

UNITED STATES OFFICE OF
GOVERNMENT ETHICS



January 9, 2017

The Honorable Patty Murray
Ranking Member
U.S. Senate Committee on Health, Education,
Labor and Pensions
United States Senate
428 Senate Dirksen Office Building
Washington, DC 20510

Dear Ranking Member Murray:

This responds to your letter of January 7, 2017, requesting specific information regarding the ethics review of a named individual who has been announced as an intended nominee of the President-elect. The U.S. Office of Government Ethics (OGE) generally avoids providing information about individual nominees, but believes that the information regarding the nominee financial disclosure process provided below is responsive to your request.

It is necessary to avoid formally sharing information regarding OGE's ongoing work on individual nominations whenever releasing such information could undermine the purposes of the nominee ethics review process by slowing the effective review the financial disclosure report and completion of an ethics agreement to resolve identified conflicts of interest, potentially leading to the release of incomplete or incorrect information, or harming individual nominees and the overall recruitment for positions the President needs to fill in order to carry out his constitutional responsibilities. OGE adheres to this nondisclosure practice as closely as possible, particularly if other information may satisfy the interests underlying the request.

In this instance, the additional information about OGE's work and the nomination process provided below may address the concerns underlying your request. As explained below, if OGE has not transmitted a certified financial disclosure report and an ethics agreement to the Senate, the ethics work on a particular nomination has not been completed. Until all of the ethics work is completed, OGE cannot provide any assurance that conflicts of interest have been identified and resolved. Our responses to your specific questions below provide an explanation of the steps necessary to complete this important work.

QUESTIONS 1, 4 AND 5

A nominee submits a draft public financial disclosure report (OGE Form 278e) through OGE's electronic filing system (*Integrity*). Ethics officials review the draft financial disclosure report, ask follow-up questions, and provide instructions for revising

the report. Multiple rounds of questions and revisions are almost always needed before a report can be finalized to meet the complex disclosure requirements of the Ethics in Government Act. Once the report is complete, as a result of these revisions, OGE and agency ethics officials analyze the information contained in the report to identify potential conflicts of interest with the duties of the position for which the nominee is being nominated. OGE and agency ethics officials then work together to prepare an ethics agreement outlining steps the nominee must take to avoid conflicts.

Until OGE has precleared a report, OGE does not have all necessary information from a nominee and has not resolved all potential conflicts of interest. Often, there are delays while a nominee searches for information that OGE has requested, while a nominee enters the information into the draft financial disclosure report, while a nominee considers his or her willingness to take the steps necessary to resolve conflicts of interest, or while a nominee considers the ethics agreement that OGE and agency ethics officials have drafted. OGE's staff and agency ethics officials typically complete their work quickly. The two primary determinants in the timing of this process are the complexity of the nominee's holdings and the nominee's level of responsiveness to questions from agency ethics officials. However, the requirement to obtain OGE's certification prior to a hearing invariably provides the necessary leverage to secure the cooperation and legal compliance from nominees. Of course, that leverage is greatly diminished if a hearing is held prior to OGE's preclearance and subsequent certification.¹

Once complete, OGE preclears (that is, tentatively approves) the nominee's report and ethics agreement. The nominee then finalizes the report and OGE is able to certify it. Shortly thereafter, the report is transmitted to the Senate.

QUESTION 2

Nominees submit their initial draft reports through OGE's electronic filing system, *Integrity*. The White House—or, during a Presidential transition, the transition team—receives the report and holds it until ready to release the report to OGE and the agency. The length of time that the White House or transition team holds the report before releasing it varies widely.

The date of initial submission of the draft is recorded as the date of "filing" on the face of the report. However, filing is actually a two-step process. *Integrity* does not allow the nominee to complete the process of "filing" until OGE has precleared (tentatively approved) the report. After OGE has precleared the report, the nominee must log back into the system and formally file the report by certifying that the information in the finalized report is correct. OGE then certifies the report and sends the report to the Senate. Therefore, until OGE has precleared a nominee's financial disclosure report, the

¹ In a letter last week, I indicated that I was unaware of any such thing ever having happened. Subsequent news reports have brought to my attention two instances, both of which occurred 16 years ago during the unusual circumstance of a Presidential transition that was delayed several weeks due to litigation. Even if there were any other instances, the fact that there may have been extremely rare breaches of the ethics process in the past is not a justification for a subsequent breach. (See <http://www.politico.com/f/?id=00000159-70db-d0f6-a75d-ffffb2ae0002>.)

nominee cannot comply with the legal requirement under 5 U.S.C. app. § 101(b)(2) to “file” the required report prior to a hearing, for the simple reason that the electronic filing system does not permit the nominee to complete the two-step process of “filing” that report until the report has been precleared.

QUESTION 3

The commitments that nominees make in their ethics agreements ensure that they will be able to carry out their duties as Presidential appointees. The ethics agreement outlines the specific steps a nominee will take to avoid conflicts of interest identified in his or her financial disclosure report. OGE and agency ethics officials draft each ethics agreement using standardized language from OGE’s ethics agreement guide, which is tailored to the nominee’s unique circumstances. The nominee must agree to take the steps outlined in the agreement to resolve his or her conflicts of interest; for example, resignation of positions, divestiture of holdings, or recusal. When OGE is satisfied that the report is complete and the ethics agreement has resolved all ethics issues, OGE preclears the report, the nominee finalizes it, and OGE is then able to certify it. Shortly thereafter, the report is transmitted to the Senate.

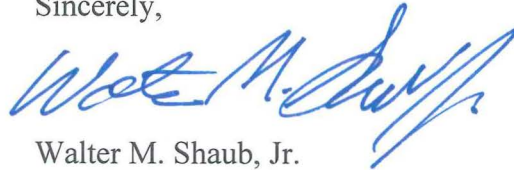
QUESTION 6

It is impossible to predict how long the process will take for any individual nominee because OGE is dependent on the nominee to provide needed information, respond to questions, and accept the terms of an ethics agreement. Many factors affect the timing of this process, including the responsiveness of the nominee. Another factor is the complexity and extent of the nominee’s financial holdings and arrangements. It usually takes even the most responsive nominees time to gather the information they are required to produce, particularly if they are wealthy. Multiple rounds of questions and revisions are usually needed before a report can be finalized because the financial disclosure requirements in the Ethics in Government Act are quite complex. Some nominees also find it difficult to untangle their complex financial investments and employment arrangements quickly, especially if they wish to do so without incurring otherwise avoidable financial losses. For these reasons, the financial disclosure vetting process for a potential nominee can take weeks and, in the case of extremely wealthy individuals, sometimes months. Through focused effort, OGE’s and agency ethics officials help nominees to complete their work on these reports as quickly as possible without sacrificing quality.

I hope you have found the information provided regarding the nominee financial disclosure process helpful. I also hope this response provides clarity about the significance of the Senate not having received a certified financial disclosure report and an ethics agreement from

OGE prior to holding a hearing on a nominee. If you require more detailed information about this specific named individual, the President-elect's transition team may be able to provide it.

Sincerely,

A handwritten signature in blue ink, appearing to read "Walter M. Shaub, Jr.", with a stylized flourish at the end.

Walter M. Shaub, Jr.
Director

cc: The Honorable Lamar Alexander
Chairman