



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

April 28, 2009  
DO-09-015

MEMORANDUM

TO: Designated Agency Ethics Officials

FROM: Robert I. Cusick  
Director

SUBJECT: Procedures and Required Evidence of Compliance for Ethics Agreements  
Made by PAS Nominees

As the leadership of their agencies, PAS officials (officials whose positions required the advice and consent of the Senate) have a particular responsibility to ensure that their actions are free from actual and apparent conflicts of interest. Prospectively setting out in an ethics agreement clear expectations of what a PAS official will do to stay conflicts-free protects the official and the executive branch and avoids the potential embarrassment that might result from miscommunications or misunderstandings. These benefits, however, depend on the PAS official honoring his or her commitments timely and completely.

This memorandum reiterates and clarifies previous OGE guidance regarding which commitments in an ethics agreement require evidence of compliance and what documentation OGE will accept as demonstrating compliance.

**Ethics Agreement Compliance Procedures**

The Ethics in Government Act expressly recognizes the need for nominees to address actual or apparent conflicts of interest by requiring individuals to provide written notice "of any action taken by the individual pursuant to that agreement." See 5 U.S.C. app. § 110(a). For ethics agreements of nominees to positions requiring the advice and consent of the Senate, evidence of any action taken to comply with the terms of such ethics agreements must be submitted by the designated agency ethics official (DAEO) who, upon receipt of the evidence, forwards the evidence to the Office of Government Ethics and to the Senate confirmation committee.

Once a nominee is confirmed, the individual generally has up to three months from the Senate confirmation date to submit documentation of compliance with an ethics agreement. See 5 CFR § 2634.802(b). OGE uses a standard of 90 calendar days to measure this deadline. All the necessary actions to comply with the terms of an ethics agreement must generally be completed within this 90-day period. To account for

collection and transmission delays of compliance documentation, agencies have three (3) business days from the compliance deadline to submit evidence to OGE that the nominee has complied within the 90-day time-frame.

Individuals may, under rare circumstances, obtain an extension of the 90-day compliance period from OGE. See 5 CFR § 2634.802. All extension requests must be made in writing and must be sent prior to the expiration of the original compliance period. Acceptable reasons for an extension would include a significant gap between the individual's confirmation and date of appointment, contractual provisions that prevent divestiture of an interest within the specified time period, and an oversight on the part of the agency or OGE.

Changes made to a nominee's ethics agreement, to include additional recusals, waivers, and divestitures, must be brought to the attention of OGE. Evidence of compliance with an updated ethics agreement must be submitted to OGE using the identified procedures included in this DAEOgram. See 5 CFR §§ 2634.803 and 2634.804.

Individuals who have not submitted evidence of compliance to their DAEOs by the compliance deadline and have not requested an extension will be referred by OGE to the White House Counsel's office.

### **Evidence of Compliance Requirements**

With certain exceptions, all commitments to take specific actions shall be accompanied by proof that such actions were taken. The type of evidence required varies according to the promised action. If an agency ethics official believes that a potential conflict or appearance concern is too remote to require written evidence of compliance, the ethics official should raise that issue with the OGE reviewer of the nominee report prior to its certification.

### **Recusals**

Commitments requiring evidence: Written compliance documentation must be provided for each recusal included in the ethics agreement as a remedy for potential conflicts under 18 U.S.C. § 208. Compliance documentation is also required for all recusals made in relation to 5 CFR § 2635.503 and all "substantive" recusals made to address possible appearance concerns arising under 5 CFR § 2635.502.

Type of evidence required: A screening arrangement identifying the matters from which the appointee will be recused, the person(s) who will screen matters from the appointee, and the person(s) to whom such matters will be referred for action. See DAEOgram DO-04-012 for a sample screening arrangement.

OGE will also accept

(1) language in the ethics agreement describing the necessary elements of a screening arrangement in detail, or

(2) a memorandum to one's immediate supervisors and subordinates that identifies the specific recusals and requests that matters that might implicate these recusals be handled by a designee or referred to the agency ethics official, or

(3) a memorandum to one's immediate supervisors and subordinates that circulates the actual ethics agreement and requests that matters that might implicate these recusals be handled by a designee or referred to the agency ethics official.

Alternatives 2 and 3 may prove particularly attractive for PAS officials who do not have an assistant to act as gatekeeper or for those who would have difficulty identifying a specific designee. Such a memorandum is a more effective tool than mere self-screening because it publicizes the potential areas of concern and sets clear expectations in terms of how the individual's ethics commitments will affect the workflow of the office.

## **Resignation**

Commitments requiring evidence: Individuals do not need to provide compliance documentation for resignations from a Federal Government position or from a full-time, outside position. In all other cases, evidence of compliance is required.

Type of evidence required: A written statement that the resignation has occurred, including the resignation date, or a copy of the letter of resignation. OGE will accept a written statement from the agency ethics official; however, the official's statement must be based on written notification from the individual.

## **Divestiture**

Commitments requiring evidence: All divestitures.

Type of evidence required: A written statement that the item has been sold, along with the sale date, or a copy of the sale document. OGE will accept a written statement from the agency ethics official; however, the official's statement must be based on written notification from the individual.

- Even if a Certificate of Divestiture is requested from OGE, the divestiture must be completed within 90 days of the date of confirmation.

## **Waiver**

Commitments requiring evidence: Evidence is not required when a waiver is listed as a possible future remedy. In all other instances, OGE must receive evidence that the waiver was granted.

Type of evidence required: A copy of any waivers issued pursuant to 18 U.S.C. § 208(b) and signed by the appropriate official. The waiver should comply with the requirements of subpart C of 5 CFR § 2640.

## **Qualified Trust**

Commitments requiring evidence: All.

Type of evidence required: All information required by subpart D of 5 CFR § 2634 must be submitted for OGE's certification of any qualified blind trust or qualified diversified trust.

## **Questions about the Compliance Process**

If you have any questions about the compliance process, please contact Kim Kaplan at 202-482-9309 or Leigh Snyder at 202-482-4319. Questions concerning the content of any proposed ethics agreement should be addressed to the OGE reviewer assigned to a given nominee report.