, and political polling firms because these types of organizations are not “political” entities but are instead in business to provide legal advice, consulting, or polling services to candidates for elective office or political parties. By contrast, OGE has advised that filers do not have to report their positions with a political campaign itself or with a political party, because these entities are themselves “political.” Nonetheless, there are many entities that operate in the space between political campaigns or parties and political consulting firms. Therefore, OGE recognizes the benefit of providing further guidance regarding the meaning of “political entity.”

The meaning of “political entity” is evident in other parts of the federal statutory scheme, such as section 527 of the Internal Revenue Code (IRC), which defines “political organization” as a “party committee, association, fund, or other organization” engaged in “influencing or attempting to influence the selection, nomination, election, appointment” of a candidate for public office.¹ This section grants tax-exempt status to political organizations at the national, state, and local level.² OGE has determined that the entities covered by the definition of

¹ 26 U.S.C. § 527(e).

² *See* 26 U.S.C. § 527.



“political organization” that Congress established in the IRC (“527 organization”) are coextensive with the entities intended to be excluded from reporting given the use of the term “political entity” in the EIGA. Accordingly, for financial disclosure purposes, a position with an organization that meets the definition section 527(e) of the IRC would not have to be disclosed on a financial disclosure report.

Some organizations’ names may not provide a clear indication whether or not they are organized to support a candidate for public office. The U.S. Federal Election Commission (FEC) states that “(a)ll political committees that register and file reports with the FEC are 527 organizations, but not all 527 organizations are required to file with the FEC.”³ As a result, if the entity is required to register with the FEC, it will qualify as a “political entity” for financial disclosure purposes. Ethics officials, however, will not always be able to utilize FEC registration to make a determination about an organization, in particular regarding state and local organizations. If an ethics official is uncertain about whether an organization qualifies as a “political entity” for financial disclosure purposes, the ethics official should ask the filer to provide information about the organization that would support the non-disclosure of the position. Note that a social welfare organization exempt from taxation under IRC section 501(c)(4) will not qualify for the political entity exemption. In addition, Presidential transition committees traditionally have not been organized as 527 organizations.

If a filer holds a position with a 527 organization, that position will not be reportable in Part 1 of the OGE Form 278e or Part III of the OGE Form 450. However, the exclusion from reporting a “political entity” only applies to positions held with these entities. Therefore, if a filer has reportable income or a reportable agreement or arrangement with a political entity, that information is required to be reported in the appropriate part of the financial disclosure form. For example, public financial disclosure filers will report income from a 527 organization in Part 2 of the OGE Form 278e if the income received was more than \$200 during the reporting period, and report the organization as a source of income in Part 4 if the income was greater than \$5,000 in any calendar year during the reporting period. Confidential financial disclosure filers will report a 527 organization as the source of the income in Part I of the OGE Form 450 if the filer received income exceeding \$1,000 during the reporting period.

Agency ethics officials who have questions about this Legal Advisory should contact their OGE Desk Officer.

³ FEC website, https://transition.fec.gov/ans/answers_general.shtml last visited July 16, 2018.