



March 11, 2021
LA-21-06

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Shelley K. Finlayson
Chief of Staff and Program Counsel

SUBJECT: Summary of Key Legislation (116th Congress), including H.R. 1, and Update to the
Compilation of Federal Ethics Laws

This Legal Advisory summarizes relevant legislative activity from the recently ended 116th Congress, including H.R. 1, which has been reintroduced and is currently pending in the 117th Congress. This Legal Advisory highlights key provisions and provides links to the text of those bills (I) relevant to the executive branchwide program that were [enacted](#) or [considered](#), (II) relevant to specific agencies that were [enacted](#) or [considered](#),¹ and (III) provides information about the newly updated [Compilation of Federal Ethics Laws](#).

I. LEGISLATION OF INTEREST TO THE EXECUTIVE BRANCH ETHICS PROGRAM

A. ENACTED

Several bills were enacted in the 116th Congress on topics of interest to the executive branch ethics community, including conflicts of interest and government integrity.

Congress enacted legislation that requires the head of certain agencies to submit to the Inspector General (IG), or senior ethics official for agencies without an IG, information regarding the costs and contracting procedures related to each conference when the cost of the conference exceeds \$100,000.² Covered agencies must also report the date, location, and number of employees attending any conference when the cost exceeds \$20,000.³

Legislation was also enacted to require eligible presidential candidates to have an ethics plan that prohibits transition team members with conflicts of interest from working on particular matters involving specific parties that affect their interests.⁴

¹ Although OGE tracked more than 200 bills in the 116th Congress, this Legal Advisory is intended to highlight key provisions for agency ethics officials, not exhaustively detail all provisions or bills introduced.

² Consolidated Appropriations Act, 2019, [H.J. Res. 31](#), Pub. L. No. 116-6 (2019); Consolidated Appropriations Act, 2020, [H.R. 1158](#), Pub. L. No. 116-93 (2019); and Consolidated Appropriations Act, 2021, [H.R. 133](#), Pub. L. No. 116-260 (2020).

³ *Id.*

⁴ Presidential Transition Enhancement Act of 2019, [S. 394](#), Pub. L. No. 116-121 (2020).

Finally, the 116th Congress enacted legislation to prohibit an entity in which the President, Vice President, head of an executive department, member of Congress, or their spouse, child, or son- or daughter-in-law holds a controlling interest from being eligible for emergency relief and taxpayer protections.⁵

B. CONSIDERED

1. The For the People Act (H.R. 1)

The For the People Act (H.R. 1) included multiple provisions to reform the executive branchwide ethics program, along with campaign finance and voting reforms.⁶ Summarized below are notable conflict of interest provisions, transparency provisions, and other relevant provisions of the bill from the 116th Congress.⁷

H.R. 1: Notable Conflict of Interest Provisions

§7301 requires all presidential appointees to recuse themselves from any matter in which a party is the President, the President's spouse, or an entity in which the President or President's spouse has a substantial interest.⁸

§§8001-8007 prohibit incentive payments from corporations to individuals entering or leaving government service. These provisions also prohibit a federal employee from awarding a contract to a former employer for two years after leaving the company, and from working for a company after participating in a contract award to that company, for two years after leaving government service.⁹

§8012 requires the President and the Vice President, within 30 days of taking office, to divest financial interests that pose a conflict of interest or disclose information about their business interests.¹⁰

⁵ CARES Act, [H.R. 748](#), Pub. L. No. 116-136 (2020) at §4019.

⁶ For the People Act of 2019, [H.R. 1](#), 116th Congress (2019).

⁷ The legislative history of H.R. 1, which includes multiple bills previously introduced, highlights continued congressional interest in ethics reform across multiple recent congresses. *See* OGE Legal Advisory [LA-19-04](#) (May 2, 2019). In addition to being passed by the House in the 116th Congress, the provisions of which are described in this advisory, H.R. 1 was reintroduced in the 117th Congress and passed again by the House on March 3, 2021. As reintroduced in the 117th Congress, H.R. 1 retains Title VIII of Division C of the original version, which includes numerous ethics reforms that would affect the President, Vice President, and federal officers and employees. *See* For the People Act of 2019, [H.R. 1](#), 116th Congress (2019) at Title VIII: "[Ethics Reforms for the President, Vice President, and Federal Officers and Employees](#)," Division C; *see also* [H.R. 1](#), 117th Congress (2021).

⁸ For the People Act of 2019, [H.R. 1](#), 116th Congress (2019) at Subtitle D: "[Recusal of Presidential Appointees](#)," Title VII.

⁹ *Id.* at Subtitle A: "[Executive Branch Conflict of Interest](#)," Title VIII; *see also* Executive Branch Conflict of Interest Act, [H.R. 599](#), 116th Congress (2019); [S. 156](#), 116th Congress (2019).

¹⁰ *Id.* at Subtitle B: "[Presidential Conflicts of Interest](#)"; *see also* Presidential Conflicts of Interest Act, [S. 882](#), 116th Congress (2019); Anti-Corruption and Public Integrity Act, [S. 5070](#), 116th Congress (2020).

§8062 codifies the executive branch ethics pledge issued in Executive Order 13490 by President Obama.¹¹

H.R. 1: Notable Transparency Provisions

§8013 requires the President and the Vice President to file new financial disclosure reports within 30 days of taking office.¹²

§8022 requires ethics waivers to be disclosed to OGE and the public.¹³

§8042 requires individuals nominated or appointed to Senate-confirmed positions and certain other senior government officials to disclose contributions by, solicited by, or made on behalf of an individual. This provision also requires disclosure of certain types of gifts to these individuals or their families and requires OGE to issue rules on addressing conflicts of interest identified in these disclosures.¹⁴

§8052 requires information about presidential transition team members' roles and an affirmation that they are free from financial conflicts of interest.¹⁵

§10001 requires the disclosure of individual tax returns and certain business tax returns by presidents and vice presidents, as well as certain candidates.¹⁶

§§9301-9307 require that all reports from federal agencies mandated by Congress be published online in a searchable and downloadable database.¹⁷

H.R. 1: Other Notable Executive Branch Ethics Provisions

§§8031-8038 reauthorize OGE and enhance OGE's enforcement mechanisms, including authorizing OGE to issue subpoenas during investigations, order corrective actions (e.g., divestiture) and issue administrative remedies (e.g., suspension or demotion). These provisions also require OGE to provide ethics education and training to all designated and alternate designated agency ethics officials, who must register with, and report to, OGE and their appointing authority. In addition, agency ethics officials must provide specified ethics

¹¹ *Id.* at Subtitle G: "[Ethics Pledge for Senior Executive Branch Employees](#)"; *see also* Ethics in Public Service Act, [H.R. 209](#), 116th Congress (2019).

¹² *Id.* at Subtitle B: "[Presidential Conflicts of Interest](#)"; *see also* Presidential Conflicts of Interest Act, [S. 882](#), 116th Congress (2019); Anti-Corruption and Public Integrity Act, [S. 5070](#), 116th Congress (2020).

¹³ *Id.* at Subtitle C: "[White House Ethics Transparency](#)"; *see also* White House Ethics Transparency Act, [H.R. 391](#), 116th Congress (2019).

¹⁴ *Id.* at Subtitle E: "[Conflicts from Political Fundraising](#)"; *see also* Conflicts from Political Fundraising Act, [H.R. 812](#), 116th Congress (2019); [S. 232](#), 116th Congress (2019).

¹⁵ *Id.* at Subtitle F: "[Transition Team Ethics](#)"; *see also* Transition Team Ethics Improvement Act, [H.R. 964](#), 116th Congress (2019); [S. 338](#), 116th Congress (2019).

¹⁶ *Id.* at Title X: "[Presidential and Vice Presidential Tax Transparency](#)."

¹⁷ *Id.* at Subtitle D: "[Access to Congressionally Mandated Reports](#)," Title IX: "Congressional Ethics Reform."

records, including information not currently made public, to OGE in a searchable, sortable, and downloadable format – and this information must be published on OGE’s website.¹⁸

§8015 requires OGE’s Director to certify legal defense funds.¹⁹

§8072 prohibits federal funds from being used to pay travel expenses of a senior political appointee for travel on official business on a non-commercial, private, or chartered flight, subject to certain exceptions.²⁰

2. OTHER LEGISLATION CONSIDERED

In addition to H.R. 1, the 116th Congress also considered other ethics-related legislation, including some proposals already reintroduced in the 117th Congress. Notable proposals, summarized below, covered topics including transparency and financial disclosure, financial interests, post-employment and recusal, and insider trading.

Notable Transparency and Financial Disclosure Legislation

The House and the Senate each proposed bills that sought to expand the disclosure requirements in the Ethics in Government Act by requiring senior officials to report certain payments besides salary and tax refunds received from the federal government.²¹

The Debt Disclosure for Officials in Government Act would revise the disclosure requirements for debts of certain officials.²²

The Transparency in Executive Branch Official Finances Act would require the disclosure of foreign business interests or foreign business relationships.²³

Notable Financial Interest Legislation

The Stop Foreign Payoffs Act would require certain officials to divest of any foreign financial interest and prohibit them from receiving foreign payments.²⁴

Another bill proposed, to require certain officers and employees in the executive branch of the federal government to divest certain financial interests, would have required divestiture of any “covered significant business interest,” which included any financial interest in a corporation, company, firm, partnership, proprietorship, etc., of which an official is a

¹⁸ *Id.* at Subtitle D: “[Executive Branch Ethics Enforcement](#),” Title VIII; *see also* Executive Branch Comprehensive Ethics Enforcement Act, [H.R. 745](#), 116th Congress (2019); [S. 896](#), 116th Congress (2019).

¹⁹ *Id.* at Subtitle B: “[Presidential Conflicts of Interest](#)”; *see also* Presidential Conflicts of Interest Act, [S. 882](#), 116th Congress (2019); Anti-Corruption and Public Integrity Act, [S. 5070](#), 116th Congress (2020).

²⁰ *Id.* at Subtitle H: “[Travel On Private Aircraft By Senior Political Appointees](#)”; *see also* Restoring the Public Trust Act, [H.R. 706](#), 116th Congress (2019).

²¹ [H.R. 8362](#), 116th Congress (2020); [S. 4665](#), 116th Congress (2020).

²² Debt Disclosure for Officials in Government Act, [S. 5042](#), 116th Congress (2020).

²³ Transparency in Executive Branch Official Finances Act, [H.R. 5433](#), 116th Congress (2019).

²⁴ Stop Foreign Payoffs Act, [H.R. 7526](#), 116th Congress (2020).

trustee, partner, officer, director, or shareholder holding more than 10 percent of any class of equity securities.²⁵

The House also introduced the Integrity for Public Officials Act, which would prohibit certain officials from purchasing or selling any “investment in a security, a commodity, or a future, or any comparable economic interest acquired through synthetic means such as the use of a derivative” and prohibit them from entering into a transaction that creates a net short position in any security.²⁶ This proposed bill would also statutorily prohibit some officials from serving as an officer or member of any board of any for-profit association, corporation, or other entity.²⁷

Notable Post-Employment and Recusal Legislation

The Executive Branch Conflict of Interest Act would increase the time period of post-employment restrictions for certain senior personnel from one year to two years.²⁸ Among other prohibitions, this proposed bill would also prohibit certain employees from using or attempting to use their position to participate in a particular matter in which they know a former employer or former client has a financial interest.²⁹ These proposals have been reintroduced in the current Congress.³⁰

The Cleaning Up Washington’s Act and the Serve the People, Not the Swamp Act sought to impose a five-year restriction on lobbying for individuals in the executive schedule and equivalent positions.³¹ This proposal has been reintroduced in the 117th Congress.³²

Notable Insider Trading Legislation

The Insider Trading Prohibition Act sought to prohibit certain securities trading and related communications by those who possess material, nonpublic information.³³

²⁵ To require certain officers and employees in the executive branch of the federal government to divest certain financial interests, and for other purposes, [H.R. 7581](#), 116th Congress (2020).

²⁶ Integrity for Public Officials Act, [H.R. 6461](#), 116th Congress (2020).

²⁷ *Id.*

²⁸ Executive Branch Conflict of Interest Act, [H.R. 6759](#), 116th Congress (2020) at §5.

²⁹ *Id.* at §3.

³⁰ Executive Branch Conflict of Interest Act, [H.R. 244](#), 117th Congress (2021).

³¹ Cleaning Up Washington’s Act, [S. 1158](#), 116th Congress (2019); Serve the People, Not the Swamp Act, [H.R. 765](#), 116th Congress (2019)

³² Serve the People, Not the Swamp Act, [H.R. 753](#), 117th Congress (2021).

³³ Insider Trading Prohibition Act, [H.R. 2534](#), 116th Congress (2019).

II. ETHICS LEGISLATION OF INTEREST TO SPECIFIC AGENCIES

A. ENACTED

The 116th Congress enacted several agency-specific ethics provisions. Notably, the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (NDAA) affected the agencies discussed below.³⁴ Although this law was directed at particular agencies, the ethics-related issues in the following provisions may signal broader congressional concern.

§548(c) requires the Secretary of Veterans Affairs to consult with the Attorney General and the Director of the U.S. Office of Government Ethics to conduct a review of the rules and regulations governing the circumstances under which attorneys employed by the federal government can provide pro bono legal assistance to veterans.

§837 contains provisions requiring the Secretary of Defense to establish and maintain a list of critical national security technology that may require certain restrictions on current or former Department of Defense (DOD) employees, contractors, or subcontractors that contribute to such technology. Additionally, this section requires the Secretary to review existing authorities under which DOD employees may be subject to post-employment restrictions with foreign governments and with organizations subject to foreign ownership, control, or influence.

§1102 clarifies that DOD participants in public-private talent exchange programs may not use knowledge related to DOD acquisition or procurement for the benefit of a participating private-sector organization and prohibits private-sector participants from performing work that is considered inherently governmental. This section also directs the Secretary of Defense to implement a system to identify, mitigate, and manage any conflicts of interests that may arise as a result of an individual's participation in a public-private talent exchange.

§6214 requires the Secretary of the Treasury to convene a public-private team to examine strategies to increase cooperation between the public and private sectors to counter illicit finance.

Other provisions of the NDAA increased the number of Presidentially appointed, Senate-confirmed (PAS) advisory board members at an agency;³⁵ established a new PAS position and a new office within the Executive Office of the President;³⁶ and clarified the employment status of members of a specific advisory committee.³⁷

Other agency-specific legislation of note was also enacted during the 116th Congress. For example, legislation was enacted to exempt certain financial interests from conflict of interest

³⁴ National Defense Authorization Act for Fiscal Year 2021, [H.R. 6395](#), Pub. L. No. 116-283 (2021).

³⁵ *Id.* at §1299Q.

³⁶ *Id.* at §1752.

³⁷ *Id.* at §8604.

limitations for officials at the Government Publishing Office.³⁸ In addition, legislation was enacted to prohibit certain DOD officials from owning or trading stocks in certain companies.³⁹

B. CONSIDERED

Also noteworthy, the 116th Congress considered ethics legislation that would affect certain agencies. One such proposal would have required certain officials at the Federal Aviation Administration (FAA) to disclose certain financial interests in the aircraft-related industry and would have required such disclosures to be publicly posted on FAA’s website in “a de-identified form.”⁴⁰ Another proposed bill would have imposed a criminal penalty on certain White House officials and other officials for using their public office for private gain or for endorsing any product, service, or enterprise.⁴¹ Another agency-specific proposal sought to prohibit certain Department of Justice appointees from participating in particular matters in which the President or a relative or agent of the President is a party.⁴²

III. COMPILATION OF FEDERAL ETHICS LAWS

This Legal Advisory also reflects OGE’s determination that no statutory changes enacted during the 116th Congress require substantive revision of the “Compilation of Federal Ethics Laws.” However, to improve its usefulness, OGE has revised the Compilation to add the Foreign Agents Registration Act (FARA)⁴³ and to update the footnotes related to the civil monetary penalties. The newly published Compilation may be found on OGE’s website at: [OGE.gov/Compilation](https://oge.gov/Compilation).

CONCLUSION

OGE brings the actions of the 116th 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 117th 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.

³⁸ [H.R. 5277](#), Pub. L. No. 116-78 (2019).

³⁹ National Defense Authorization Act for Fiscal Year 2020, [S. 1790](#), Pub. L. No. 116-92 (2019) at §921.

⁴⁰ Aircraft Certification Reform and Accountability Act, [H.R. 8408](#), 116th Congress (2020) at §3(a)(6)(B).

⁴¹ Accountability for Government Officials Act of 2019, [H.R. 329](#), 116th Congress (2019).

⁴² Blocking Appointees from Refusing Recusal Act, [S. 3851](#), 116th Congress (2020).

⁴³ 22 U.S.C. §§ 611-621. OGE has added the Foreign Agents Registration Act (FARA) to the Compilation because the FARA is referenced in “Executive Order on Ethics Commitments by Executive Branch Personnel,” Exec. Order No. 13989 (Jan. 20, 2021).