

Frequently Asked Questions for Nominees

Prepared by the Ethics Division

1. How do I avoid ethics problems?

There are hundreds of pages of ethics laws and regulations, many of which are not intuitive. You are responsible for complying with them. But you don't have to go it alone. We, the Ethics Division of the Office of the General Counsel (OGC), are here to help you avoid problems. We do this by assisting you in completing your financial disclosure Report prior to Senate confirmation and in reviewing that Report and subsequent annual Reports to identify potential conflicts of interest; meeting with you when you first come on board and at least annually for an ethics briefing; and providing ethics advice to you on a continuing basis.

We know you will be very busy, and we don't expect you to become ethics experts. Our briefings are designed to give you some of the basics and to help you identify ethics issues as they arise so that you can raise them with us. Our central message is to contact us with your questions; no ethics question is too simple or too small. We can only be effective in helping you to avoid problems if you contact us with your questions before you take an action that may be subject to an ethics law. You are very welcome to contact us directly and informally. In addition, because your attention will appropriately be focused on program or management matters, it is a good idea for you to designate your confidential assistant or another aide who may be involved in your scheduling and planning to help protect you by spotting these issues and raising them on your behalf with us.

We put a premium on giving you prompt advice on as informal a basis as you would like. Our policy also is to avoid being "cold lawyers" who look for ways to say, "No." Rather, we try to be sensitive to the Department's programmatic and management needs -- and to your personal needs -- in giving ethics advice. There certainly are times when we have to say, "No," but in these instances, we try to look for alternatives that meet the Department's and your needs.

The work of the Ethics Division is overseen by Steven Y. Winnick, who serves as the Department's Designated Agency Ethics Official and as the career Deputy General Counsel within OGC. The Division is directly supervised by Joan Bardee, the Assistant General Counsel for Ethics.

2. Why do I have to complete so many different forms that ask for essentially the same information?

This duplicative burden is a real problem. In fact, Congress recently passed legislation that requires a study of the problem. However, until such time as this matter is resolved, all nominees must complete a variety of similar forms in order to get through the process. The White House requires certain forms, including the paperwork for the FBI

background check. In addition, the Senate has its own questionnaire for nominees to complete. Finally, the Ethics in Government Act requires nominees to Senate-confirmed positions to complete a Public Financial Disclosure Report. Our office is available to assist you in completing your Report and to review your Senate questionnaire to ensure that it is consistent with your financial disclosure Report.

3. How does the nomination process work? What happens to my Public Financial Disclosure Report?

Every administration handles nominations somewhat differently. Based on past experience, however, you probably can expect the following. By the time you are reading this, you have already submitted your financial disclosure Report to the White House or to the transition team. While that Report is being reviewed, the FBI is working on your background check. You will not be nominated until the background check is completed and the White House Counsel's office is satisfied with your financial disclosure Report.

The purpose of the financial disclosure Report is to determine whether your assets, sources of income, prior employment, spousal employment, outside positions or other information required by the Report pose a bar to your nomination, or whether steps need to be taken to avoid a conflict of interest. The Office of the White House Counsel, the Ethics Division within the Office of the General Counsel, and the Office of Government Ethics (OGE) will each review this Report BEFORE you are actually nominated. All three offices have to be satisfied that -- (1) your Report is complete and (2) all ethics issues have been resolved before you are nominated. During the course of the review of your Report, both the White House Counsel's office and OGE will be contacting the Ethics Division with questions about your Report. As a result, it is likely that the Ethics Division will be asking you additional questions and discussing with you the manner in which any conflicts will be resolved. Once your Report is complete and all ethics issues have been resolved, our office notifies the White House that we are satisfied with your Report and what the terms of your "ethics agreement" will be. We work with OGE on this to make sure it agrees with our analysis before you are nominated. Resolving ethics matters before you are nominated expedites the confirmation process.

4. What is the Office of Government Ethics?

OGE is an independent Federal office in the Executive Branch. It is not part of the Department of Education or the White House. It is responsible for developing and overseeing implementation of the ethics regulations applicable to Federal employees and for clearing and transmitting to the Senate your financial disclosure Report after we clear it.

5. What is an ethics agreement?

Almost all nominees have sources of income or assets that pose an actual or apparent conflict of interest. An ethics agreement is a written document that specifies the steps

that the nominee must take within 90 days of confirmation to resolve these matters. For example, a nominee on a leave of absence from a tenured position with a university will have to agree not to participate in matters at the Department that involve that university. In addition, spousal employment and stock holdings often pose actual or apparent conflicts that require the nominee to disqualify him- or herself from particular matters. It may be necessary to sell stock that poses a conflict of interest. In addition, nominees generally must resign their board memberships and other offices in non-Federal organizations upon assuming their position. These requirements also are addressed in the ethics agreement. Our office drafts the ethics agreement for your review and approval. We will work with you to ensure that you comply with your ethics agreement. A sample ethics agreement is attached.

6. How will I go about disqualifying myself from working on an issue at the Department?

Once you are on board, our office will prepare a written disqualification memorandum for your signature. The memorandum will state those matters from which you are disqualified, and will indicate to whom these matters should be directed. A sample disqualification memorandum is attached so you can see how this works. However, as a practical matter, disqualification is effected by not working on the matter. We will discuss this, and other ethics issues, with you during your initial ethics briefing.

7. How and WHEN will I find out when I have been nominated?

Every administration handles this differently. The amount of time between the completion of your forms and your actual nomination varies greatly. It also has sometimes happened that a nominee has not been notified by the White House when his/her nomination is transmitted to the Senate. Our office will let you know as soon as we hear that you have been formally nominated.

8. What happens after I've been nominated?

As soon as your nomination is transmitted to the Senate, our office will "certify" your financial disclosure Report and send it, along with your ethics agreement, to OGE. OGE will also certify it and send it, along with a cover letter, to the Senate committee considering your nomination. Your nomination will not be considered until the Senate receives this Report from OGE. In sum, your Report will go from the White House, to our Ethics Division, to OGE, and then to the Senate. It is possible that members of the press, or others, will ask for a copy. Once our office certifies your Report, it becomes publicly available. We will notify you if anyone asks for a copy.

Once the Senate receives your financial disclosure Report, the Senate will send you a separate financial questionnaire to complete. At present, the Senate Committee on Health, Education, Labor and Pensions has jurisdiction over Department nominees. This questionnaire will ask for much of the same information you have already provided. However, it does ask for more detailed financial information than the financial disclosure

Report. You have the option of providing 3 years of tax returns in lieu of completing the questionnaire's detailed financial form. This questionnaire also includes questions concerning your political contributions made in the past 5 years. There will also be some conflict of interest questions. Our office can provide suggested language for you to use in answering those questions. The Ethics Division should review your Senate questionnaire to ensure that it is consistent with your financial disclosure Report.

After you have submitted your questionnaire to the Senate committee, the committee will consider your nomination. It may hold a hearing. After the committee votes in favor of your nomination – “votes you out of committee” – the full Senate will vote on your confirmation. We have no way of knowing how long this process will take. After your confirmation, the Ethics Division will work with you to make sure that all of the paperwork necessary under your ethics agreement is finalized and sent to OGE within the 90-day deadline.

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