

UNITED STATES OFFICE OF
GOVERNMENT ETHICS



January 6, 2017

The Honorable Charles E. Schumer
Minority Leader
United States Senate
322 Hart Senate Office Building
Washington, DC 20510

The Honorable Elizabeth Warren
United States Senator
317 Hart Senate Office Building
Washington, DC 20510

Dear Senators Schumer and Warren:

I write in response to your letter dated January 5, 2017, requesting information about the work of the U.S. Office of Government Ethics (OGE) to implement the Ethics in Government Act in connection with the individuals whom the President-elect has announced he intends to nominate.¹ This response addresses the issues your letter raises.

As OGE's Director, the announced hearing schedule for several nominees who have not completed the ethics review process is of great concern to me. This schedule has created undue pressure on OGE's staff and agency ethics officials to rush through these important reviews. More significantly, it has left some of the nominees with potentially unknown or unresolved ethics issues shortly before their scheduled hearings. I am not aware of any occasion in the four decades since OGE was established when the Senate held a confirmation hearing before the nominee had completed the ethics review process.

The Ethics in Government Act establishes a requirement that covered nominees to Presidentially-appointed, Senate-confirmed positions must obtain OGE's certification of their financial disclosure reports.² That this certification must be obtained prior to the hearing is evidenced by the additional requirement that nominees must "make current" their financial disclosure reports as to earned income by the date of the hearing.³ Further evidence is found in the requirement that, "The [OGE] Director shall forward a copy of the report of each nominee to

¹ These individuals are not nominees because the President-elect cannot nominate them until he assumes the office of the President on January 20, 2017, but this letter refers to them as "nominees" for the sake of convenience.

² See 5 C.F.R. §§101(b), 103(c), 106(b).

³ See 5 C.F.R. §§101(b).

the congressional committee considering the nomination.”⁴ This timing is significant because the need for OGE’s certification prior to the hearing creates the leverage necessary to compel nominees to disclose their assets fully and resolve all conflicts of interest.

The nominee financial disclosure process is complex. It involves assisting nominees to make complete and accurate disclosure of complex financial holdings and arrangements, identifying conflicts of interest uncovered through reviews of nominees’ disclosures, and developing comprehensive written ethics agreements that resolve all identified conflicts of interest. This work is labor-intensive. As a result, the process is necessarily measured in weeks, not days. OGE’s staff and agency ethics officials must have adequate opportunities to ensure that the Senate receives a complete accounting of each nominee’s relevant financial interests and an explanation of the steps the nominee will take to resolve conflicts of interest. To provide a window into the complexity of this work, I have enclosed non-exhaustive checklists that we have developed for financial disclosure reviews, OGE’s Nominee Ethics Guide, the Appendix to the Nominee Ethics Guide, and a copy of OGE’s Ethics Agreement Guide.⁵

This normally intensive process has been further complicated by both the Senate hearing schedule and the announcement of nominees prior to consulting OGE for an evaluation of any ethics issues. In the past, the ethics work was fully completed prior to the announcement of nominees in the overwhelming majority of cases.⁶ Under this traditional process, the names of nominees were not made public until OGE “precleared” them and, therefore, there was no opportunity for undue influence on the independent ethics review process.

During this Presidential transition, not all of the nominees presently scheduled for hearings have completed the ethics review process. In fact, OGE has not received even initial draft financial disclosure reports for some of the nominees scheduled for hearings. Despite the challenges current circumstances present, OGE’s staff and agency ethics officials have been working diligently in an effort to deliver expedited reviews that meet the Senate’s schedule. As a measure of our success, I note that we have precleared 58% of the financial disclosure reports that we have received from the President-elect’s Transition Team. By the same date eight years ago, we had precleared 21% of the financial disclosure reports that we had received from the transition team.

We remain committed to completing the ethics work on each nominee as quickly as possible without compromising the integrity of our ethics work or the nominee’s future activities on behalf the American public. I am optimistic that we will be able to continue expediting our ethics reviews of the President-elect’s nominees to meet reasonable timeframes without sacrificing quality. It would, however, be cause for alarm if the Senate were to go forward with

⁴ 5 U.S.C. app. § 103(b).

⁵ All of these materials are available on the Presidential transition page of OGE’s website at the following address: <https://www.oge.gov/web/oge.nsf/Resources/PRESIDENTIAL+TRANSITION>.

⁶ I have enclosed OGE’s Transition Guide for more information on the process. A copy of this document is also available on the Presidential transition page of OGE’s website.

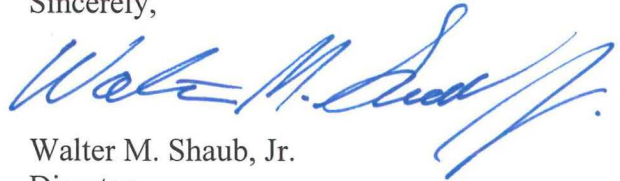
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hearings on nominees whose reports OGE has not certified. For as long as I remain Director, OGE's staff and agency ethics officials will not succumb to pressure to cut corners and ignore conflicts of interest.

Sincerely,

A handwritten signature in blue ink, appearing to read "Walter M. Shaub, Jr.", written in a cursive style.

Walter M. Shaub, Jr.
Director

Enclosures

Cc: The Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, DC 20510