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LEGAL ADVISORY

TO: Designated Agency Ethics Officials

FROM: Shelley K. Finlayson
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SUBJECT: Legislation Introduced in the 115th Congress Relevant to the Executive Branch Ethics Program

This Legal Advisory summarizes relevant legislative activity from the 115th Congress, during which members introduced more legislation that referenced ethics officials than any previous Congress¹ and more legislation that referenced the Ethics in Government Act than any Congress since the 101st Congress.² Given the significant number of bills introduced related to the executive branch ethics program, this Legal Advisory highlights legislative trends in the 115th Congress rather than specific bills. These trends include proposed changes to: (1) the structure and responsibilities of the executive branch ethics program; (2) financial disclosure laws; (3) conflict of interest laws; and (4) other government integrity laws; as well as legislation enacted related to whistleblowers. Notably, many of these trends have continued with the current Congress, demonstrating continuing congressional interest in ethics-related topics.³

For a description of statutory changes in the 115th Congress reflected in [OGE's Compilation of Federal Ethics Laws](#), please see OGE Legal Advisory, [LA-19-03 \(2019\)](#).

Proposed changes to the structure and responsibilities of the executive branch ethics program

OGE tracked more than 200 bills in the 115th Congress of relevance to the executive branch ethics program. A number of these bills would have either strengthened or expanded OGE's authorities or comprehensively reformed the entire executive branch ethics program.

The proposals to reform OGE included legislation that would have provided OGE with investigative and enforcement authority. Specifically, legislation would have provided OGE

¹ Based on data from Congress.gov, presented by the Library of Congress, which lists results for this search beginning with the 98th Congress (1983-1984), <https://bit.ly/2V9mVdG>.

² The 101st Congress passed the Ethics Reform Act of 1989. Legislative data is from Congress.gov, presented by the Library of Congress, <https://bit.ly/2FpauVB>.

³ For example, the House of Representatives passed H.R. 1 in March, which included several of the provisions introduced in the 115th Congress. For the People Act of 2019, H.R. 1, 116th Congress (2019).



subpoena authority and the ability to issue administrative penalties.⁴ They would have also expanded the authority of OGE's Director to approve and make public any recusals, exemptions, or waivers to the conflicts of interest and ethics laws, rules, and regulations. Additional bills would have changed the ethics program in more limited, but similar ways, such as requiring OGE to review waivers in certain situations,⁵ allowing OGE's Director to only be removed for cause,⁶ requiring federal political appointees to sign a binding ethics pledge,⁷ or providing additional ethics documents to the public or the Congress.⁸

The proposals to reform the entire ethics program included legislation that would have created a new ethics agency to conduct anti-corruption, ethics, and public integrity oversight of federal employees through investigations, corrective action, and additional penalties.⁹

Proposed changes to financial disclosure laws

OGE tracked more than 50 bills in the 115th Congress related to financial disclosure and transparency. Many of these bills would have required the President and Presidential candidates to make their tax returns publicly available; however, there was considerable variety in how many years would be required, how they would be made public, and if others, such as the Vice President, would be included.¹⁰ Other bills would have created new disclosure requirements, such as requiring filers to report certain funds they have donated to, solicited, or received from entities (i.e., political action committees).¹¹ Additional legislation would have expanded existing disclosure requirements, such as amending the reporting amount categories in section 102 of the Ethics in Government Act.¹²

Proposed changes to conflict of interest laws

OGE tracked more than 60 bills in the 115th Congress related to conflicts of interest in the federal government. One set of these bills would have required the President and Vice President

⁴ Executive Branch Comprehensive Ethics Enforcement Act of 2018, H.R. 5902, 115th Congress (2018); Executive Branch Comprehensive Ethics Enforcement Act, S. 2919, 115th Congress (2018) (This legislation also would have required Designated Agency Ethics Officials (DAEOs) and Alternate Designated Agency Ethics Officials (ADAEOs) to report to both OGE's Director and their appointing authority).

⁵ *See, e.g.*, Executive Appointee Ethics Improvement Act, H.R. 2500, 115th Congress (2017); Pharmaceutical Regulation Conflict of Interest Act, S. 2057, 115th Congress (2017).

⁶ *See, e.g.*, Office of Government Ethics Independence Act of 2017, H.R. 3462, 115th Congress (2017).

⁷ *See, e.g.*, Ethics in Public Service Act, H.R. 6732, 115th Congress (2018).

⁸ *See, e.g.*, White House Ethics Transparency Act of 2017, H.R. 2762, 115th Congress (2017); Congressional Oversight Needed For Likely Illicit and Corrupt Transactions Act, H.R. 5495, 115th Congress (2018).

⁹ Anti-Corruption and Public Integrity Act, S. 3357, 115th Congress (2018); H.R. 7140, 115th Congress (2018) (This legislation would have also changed the statutory definition of DAEOs in a number of ways, including requiring certain consultations before a DAEO could be removed).

¹⁰ *See, e.g.*, Presidential Tax Transparency Act, S. 26, 115th Congress (2017); H.R. 305, 115th Congress (2017); S. 3450, 115th Congress (2018); H.R. 6970, 115th Congress (2018); Presidential Tax Disclosure Act of 2017, H.R. 540, 115th Congress (2017).

¹¹ Conflicts from Political Fundraising Act of 2017, H.R. 2493, 115th Congress (2017); S. 1184, 115th Congress (2017); We the People Democracy Reform Act of 2017, H.R. 3848, 115th Congress (2017); S. 1880, 115th Congress (2017).

¹² Transparency in Government Act of 2017, H.R. 4504, 115th Congress (2017).

to divest any financial interest posing a potential conflict of interest,¹³ despite the fact that the primary criminal conflict of interest statute does not apply to the President or Vice President.¹⁴

Other bills would have amended 18 U.S.C. § 208 to prohibit federal employees from personally and substantially participating in a government matter in which the President has a financial interest.¹⁵ Additional bills proposed other notable changes, including legislation that would have provided a criminal penalty for certain federal employees using their public office for private gain¹⁶ and legislation related to financial service regulators that would have prohibited government employees from accepting bonuses from former private employers for entering government service.¹⁷

A number of bills were also introduced that would have strengthened post-employment restrictions by amending 18 U.S.C. § 207. Many of the proposals would have changed the length of the cooling off period, the definition of former employees, and/or the scope of the restriction.¹⁸

Proposed changes to other government integrity laws

- Proposed changes to the use of government resources: a number of bills were introduced that would have prohibited the use of federal funds for certain expenditures, such as non-commercial flights for cabinet officials or lodging at establishments owned by certain public officials.¹⁹
- Proposed changes to ethics plans for transition teams: legislation was introduced that would have required the development of ethics plans for certain transition teams.²⁰
- Proposed changes to federal advisory committees: legislation was introduced that would have required that recusal agreements and waivers issued pursuant to 18 U.S.C. § 208(b)(3) for members be made public. This legislation would have also

¹³ See, e.g., Presidential Conflicts of Interest Act of 2017, S. 65, 115th Congress (2017); H.R. 371, 115th Congress (2017); We the People Democracy Reform Act of 2017, S. 1880, 115th Congress (2017); H.R. 3848, 115th Congress (2017); Anti-Corruption and Public Integrity Act, S. 3357, 115th Congress (2018); H.R. 7140, 115th Congress (2018).

¹⁴ See Ethics Reform Act of 1989, Pub. L. No. 101-194, § 401 (1989); see also 18 U.S.C. §§ 202(c), 208(a) (2012).

¹⁵ Separation of Government and President's Financial Interests Act, H.R. 2455, 115th Congress (2017).

¹⁶ Restoring the Public Trust Act, H.R. 7167, 115th Congress (2018); E. Scott Pruitt Accountability for Government Officials Act of 2018, H.R. 6788, 115th Congress (2018).

¹⁷ Financial Services Conflict of Interest Act, S. 265, 115th Congress (2017); H.R. 859, 115th Congress (2017).

¹⁸ See, e.g., Anti-Corruption and Public Integrity Act, S. 3357, 115th Congress (2018); H.R. 7140, 115th Congress (2018); H.R. 7140, 115th Congress (2018); Drain the Swamp Act of 2017, H.R. 796, 115th Congress (2017); Restoring Integrity in our Elected Officials Act, H.R. 5289, 115th Congress (2018); Executive Appointee Ethics Improvement Act, H.R. 2500, 115th Congress (2017); DRAIN the SWAMP Act, H.R. 484, 115th Congress (2017); Stop Foreign Influence Act, H.R. 345, 115th Congress (2017); S. 522, 115th Congress (2017).

¹⁹ See, e.g., Fly Smart Act, S. 3399, 115th Congress (2018); JETS Act, H.R. 3974, 115th Congress (2017); Taxpayers DIME Act of 2017, H.R. 3879, 115th Congress (2017); Cut the Perks Act, H.R. 6295, 115th Congress (2018); Heightened Oversight of Travel, Eating, and Lodging Act, H.R. 5304, 115th Congress (2018); S. 1832, 115th Congress (2017).

²⁰ Transition Team Ethics Improvement Act, S. 2321, 115th Congress (2018); H.R. 4826, 115th Congress (2018); Anti-Corruption and Public Integrity Act, S. 3357, 115th Congress (2018); H.R. 7140, 115th Congress (2018).

required that agencies designate members as special Government employees or representatives.²¹

Legislation enacted related to whistleblowers

In addition to statutory changes in the 115th Congress reflected in [OGE's Compilation of Federal Ethics Laws](#) and detailed in OGE Legal Advisory, [LA-19-03 \(2019\)](#), legislation was also enacted that increased accountability and required discipline for federal supervisors who retaliate against whistleblowers.²² This legislation also enhanced agencies' obligations to provide information to employees on whistleblower protections.

Conclusion

OGE brings the actions of the 115th Congress to your attention as part of our initiative to keep the ethics community apprised of relevant ethics-related legislative activity. OGE will provide you with relevant updates throughout the 116th Congress and will also continue to monitor and keep agency ethics officials informed of agency-specific legislative proposals that may affect their agency's ethics program. If you have questions about this Legal Advisory or other legislative matters, please contact Diana Veilleux at (202) 482-9203 or djveille@oge.gov.

²¹ Federal Advisory Committee Act Amendments of 2017, H.R. 70, 115th Congress (2017).

²² Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017, Pub. L. No. 115-73, 131 Stat. 1235 (2017).