



September 12, 2017

The Honorable David J. Apol
Acting Director and General Counsel
U.S. Office of Government Ethics
1201 New York Avenue, NW, Suite 500
Washington, DC 20005

Via Email: ContactOGE@oge.gov

Dear Acting Director Apol:

The Project On Government Oversight (POGO) shares the Office of Government Ethics' (OGE) vision "to achieve a high level of public confidence in the integrity of executive branch programs and operations." Since 1981, POGO has worked as a nonpartisan independent watchdog that champions good government reforms. We investigate corruption, misconduct, and conflicts of interest in order to achieve a more effective, accountable, open, and ethical federal government. We urge OGE, in its role as the head of all executive branch ethics programs, to require more comprehensive and detailed ethics agreements for executive agency appointees.

In 1993, within hours of being sworn into office, President Clinton signed Executive Order 12834, which established ethics commitments for executive branch appointees.¹ Presidents Obama and Trump have followed suit, both signing ethics pledge executive orders within days of taking office.² Presidents Obama and Trump went even further than President Clinton, creating a two-year ban on participating in particular matters involving former employers and clients, and a two-year ban on participating in matters on which they lobbied as registered lobbyists.³

In keeping with OGE's mission to provide leadership and oversight of executive branch ethics programs, the agency has provided the public with access to ethics agreements submitted by appointees or nominees to senior level positions.⁴ Those agreements describe the steps that the senior official will take to avoid any actual or apparent conflicts of interest, including resigning from private sector positions, divesting assets, and recusing themselves from certain government activities.

¹ Executive Order 12834, January 20, 1993. <https://www.archives.gov/files/federal-register/executive-orders/pdf/12834.pdf> (Downloaded August 30, 2017)

² Executive Order 13490, January 21, 2009. <https://www.gpo.gov/fdsys/pkg/FR-2009-01-26/pdf/E9-1719.pdf>; Executive Order 13770, January 28, 2017. <https://www.gpo.gov/fdsys/pkg/FR-2017-02-03/pdf/2017-02450.pdf> (All downloaded August 30, 2017)

³ Executive Order 13490, Sections 1.2 and 1.3; Executive Order 13770, Sections 1.6 and 1.7.

⁴ Office of Government Ethics, *Public Financial Disclosure Reports*.

<https://extapps2.oge.gov/201/Presiden.nsf/PAS%20Index?OpenView> (Downloaded September 11, 2017)

However, ethics agreements only cite the one-year recusal period established in regulation.⁵ Since the beginning of the Obama administration and continuing today, the ethics pledge is only incorporated by reference into each appointee's ethics agreement,⁶ which means there is no express citation of any two-year recusal periods. Practically speaking, that might make sense in instances when ethics agreements were completed for nominees who were vetted by OGE prior to the signing of the ethics pledge Executive Order on January 28, 2017, but it makes no sense for those vetted after the order was issued.

As a result of this omission, the appointee lacks a clear written record of all ethics requirements. A more comprehensive ethics agreement would correct this, and would improve enforcement by designated agency ethics officials and enhance public access to all restrictions that apply to senior government employees.

For example, Mark Esper, the President's nominee for Secretary of the Army and a Raytheon lobbyist⁷ who was paid over \$1.5 million in salary and bonuses by the company in 2014,⁸ lists only a one-year recusal period in which he "will not participate personally and substantially in any particular matter involving specific parties in which I know Raytheon is a party or represents a party, unless I am first authorized to participate."⁹ However, according to Sections 6 and 7 of President Trump's ethics pledge, Mr. Esper would have a two-year ban on participating "in any particular matter involving" Raytheon, and, because he was a registered lobbyist for the company, a two-year ban on participating "in any particular matter on which [he] lobbied within the 2 years before the date of my appointment or...in the specific issue area in which that particular matter falls." The failure to specify those extended restrictions could potentially confuse Mr. Esper, Army officials, the public, and former employers or clients who want to approach Mr. Esper.

POGO urges OGE to include the restrictions under Executive Order 13770 in ethics agreements for covered appointees. In addition, POGO urges OGE to not only include ethics restrictions that are required pursuant to law, regulation, and executive order, but also require appointees to

⁵ 5 C.F.R. § 2635.502(b)(1)(iv) (providing a one-year recusal period for a government employee who "served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee" with respect to a specific party).

⁶ "I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order no. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement." Ethics Agreement of Mark T. Esper, July 26, 2017, p. 2.

[https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/26BF12099203D918852581710026F5E2/\\$FILE/Esper,%20Mark%20T.%20%20finalEA.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/26BF12099203D918852581710026F5E2/$FILE/Esper,%20Mark%20T.%20%20finalEA.pdf) (Downloaded August 30, 2017) (Hereinafter Esper Agreement)

⁷ Mark T. Esper LinkedIn Profile. <https://www.linkedin.com/in/mark-t-esper-11b4671> (Downloaded September 11, 2017); 2017 2nd quarter lobbying report of Raytheon Company.

<https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=DDC38175-4525-4476-8804-1C96CF443098&filingTypeID=60> (Downloaded August 30, 2017)

⁸ March 2014 Executive Branch Personnel Public Financial Disclosure Report of Mark Thomas Esper, p. 2.

[https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/6FAEF3D8802381A3852581710026F204/\\$FILE/Esper,%20Mark%20T.%20%20final278.pdf](https://extapps2.oge.gov/201/Presiden.nsf/PAS+Index/6FAEF3D8802381A3852581710026F204/$FILE/Esper,%20Mark%20T.%20%20final278.pdf) (Downloaded August 30, 2017)

⁹ Esper Agreement, p. 1.

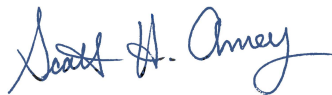
amend existing ethics agreements with any additional ethics commitments that have been separately required or negotiated as part of the Senate's confirmation process.¹⁰

Appointees serve in positions vested with the public's trust. They are obligated or personally committed to binding ethics restrictions that are enforceable by law. POGO urges OGE to work with appointees and agencies to ensure that appointee ethics agreements are comprehensive, detailing all existing applicable ethics and conflict of interest restrictions. The omission of express restrictions listed in the President's ethics pledge or Senate commitments might be necessary in certain instances, but in most it could cause confusion and lead to ethics violations, thereby weakening "the public's confidence that the Government's business is conducted with impartiality and integrity."¹¹

As part of OGE's oversight efforts, due diligence and completeness are necessary to ensure the integrity of government decisions. With transparency comes accountability, and the public deserves a government that operates in the best interest of the whole country and not in the best interest of an appointee's former employers or clients.

We appreciate your consideration of this matter and your commitment to improving oversight of executive branch ethics programs. If you have any questions or would like to discuss this matter further, please contact me at 202-347-1122.

Sincerely,



Scott H. Amey
General Counsel

¹⁰ For instance, the Senate Committee on Armed Services has a practice of requiring that Defense Department nominees divest of companies identified on DoD's contractors list. *See also* Letter from William J. Lynn, III, to Senator John McCain, Ranking Member, Senate Committee on Armed Services, January 30, 2009. <http://pogoarchives.org/m/gc/lynn-letter-20090130.pdf>

¹¹ 5 C.F.R. § 2600.101(a).