**From:** Fugh, Justina
**To:** Garbow, Avi
**Subject:** ethics advice regarding your participation in Puget Soundkeeper Alliance v. EPA
**Date:** Tuesday, March 02, 2021 4:43:00 PM

---

Avi,

I have been asked by the Water Law Office whether you may participate personally and substantially in your EPA role in Puget Soundkeeper Alliance v. EPA. As an SGE, you are permitted to remain an employee of Patagonia simultaneous with your employment at EPA. I understand that your employer, Patagonia, moved to intervene in this case, and you were identified pro hac vice. But that motion has yet to be acted upon by the court, and your name has since been withdrawn. Patagonia is therefore not a party to the case and you have not worked personally and substantially in this specific party matter. Therefore, for the purposes of federal ethics rules, you may participate in this case on behalf of EPA. I will let the WLO know, but you should think through whether you actually want or should do so.

If you participate in this case then, after you leave, you will be bound by 18 U.S.C. § 207(a)(1) and precluded from representing another back to the United States (not just EPA) in that same case. You could not be on a motion to intervene later, for example. But also be mindful about your bar rules. Should you participate in this case, you must adhere to rule 1.6 that requires you to continue to protect the client confidentiality of Patagonia. DC Bar rule 1.11 will apply to you after your SGE service is over, and it is quite restrictive. As a former government official working on this case, you will be prohibited from working on it again for Patagonia and will not even be able to engage in "behind the scenes" consultation on it. The DC bar rule will also prevent you from working any specific party matter that is the "same as, or substantially related to" this same matter. That phrase is more expansive than the federal ethics rules, so I can't interpret what it means. It could possibly preclude you from working on behalf of Patagonia on other WOTUS cases, but I don't know since I don't give bar advice. You should consult bar counsel and check out comment 4 to DC Bar rule 1.11.

Bottom line is that I foresee no federal ethics reasons to prevent you from working on Puget Soundkeeper Alliance v. EPA, but you should consider what you want to be able to do when you return to Patagonia.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

| | |
|---|---|
| **From:** | Fugh, Justina |
| **To:** | avi garbow |
| **Subject:** | financial disclosure report |
| **Date:** | Thursday, January 21, 2021 1:12:00 PM |
| **Attachments:** | 3110-48 for to complete.pdf |

---

Hi Avi,

As an SGE receiving compensation, you have to complete a financial disclosure report. But, this time, given your pay level, you will NOT file the public financial disclosure report through INTEGRITY. Instead, attached is the report we use for SGEs, which is a confidential report so will not be disclosed to the public. You'll see also that there is less information that needs to be reported, so my hope is that it will easier for you to complete. This report is often used for FACA appointments, so if there's something that does not apply to you, enter NONE or NO, not "N/A." We hate "N/A."

I believe that the form I sent you is a fill and print pdf so you should be able to just pdf it back to me. I'm reachable if you want to talk further about this form or your ethics obligations.

Cheers,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

OMB Control NO. 2090-0029
Approval Expires 06/30/2021

# Confidential Financial Disclosure Form for Environmental Protection Agency Special Government Employees (EPA Form 3110-48)

**A. Why You Must File**

Public service is a public trust. In order to uphold that trust, the Government must obtain certain confidential financial information to ensure that there are no conflicts between your public service and your private interests.

**B. Who Must File**

This form is used by the Agency for Special Government Employees (SGEs) as defined under 18 U.S.C. 202 and candidates to be SGEs.

**C. Privacy Act Statement**

Title I of the Ethics in Government Act of 1978 (5 U.S.C. App.), Executive Order 12674 (as modified by Executive Order 12731), and 5 CFR Part 2634, Subpart I, of the Office of Government Ethics regulations require the reporting of this information. The primary use of the information on this form is for review by Government officials of your agency, to determine compliance with applicable Federal conflict of interest laws and regulations. Additional disclosures of the information on this report may be made: (1) to a Federal, State, or local law enforcement agency if the disclosing agency becomes aware of a violation or potential violation of law or regulation; (2) to a court or party in a court or Federal administrative proceeding if the Government is a party or in order to comply with a judge-issued subpoena; (3) to a source when necessary to obtain information relevant to a conflict of interest investigation or decision; (4) to the National Archives and Records Administration or the General Services Administration in records management inspections; (5) to the Office of Management and Budget during legislative coordination on private relief legislation; (6) to the Department of Justice or in certain legal proceedings when the disclosing agency, and employee of the disclosing agency, or the United States is a party to litigation or has an interest in the litigation and the use of such records is deemed relevant and necessary to the litigation; (7) to reviewing officials in a new office, department or agency when an employee transfers from one covered position to another, (8) to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record, and (9) to contractors and other non-Government employees working for the Federal Government to accomplish a function related to an OGE Government-wide system of records. This confidential report will not be disclosed to any requesting person unless authorized by law.

**D. Paperwork Burden Disclosure Notice**

The public reporting and recordkeeping burden for this collection of information is estimated to average one hour per response. Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (Mail Code 2822T), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460. Include the OMB control number in any correspondence. Do not send the completed form to that address; instead, send your completed form as directed by the Agency official who sent it to you.

**E. When to file**

Candidates and newly-appointed special Government employees must fully complete this form before performing any work for EPA. Subsequently, you must file a new form annually or as instructed by your agency ethics official. PLEASE NOTE: **It is your responsibility to notify the appropriate EPA ethics official of any changes to the information you provide in this form.**

**F. Where to file**

Send your report to the address specified by the Agency or by the Agency ethics official. You may use additional blank pages in any section if needed. Please note your name and supplemental page number on the continuation pages.

**Penalties**

Falsification of information or failure to file or report information required to be reported may subject you to disciplinary action by your employing agency or other authority. Knowing and willful falsification of information required to be reported may also subject you to criminal prosecution.

**G. What is a Special Government Employee (SGE)?**

The SGE category was created by Congress to employ individuals who provide important, but limited, service to the Government. These employees are subject to a limited set of conflict of interest requirements. SGEs provide temporary service to the Government (not to exceed 130 days during any period of 365 consecutive days with or without compensation). SGEs are often recruited because they provide outside expertise or perspectives that might be unavailable among an agency's regular employees. SGEs are generally used as advisory committee members, individual experts or consultants. However, some SGEs serve on Boards or Commissions and are brought on pursuant to applicable statute. (See 18 U.S.C. §202(a) for more information.)

**H. What is a conflict of interest?**

18 U.S.C. §208 prohibits all employees (including SGEs) from participating in any particular Government matter that will have a direct and predictable effect on their financial interests. It also prohibits employees from acting in Government matters that will affect the financial interests of others with whom they have certain relationships. These relationships are:

- Spouse
- Minor child
- General partner
- Organization in which the individual serves as officer, director, trustee, general partner or employee
- Person or organization with which the employee is negotiating or has an arrangement concerning prospective employment.

**I. What is a particular matter?**

The term "particular matter" includes deliberations, decisions, or actions that are focused upon the interests of specific persons or entities or an identifiable class of persons or entities. A particular matter does not extend to broad policy options or considerations directed toward the interest of a large and diverse group of people. A particular matter may involve specific parties (e.g., a contract, grant or case in litigation) or it may be a particular matter of general applicability that is focused on the interests of a discrete and identifiable class of persons (such as an industry).

**J. What is a direct and predictable effect?**

A particular matter will have a direct effect on a financial interest if there is a close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. However, a particular matter will not have a direct effect on a financial interest if the link is attenuated, or is contingent upon the occurrence of events that are speculative, or that are independent of, and unrelated to, the matter. Furthermore, a particular matter that has an effect on a financial interest only as a consequence of its effects on the general economy is also not considered to have a direct effect on a financial interest. A particular matter will have a "predictable" effect if there is a real (as opposed to speculative) possibility that the matter will affect a financial interest. It is not necessary to know the magnitude of the loss/gain, and the dollar amount is immaterial.

**K. What is an appearance of a loss of impartiality?**

5 C.F.R. Part 2635, Subpart E contains provisions intended to ensure that an employee takes appropriate steps to avoid an appearance of a loss of impartiality in the performance of his/her official duties. Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his/her household, or knows that a person with whom he/she has a covered relationship is or represents a party to such a matter, and where the person determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his/her impartiality in the matter, the employee should not participate in the matter unless he/she has informed the agency designee of the appearance of a problem and received authorization from the agency designee.

**SECTION 1: Identifying Information and Record of Agency Review**

**Your Name:**

| Last Name: | First Name: | Middle Initial: |
|---|---|---|
| | | |

**Your Certification:**

I certify that information I have provided on this form and all attachments is true, complete and correct to the best of my knowledge.

| Signature of Reporting Individual | Date: |
|---|---|
| | |

| Date Received by the Agency (for Agency use only): |
|---|

**Agency Review (for Agency use only):**

| | |
|---|---|
| Panel Name/Employing Office | |
| Intermediate Reviewer Signature, Date | |
| Final Reviewing Official Signature, Date | |
| Comments: | |

| | |
|---|---|
| Panel Name/Employing Office: | |
| Intermediate Reviewer Signature, Date | |
| Final Reviewing Official Signature, Date | |
| Comments: | |

| | |
|---|---|
| Panel Name/Employing Office: | |
| Intermediate Reviewer Signature, Date | |
| Final Reviewing Official Signature, Date | |
| Comments: | |

| | |
|---|---|
| Panel Name/Employing Office: | |
| Intermediate Reviewer Signature, Date | |
| Final Reviewing Official Signature, Date | |
| Comments: | |

**SECTION 2: Your Employment/Consulting/Volunteer Work**

Report any employment or consulting, whether or not for compensation, for you and/or your spouse for the last two years preceding the date of filing. Do not include any compensated expert testimony as these are reported in another part of this form. **Don't forget to include your current employer as well as your spouse's employer.** You may indicate (S) for employment of your spouse. You should report any of the following positions that you hold, whether or not for compensation: employee, officer, director, trustee, general partner, proprietor, representative/executor of any business, consulting firm, non-profit, labor organization, or educational institution. Also include any organization or person with whom you are negotiating or have an arrangement concerning prospective employment. You may exclude unpaid positions with any religious, social, fraternal or political entities, or those solely of an honorary nature, but you have to include any positions held with professional societies. You may add additional pages as necessary. **If you have NO employment at all, enter NONE below.**

| Organization (Name, City, State). If reporting consulting, Name of Project and Client. | Name of position and description of work. If you are employed by a consulting firm, indicate the firm's major practice areas, categories of principal clients, and the clients you or your spouse have dealt with directly or derived compensation from. If reporting independent consulting, provide a description and date(s) of the project. |
|---|---|
| **Example:** East-West University, Anywhere, KS | **Example:** Dean, School of Environmental Studies. |
| **Example:** ABC Corporation, Smallville, VA | **Example:** Consultant on toxicological effects of heavy metals in wastewater from company facilities. July 2007-July 2011. |
| | |
| | |
| | |
| | |
| | |
| | |

**Continuation of Section 2 (if needed). Otherwise, continue to Section 3**

| Organization (Name, City, State). If reporting consulting, Name of Project and Client. | Name of position and description of work. If you are employed by a consulting firm, indicate the firm's major practice areas, categories of principal clients, and the clients you or your spouse have dealt with directly or derived compensation from. If reporting independent consulting, provide a description and date(s) of the project. |
|---|---|
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |

**SECTION 3: Compensated Expert Testimony**

Report any expert testimony for you or your spouse for the last two years preceding the date of filing. You may indicate (S) for spouse. **If you have NO compensated expert testimony, enter "NONE" below.**

| Client Name, City, State | Description & Date of Testimony. Include citation if available. |
|---|---|
| **Example:** XYZ law firm, Anytown, CA | **Example:** Provided expert testimony for ABC corporation (plaintiff) on effects of heavy metals in wastewater from company facilities. ABC Corporation v. XYZ, Civil Action No. 07-1234, Superior Court of Anywhere, July, 2007. |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |

**SECTION 4: Research Support/Project Funding**

Report any source of research or project funding (e.g., grants, contracts, or other mechanism) that you or your spouse have received in the last two years preceding the date of filing from any source (including state, federal or local government, private sector companies, or non-profit organizations). You may indicate (S) for research support or project funding received for your spouse. Add any additional pages as necessary. **If you have NO research support or project funding, enter "NONE" below.**

| Funding Organization (Name, City, State) If EPA, include Office | Exact Title of Project. Include start and completion dates. Please also indicate whether funded through grant, cooperative agreement, or contract. If a grant, include whether awarded competitively or not. If an EPA grant include Project Officer and grant number. |
|---|---|
| **Example:** Foundation for a Cleaner Tomorrow, Washington, DC | **Example:** Competitive Grant: "Mitigation Technologies for Volatile Organic Compounds" July 2007-July 2011. |
| **Example:** EPA, Office of Research and Development, Cincinnati, OH | **Example:** Competitive Grant: "Health Effects of Long-Term Exposure to Air Pollutants in Nonsmoking Virginia Residents" Project Officer: Jane Doe. EPA Grant Number R123456. March 2000 – Feb. 2003 |
| | |
| | |
| | |
| | |
| | |
| | |
| | |

**SECTION 5: Assets**

Report for yourself, spouse, and dependent children any assets currently held for investment that are valued at more than $1,000 or that generate more than $200 per year in income. You may distinguish any entry for a family member by preceding it with (S) for spouse, (DC) for dependent child, or (J) for jointly held. You may also add additional pages if needed. **If you have NO reportable assets, enter "NONE" below.**

**Types of assets to report include (but are not limited to):**

- Stocks, bonds, annuities, trust holdings, partnership interests, life insurance, investment real estate or a privately-held trade or business. For real estate or a privately held business, report the type and city/state of the entity.
- Sector mutual funds, which are funds invested in a particular industry, business, or location such as ABC Electronics Fund or XYZ Canada Fund. Please report the full name of the fund, not just the general family fund name.
- Individual holdings of retirement plans like 401(k)s or IRAs. List each holding except diversified mutual funds (see below)
- Holdings of investment life insurance or variable annuities
- Defined benefit pension plans (include name of employer)

**Do NOT report:**

- Certificates of deposit, savings accounts or checking accounts or any deposit in a bank, credit union or similar financial institution
- Term life insurance
- Money market mutual funds or money market accounts
- Your personal residence (unless you rent it out)
- Diversified mutual funds, such as ABC Equity Value Fund or XYZ Large Capital Fund
- U.S. Government securities (e.g., treasury bonds, treasury bills, treasury notes, U.S. savings bonds or any securities issued by U.S. Government agencies or Government sponsored corporations such as the Tennessee Valley Authority)
- Money owed to you, your spouse, or dependent child by a spouse, parent, sibling, or child
- Social Security Benefits
- Federal Government salary or retirement benefits
- Veterans' benefits
- Alimony
- Child Support
- Underlying holdings of a trust that was not created by you, your spouse or dependent children and for which you, your spouse and dependent children have no past or present knowledge of the holdings or sources of income

**Definitions:**

**Dependent Child:** A son, daughter, stepson or stepdaughter who is either: (1) unmarried and under age 21 and living in the filer's house, **or** (2) considered dependent under the U.S. tax code.

**Diversified Mutual Fund:** A mutual fund that does not have a policy of concentrating its investments in an industry, business, single country other than the United States or single state within the United States.

| Full Name of Asset. Include stock ticker symbol or other identifying information as appropriate. |
|---|
| **Example:** DEF Corporation (DEFC) |
| **Example:** JKL Energy Fund (JKLE) |
| |
| |

**Continuation of Section 5 (if needed). Otherwise, continue to Section 6.**

| |
|---|
| Full Name of Asset. Include stock ticker symbol or other identifying information as appropriate. |
| |
| |
| |
| |
| |
| |
| |
| |
| |
| |
| |
| |
| |
| |
| |
| |

**SECTION 6: Supplemental Ethics Questions for Special Government Employees Serving on Advisory Panel/Committees/Subcommittees**

If you are serving or are a candidate to serve on an advisory panel/committee/subcommittee, please answer the following questions:

| |
|---|
| Do you know of any reason that you might be unable to provide impartial advice on the matter to come before the panel/committee/subcommittee or any reason that your impartiality in the matter might be questioned? |
| Have you had any previous involvement with the review document(s) under consideration including authorship, collaboration with the authors, or previous peer review functions? If so, please identify and describe that involvement. |
| Have you served on previous advisory panels, committees or subcommittees that have addressed the topic under consideration? If so, please identify those activities. |
| Have you made any public statements (written or oral) on the issue that would indicate to an observer that you have taken a position on the issue under consideration? If so, please identify those statements. |

You may attach extra sheets if needed.

| | |
|---|---|
| **From:** | Fugh, Justina |
| **To:** | Garbow, Avi |
| **Subject:** | Hi -- question for you |
| **Date:** | Monday, March 01, 2021 9:02:00 PM |
| **Attachments:** | Puget Soundkeeper Patagonia motion to intervene.pdf |

---

Hi Avi,

I've been asked by the Water Law Office whether you may be consulted about certain WOTUS litigation. I understand that Patagonia had filed a motion to intervene in the Puget Soundkeeper Alliance v. EPA case, and your name is on it. Did the court grant the motion to intervene? In trying to sort out the ethics obligations, I may need to look at your bar rules. Are you admitted to practice in Washington State? In any other jurisdiction? Or were you not planning on participating in this case anyway?

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PUGET SOUNDKEEPER ALLIANCE, SIERRA CLUB, IDAHO CONSERVATION LEAGUE, and MI FAMILIA VOTA,
Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ANDREW WHEELER, in his official capacity as Administrator of the United States Environmental Protection Agency, UNITED STATES ARMY CORPS OF ENGINEERS, and R.D. JAMES, in his official capacity as Assistant Secretary of the Army for Civil Works,
Defendants.

No. 2:20-cv-00950-JCC

**PATAGONIA WORKS' MOTION TO INTERVENE**

**NOTE ON MOTION CALENDAR: FRIDAY, SEPTEMBER 4, 2020**



**CASCADIA LAW GROUP PLLC**
1201 Th rd Avenue, Su te 320 Seatt e, WA 98101
Te : (206) 292 6300 Fax: (206) 292 6301

## I. RELIEF REQUESTED

Pursuant to Federal Rule of Civil Procedure 24, Patagonia Works (Patagonia or the Company) moves the Court for an Order allowing it to intervene in this action because The Navigable Waters Protection Rule: Definition of "Waters of the United States," 85 Fed. Reg. 22250 (Apr. 21, 2020) ("Navigable Waters Rule") will harm Patagonia's mission to preserve our home planet, business interest in prospering rural communities, and financial interest in water-based recreation. Counsel representing Plaintiffs and counsel representing Defendants have each confirmed that they do not oppose Patagonia's intervention. Declaration of Stephen J. Tan in Support of Patagonia Works' Motion to Intervene (Tan Decl.) ¶ 2.

## II. ISSUES PRESENTED

This motion presents the following issues:

1. Whether Patagonia Works has a right to intervene in this action pursuant to Federal Rule of Civil Procedure 24(a).
2. Alternatively, whether Patagonia Works should be permitted to intervene pursuant to Federal Rule of Civil Procedure 24(b).

## III. STATEMENT OF FACTS

### A. The Clean Water Act and "Waters of the United States"

In 1972, Congress passed the Federal Water Pollution Control Act, known as the "Clean Water Act" (CWA or Act), Public Law 92-500 (1972), "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). Its stated goal in passing the Act was to eliminate the discharge of pollutants into "navigable waters" and to have waters of such quality that they would be both fishable and swimmable by the mid-1980s. 33 U.S.C. § 1251(a)(1),(2).

The CWA is "the nation's single most important statute for protecting America's clean water against pollution, degradation, and destruction." Clean Water Rule: Definition of



CASCADIA LAW GROUP PLLC
1201 Th rd Avenue, Su te 320 Seatt e, WA 98101
Te : (206) 292 6300 Fax: (206) 292 6301

"Waters of the United States," 80 Fed. Reg. 37053, 37055 (June 29, 2015) (Clean Water Rule). Its jurisdictional scope is "navigable waters," statutorily defined as "waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).[1]

The U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers ("the Defendant Agencies") have defined the scope of "waters of the United States" (WOTUS) through regulation. *See* 85 Fed. Reg. 22250 (April 21, 2020). WOTUS was historically defined to include traditional navigable waters, interstate waters, all other waters that could affect interstate or foreign commerce, impoundments of waters of the United States, tributaries, the territorial seas, and adjacent wetlands. *See, e.g.*, 44 Fed. Reg. 32854 (June 7, 1979); 51 Fed. Reg. 41250 (Nov. 13, 1986).

Since 1985, the Supreme Court has considered the breadth of "navigable waters"—of WOTUS—three times. On each occasion, it recognized the phrase includes more than waters traditionally understood to be navigable. In *United States v. Riverside Bayview Homes*, the Court considered whether a wetland abutting a navigable creek was protected under the CWA. 474 U.S. 121, 131, 133–34, 106 S. Ct. 455 (1985). Noting Congress defined the waters covered by the Act "broadly" and that the qualifier "navigable" had "limited import," the Court deferred to the Defendant Agencies' determination that wetlands adjacent to traditional navigable waters are "inseparably bound up" with and therefore also constitute WOTUS. *Id.* at 133, 135.

In *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (*SWANCC*), the Court considered whether ponds that had formed naturally after a sand and gravel pit was abandoned constituted WOTUS. 531 U.S. 159, 172, 121 S. Ct. 675 (2001). It concluded the use of these "nonnavigable, isolated, intrastate waters" by migrating birds was,

[1] The Act prohibits the discharge of (a) any pollutant and dredged or fill material into navigable waters without a permit under Sections 401, 402, and 404, *id.* at § 1341, 1342, 1344, and (b) oil and other hazardous substances into navigable waters under Section 311, *id.* at § 1321. The Act also requires states to establish water quality standards and pollutant limitations for navigable waters within their borders under Section 303. *Id.* at § 1321.



**CASCADIA LAW GROUP PLLC**
1201 Th rd Avenue, Su te 320 Seatt e, WA 98101
Te : (206) 292 6300 Fax: (206) 292 6301

standing alone, insufficient for the ponds to fall within the jurisdiction of the CWA. *Id*. at 172, 174.

Five years later, the Court decided *Rapanos v. United States*, 547 U.S. 715, 126 S. Ct. 2208 (2006), with a 4-1-4 split. The Court considered whether wetlands adjacent to tributaries of traditional navigable waters are WOTUS and "whether a manmade berm separating a wetland from the adjacent tributary makes a difference." *Id*. at 787. The plurality opinion, written by Justice Scalia, asserted that wetlands not abutting navigable waters are nonetheless covered under the Act if (1) the adjacent channel is a "relatively permanent, standing or continuously flowing bod[y] of water forming [a] geographic feature[] … described in ordinary parlance as [a] stream[], ocean[], river[], [or] lake[]" but not a "channel[] through which water flows intermittently or ephemerally, [nor a] channel[] that periodically provide[s] drainage for rainfall, and (2) "the wetland has a continuous surface connection with that water, making it difficult to determine where the 'water' ends and the 'wetland' begins." *Id*. at 739, 742 (internal punctuation omitted).

Justice Kennedy wrote a concurring opinion in which he asserted that "a water or wetland must possess a 'significant nexus' to waters that are or were navigable in fact or that could reasonably be so made" to fall within the jurisdiction of the CWA. *Id*. at 759, 767 (citing *SWANCC*, 531 U.S. at 167, 172). He explained that wetlands possess the requisite significant nexus if, in keeping with the CWA's purpose, they, "either alone or in combination with similarly situated [wet]lands in the region, significantly affect the chemical, physical, and biological integrity of other covered waters more readily understood as 'navigable.'" *Id*. at 780.

Every circuit court since *Rapanos* that has evaluated whether a waterbody is covered by the CWA has applied Justice Kennedy's more inclusive test.[2] This universally-recognized

[2] *See U.S. v. Robertson*, 875 F.3d 1281, 1292 (9th Cir. 2017) (concluding the CWA applied to waters that defendant filled without a permit under Justice Kennedy's test, which controlled because it narrowed federal authority less than Justice Scalia's test) , *vacated on other grounds,* 139 S. Ct. 1543, 203 L. Ed. 2d 708 (2019)



**CASCADIA LAW GROUP PLLC**
1201 Th rd Avenue, Su te 320 Seatt e, WA 98101
Te : (206) 292 6300 Fax: (206) 292 6301

interpretation of *Rapanos* was anticipated by Justice Stevens in his dissenting opinion in that case, in which he noted the CWA extends to all "cases in which *either* the plurality's or Justice Kennedy's test is satisfied" and predicted that, for most cases, "Justice Kennedy's approach will be controlling … because it treats more of the Nation's waters as within the [EPA's and the] Corps' jurisdiction[.]" *Id*. at 810 n. 14 (emphasis added).

In 2014, at the Supreme Court's suggestion, the Defendant Agencies formulated a new WOTUS rule informed by "the text of the CWA, Supreme Court decisions [in *Riverside Bayview Homes*, *SWANCC*, and *Rapanos*], the best available peer-reviewed science, public input, and the [Defendant A]gencies' technical expertise and experience in implementing the statute." 79 Fed. Reg. 22188, 37055 (April 21, 2014). After holding more than 400 meetings across the country, considering more than one million public comments, and evaluating more than 1,200 peer-reviewed publications to determine which waters have a significant nexus with traditional navigable waters because of the chemical, physical, or biological functions they provide to downstream waters, the Defendant Agencies published the Clean Water Rule. 80 Fed. Reg. 37053, 37057. The Clean Water Rule defined which waters are jurisdictional by rule, which require a case-specific analysis, and which categorically do not constitute WOTUS. *Id*. at 37057.[3]

---

(citing *N. Cal. River Watch v. City of Healdsburg*, 496 F.3d 993, 999–1000 (9th Cir. 2007) (concluding Kennedy's test controlled because "[h]is concurrence is the narrowest ground to which a majority of the Justices would assent if forced to choose in almost all cases")); *Orchard Hill Building v. U.S. Army Corps of Engineers*, 893 F.3d 1017, 1021 (7th Cir. 2018) ("Justice Anthony Kennedy's concurrence controls."); *Precon Development Corp., Inc. v. U.S. Army Corps of Engineers*, 633 F.3d 278, 288 (4th Cir. 2011); *U.S. v. Donovan*, 661 F.3d 174, 180 (3d Cir. 2011); *U.S. v. Bailey,* 571 F.3d 791, 799 (8th Cir. 2009); *U.S. v. Cundiff*, 555 F.3d 200, 210 (6th Cir. 2009); *Simsbury-Avon Preservation Club, Inc. v. Metacon Gun Club Inc.,* 575 F.3d 199, 216–17 (2d Cir. 2009); *U.S. v. Lucas*, 516 F.3d 316, 327 (5th Cir. 2008); *U.S. v. Robison*, 505 F.3d 1208, 1222 (11th Cir. 2007); *U.S. v. Johnso*n, 467 F.3d 56, 66 (1st Cir. 2006); *U.S. v. Gerke Excavating, Inc.,* 464 F.3d 723, 725 (7th Cir. 2006).

[3] The Clean Water Rule defined WOTUS as always including:

> (1) "traditional navigable waters, interstate waters, and territorial seas";
> (2) "tributaries," defined as "waters that are characterized by the presence of physical indicators of flow—bed and banks and ordinary high water mark—and that contribute flow directly or indirectly to a traditional navigable water, an interstate water, or the territorial seas" (*i.e.*, headwater streams and some ditches but not gullies, rills, or ephemeral streams that do not exhibit the features of a tributary); and
> (3) "adjacent waters" (including wetlands, ponds, lakes, oxbows, impoundments, and similar water features) defined as those "bordering, contiguous, or neighboring" other [WOTUS] and



**CASCADIA LAW GROUP PLLC**
1201 Th rd Avenue, Su te 320 Seatt e, WA 98101
Te : (206) 292 6300 Fax: (206) 292 6301

In 2015, the White House issued a press release citing the economic benefits of the Clean Water Rule. It recognized that "[m]ajor economic sectors—from manufacturing and energy production to agriculture, food service, tourism, and recreation—depend on clean water to function and flourish." McCarthy, Gina, and Jo-Ellen Darcy, "Reasons We Need the Clean Water Rule" (May 27, 2015) ("McCarthy Analysis"), https://obamawhitehouse.archives.gov/blog/2015/05/27/reasons-we-need-clean-water-rule (last visited Aug. 18, 2020).

On February 28, 2017, President Trump issued an Executive Order entitled, "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States Rule," which instructed the Defendant Agencies to rescind or revise the Clean Water Rule and to replace it with a rule relying on Justice Scalia's language from *Rapanos*. Exec. Ord. No. 13778, 82 Fed. Reg. 12497 (Feb. 28, 2017). After first publishing a rule postponing the Clean Water Rule's effective date to February 6, 2020, the Defendant Agencies repealed the Clean Water Rule entirely and restored the prior regulations until they could publish new language consistent with President Trump's Order. 83 Fed. Reg. 5200 (Feb. 6, 2018); "Definition of Waters of the U.S.: Recodification of Pre-Existing Rules," (the "Repeal Rule") 84 Fed. Reg. 56626 (Oct. 22, 2019).

On June 22, 2020, the Defendant Agencies' new replacement for the Clean Water Rule took effect. *See* 85 Fed. Reg. 22250. The Navigable Waters Rule limits WOTUS to "territorial seas and traditional navigable waters; perennial and intermittent tributaries that contribute surface water flow to such waters; certain lakes, ponds, and impoundments of

---

> including those separated from other [WOTUS] by "constructed dikes or barriers, natural river berms, beach dunes, [or] the like."

*Id*. at 37058. It identified waters requiring a case-specific analysis to determine if a significant nexus exists to include Prairie potholes, Carolina and Delmarva bays, pocosins, western vernal pools in California, Texas coastal prairie wetlands, waters within the 100-year floodplain of other [WOTUS], and waters within 4,000 feet of the high tide line or the ordinary high water mark of other [WOTUS]. *Id*. at 37059. The Defendant Agencies maintained all prior exclusions and added some more. For example, the Clean Water Rule continued to exclude waste treatment systems from the definition of WOTUS. *Id.* The Clean Water Rule had an intended effective date of August 28, 2015. *Id.* at 37053.



**CASCADIA LAW GROUP PLLC**
1201 Th rd Avenue, Su te 320 Seatt e, WA 98101
Te : (206) 292 6300 Fax: (206) 292 6301

In 2015, the White House issued a press release citing the economic benefits of the Clean Water Rule. It recognized that "[m]ajor economic sectors—from manufacturing and energy production to agriculture, food service, tourism, and recreation—depend on clean water to function and flourish." McCarthy, Gina, and Jo-Ellen Darcy, "Reasons We Need the Clean Water Rule" (May 27, 2015) ("McCarthy Analysis"), https://obamawhitehouse.archives.gov/blog/2015/05/27/reasons-we-need-clean-water-rule (last visited Aug. 18, 2020).

On February 28, 2017, President Trump issued an Executive Order entitled, "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States Rule," which instructed the Defendant Agencies to rescind or revise the Clean Water Rule and to replace it with a rule relying on Justice Scalia's language from *Rapanos*. Exec. Ord. No. 13778, 82 Fed. Reg. 12497 (Feb. 28, 2017). After first publishing a rule postponing the Clean Water Rule's effective date to February 6, 2020, the Defendant Agencies repealed the Clean Water Rule entirely and restored the prior regulations until they could publish new language consistent with President Trump's Order. 83 Fed. Reg. 5200 (Feb. 6, 2018); "Definition of Waters of the U.S.: Recodification of Pre-Existing Rules," (the "Repeal Rule") 84 Fed. Reg. 56626 (Oct. 22, 2019).

On June 22, 2020, the Defendant Agencies' new replacement for the Clean Water Rule took effect. *See* 85 Fed. Reg. 22250. The Navigable Waters Rule limits WOTUS to "territorial seas and traditional navigable waters; perennial and intermittent tributaries that contribute surface water flow to such waters; certain lakes, ponds, and impoundments of

---

> including those separated from other [WOTUS] by "constructed dikes or barriers, natural river berms, beach dunes, [or] the like."

*Id*. at 37058. It identified waters requiring a case-specific analysis to determine if a significant nexus exists to include Prairie potholes, Carolina and Delmarva bays, pocosins, western vernal pools in California, Texas coastal prairie wetlands, waters within the 100-year floodplain of other [WOTUS], and waters within 4,000 feet of the high tide line or the ordinary high water mark of other [WOTUS]. *Id*. at 37059. The Defendant Agencies maintained all prior exclusions and added some more. For example, the Clean Water Rule continued to exclude waste treatment systems from the definition of WOTUS. *Id.* The Clean Water Rule had an intended effective date of August 28, 2015. *Id.* at 37053.



**CASCADIA LAW GROUP PLLC**
1201 Th rd Avenue, Su te 320 Seatt e, WA 98101
Te : (206) 292 6300 Fax: (206) 292 6301

jurisdictional waters; and wetlands adjacent to jurisdictional waters." *Id*. at 22251. It excludes waters from the definition of WOTUS that the Clean Water Rule, in keeping with the CWA, Supreme Court precedent, and science, included.

**B. Substance of This Action.**

Plaintiffs challenge the Navigable Waters Rule and the Repeal Rule on the grounds that each is contrary to the CWA and violates the Administrative Procedures Act (APA), 5 U.S.C. § 706(2).

**C. Identity of Prospective Intervenor Patagonia Works.**

1. Corporate Identity and Mission.

Patagonia Works is a holding company for Patagonia, Inc., an outdoor apparel and equipment retailer; Patagonia Provisions, a purveyor of sustainably-produced food products; Tin Shed Ventures, a venture capital fund; and Worn Wear, Inc., Patagonia's used clothing business. Declaration of Lisa Pike Sheehy in Support of Patagonia Works' Motion to Intervene (Sheehy Decl.) ¶ 3. The Company is a prominent member of the national outdoor recreation economy, which employs 7.6 million people and, in 2017, generated $887 billion in revenue, including $65.3 billion in federal tax revenue and $59.2 billion in state and local tax revenue. *Id*. ¶ 6. Headquartered in Ventura, California, Patagonia operates stores across the United States. *Id*. ¶ 4. As reflected by the Company's mission statement that it is "in business to save our home planet" and by its 40-year history of environmental activism, conservation is a core business tenet. *Id*.

In 2012, Patagonia enshrined its blended goals of business success and environmental protection into its Articles of Incorporation and registered as a California benefit corporation. *Id*. This status requires the Company to: (a) contribute one percent of its annual net revenue to non-profit charitable organizations that promote environmental conservation and sustainability; (b) create a material positive impact on society and the environment, and



CASCADIA LAW GROUP PLLC
1201 Th rd Avenue, Su te 320 Seatt e, WA 98101
Te : (206) 292 6300 Fax: (206) 292 6301

(c) consider the impact of any action on its workforce, its customers, and the environment. *Id.*; *see also* Cal. Corp. Code §§ 14600 *et seq*. Patagonia also applied for and received "B Corp" certification from the non-profit organization B Lab. *Id*. at ¶ 5. The Company has procured this voluntary certification each year since 2012, which requires it to submit to an annual assessment of its performance on dozens of measures of social and environmental performance, accountability, and transparency. *Id*. Among B Corp-certified companies, Patagonia consistently scores the highest in "Civic Engagement and Giving." *Id*. In 2019, B Lab recognized Patagonia as a "Best in the World Honoree" in the Community, Environment, and Overall categories. *Id*.

2. Financial Support, Advocacy, and Grassroots Mobilization for Environmental Causes.

Beginning in 1985, Patagonia committed to donating at least 1% of its gross sales to environmental issues. *Id*. ¶ 8. The Company has since donated more than $100 million to grassroots environmental groups, including 2,914 grants totalling almost $21 million in support of 995 groups all over the United States who are fighting to protect clean water. *Id*. ¶ 9. Patagonia also encourages its customers and other companies to support environmental causes and to act sustainably. *See id*. ¶ 8. In 2002, founder Yvon Chouinard created the non-profit organization 1% For The Planet, through which 4,000 companies have donated more than $265 million. *Id*.

In addition to financial support, Patagonia engages in direct legislative advocacy to lobby for and bring attention to the need for clean water outdoors and indoors. These efforts have included lobbying for permanent funding of the Land and Water Conservation Fund, for greater protection of the Great Lakes and Boundary Waters in the Upper Midwest, for implementation of conservation projects in the Florida Everglades, for preservation of flows through the Colorado River Delta, and for measures to protect drinking water in Flint, Michigan. *Id*. ¶ 11.



**CASCADIA LAW GROUP PLLC**
1201 Th rd Avenue, Su te 320 Seatt e, WA 98101
Te : (206) 292 6300 Fax: (206) 292 6301

Finally, Patagonia engages in active efforts to educate the public, to mobilize support for environmental conservation causes, and to enable environmental groups and individuals to connect on issues they care about. The Company blog serves as a long-form storytelling platform to educate and mobilize support for healthy river ecosystems. *Id*. at ¶ 12. Blog posts include, "Why the Clean Water Act Means So Much"; "A World Without Salmon"; and "Putting Water Back: How Can We Remedy our Past Mistakes?" *Id*. Patagonia Action Works, created in 2018, connects Patagonia's customers with its grantees, offering grantees an opportunity to obtain skilled volunteers, financial donations, and to advertise events through Patagonia's social media presence. Groups currently using the Action Works platform include the Waterkeeper Alliance, Clean Water Fund, and Earth Island Institute/Clean Water Advocacy. *Id*. ¶ 18.

3. Patagonia's Previous Efforts to Challenge the Navigable Waters Rule.

On April 15, 2019, Patagonia submitted formal Comments to the EPA regarding the Defendant Agencies' proposed changes to the Clean Water Rule. *Id*. ¶ 13, Sheehy Decl. Ex. A. In its Comments, Patagonia, citing data maintained by the U.S. Geological Survey, noted that approximately 60% of stream miles within the continental United States are intermittent or ephemeral, 18% of streams are considered ephemeral, and 51% of wetlands do not abut or have a direct hydrologic surface connection to other surface waters. Sheehy Decl. Ex. A at 27-28. It warned that "[e]liminating the protection for [these streams and] thousands of acres of wetlands will have devastating effects on water quality and the environment." *Id*. at 24–25.

On January 23, 2020, in response to publication of the Navigable Waters Rule, Patagonia's CEO Rose Marcario issued a public statement on Twitter in which she responded to the rollback of the Clean Water Rule. She stated:

> President Trump just removed protections for tributaries and wetlands in your community. This comes after polluting your air, putting your public lands under threat[,] and ignoring the climate crisis. Make sure you are registered to vote today, make a voting plan, and show up in November to stop the pillaging of our planet.



**CASCADIA LAW GROUP PLLC**
1201 Th rd Avenue, Su te 320 Seatt e, WA 98101
Te : (206) 292 6300 Fax: (206) 292 6301

The statement closed with a call to action for Patagonia's 475,000 followers to urge their members of Congress to prevent the EPA from weakening the Clean Water Act. Sheehy Decl. ¶ 16, Ex. C.

On February 22, 2020, the public affairs website The Hill published an op-ed co-authored by Patagonia's Environmental Advocate Avi Garbow, in which he asserted that the Navigable Waters Rule "drastically reduces the ability of the Clean Water Act to protect waters from pollution and destruction, gutting essential protections that safeguard the drinking water of the American people and the waters they swim and fish in." Sheehy Decl. ¶ 17, Ex. D. Mr. Garbow urged that the Rule "be struck down in the courts because it is out of step with the law, the expectations of the American people, and the science that supports our environmental protection." Sheehy Decl. Ex. D.

Last, Patagonia is running an ongoing campaign on its Action Works platform called "Save the Clean Water Act," which encourages the public to submit comments directly to the EPA and EPA Administrator Andrew Wheeler that advocate for a broader definition of WOTUS under the CWA and protecting certain waterways. Sheehy Decl. ¶ 18.

4. Patagonia's Fish Business Unit.

Patagonia manufactures and sells a broad range of apparel and gear to a broad spectrum of outdoor recreationalists. A subset of these products fall within Patagonia's Business Unit – Fly Fishing, which creates and sells technical apparel and outerwear, fishing packs and duffles, waders, wading boots, and angling accessories for flyfishers. Consumers of these products typically also purchase other Patagonia gear and apparel that are produced and managed internally through other Patagonia business units. Declaration of Edward Manning in Support of Patagonia Works' Motion to Intervene (Manning Decl.) ¶¶ 3, 4.

Patagonia sells its gear and apparel through its website (www.Patagonia.com) and in over seventy Patagonia stores worldwide, the majority of which are located in the United States. In addition, Patagonia sells its gear and apparel to over 250 small and medium-sized



**CASCADIA LAW GROUP PLLC**
1201 Th rd Avenue, Su te 320 Seatt e, WA 98101
Te : (206) 292 6300 Fax: (206) 292 6301

specialty flyshops and outdoor retailers, the vast majority of which are located in rural communities in proximity to waters that provide fish habitat and fishing and other recreation opportunities. Manning Decl. ¶ 5. For example, Patagonia sells gear and apparel from its Business Unit – Fly Fishing and from other non-flyfishing business units to nine dealers in Washington. Manning Decl. ¶ 5. The viability of these business accounts is highly dependent on the dealers' proximity to clean fishable waters. Manning Decl. ¶ 6.

## IV. ARGUMENT AND AUTHORITY

### A. Patagonia Has the Right to Intervene Under Rule 24(a).

A district court must grant intervention under Rule 24(a)(2) to anyone who satisfies a four-factor test. The applicant must demonstrate (1) a "significantly protectable" interest relating to the property or transaction that is the subject of the action; (2) the existing parties to the action cannot adequately represent the applicant's interest; (3) disposition of the action without the applicant's participation as a party may as a practical matter impair or impede its ability to protect that interest; and (4) the applicant's motion must be timely. *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998); *Cabazon Band of Mission Indians v. Wilson,* 124 F.3d 1050, 1061 (9th Cir. 1997).

The Court should interpret these requirements "broadly[,] … in favor of intervention," as its analysis should be "guided primarily by practical and equitable considerations." *United States v. Alisal Water Corp*., 370 F.3d 915, 919 (9th Cir. 2004). This "liberal policy in favor of intervention serves both efficient resolution of issues and broadened access to the courts." *Wilderness Soc'y v. U.S. Forest Serv*., 630 F.3d 1173, 1179 (9th Cir. 2011) (quotations and citation omitted).

1. <u>Patagonia Has Significantly Protectable Interests in the Subject of this Action</u>.

For the purposes of Rule 24(a), a "significantly protectable interest" exists where "the [claimed] interest is protectable under some law [and] there is a relationship between the



**CASCADIA LAW GROUP PLLC**
1201 Th rd Avenue, Su te 320 Seatt e, WA 98101
Te : (206) 292 6300 Fax: (206) 292 6301

legally protected interest and the claims at issue." *Wilderness Soc'y*, 630 F.3d at 1176 (quoting *Sierra Club v. EPA*, 995 F.2d 1478, 1484 (9th Cir. 1993)). Because "the interest test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process," this element of Rule 24(a) does not require a prospective intervenor to establish or even identify a "specific legal or equitable interest." *Wilderness Soc'y*, 630 F.3d at 1179 (quoting *County of Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980)).

This case implicates three significantly protectable interests held by Patagonia: (a) its mission to preserve the integrity of wild, natural landscapes and, in particular, riverine and riparian ecosystems; (b) its mutually-beneficial interest in vibrant, sustainable rural economies and the communities that depend on them; and (c) its business interest in outdoor recreation and, more specifically, revenues from sales of clothing and products purchased by hikers, flyfishers, and other recreational users of the areas that would be adversely affected by the Navigable Waters Rule.

*a. Patagonia's interest in environmental conservation*

If the Navigable Waters Rule stands, it will undermine Patagonia's mission to "save the home planet" and will undo decades of the Company's efforts to protect freshwater aquatic ecosystems throughout the United States. Numerous courts have recognized that interests of this type are sufficient to support intervention. *See, e.g., Citizens for Balanced Use v. Mont. Wilderness Ass'n*, 647 F.3d 893, 897, 2011 (9th Cir. 2011) (finding conservation-oriented groups had "a significant protectable interest in conserving and enjoying the wilderness character of the Study Area" at issue); *United States v. Carpenter*, 526 F.3d 1237, 1240 (9th Cir. 2008) (concluding conservation groups were entitled to intervene because they had an interest in preserving the wilderness area for the use and enjoyment of their members); *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983) (granting the National Audubon Society the right to intervene in a suit challenging the actions of the Interior



**CASCADIA LAW GROUP PLLC**
1201 Th rd Avenue, Su te 320 Seatt e, WA 98101
Te : (206) 292 6300 Fax: (206) 292 6301

Secretary that would impair a bird conservation area); *see also WildEarth Guardians v. Nat'l Park Serv.*, 604 F.3d 1192, 1198 (10th Cir. 2010) (characterizing a conservation group's environmental concerns as an "indisputable" legally protectable interest) (quoting *San Juan County v. United States*, 503 F.3d 1163, 1199 (10th Cir. 2007)).

Patagonia's financial support, advocacy, and grassroots mobilization efforts substantiate its interest in a robust Clean Water Act and justify its intervention in this action. Patagonia's decision to submit Comments to the Defendant Agencies raising objections to and concerns regarding the Navigable Waters Rule and encouraging its customers to do the same particularly demonstrates its interest in protecting WOTUS. *See, e.g.*, *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 526–27 (9th Cir. 1983) (organization granted intervention as of right when it "participated actively in the administrative process"); *Idaho Farm Bureau Fed'n*, 58 F.3d at 1397 (applicant deemed "entitled as a matter of right" to intervene in a challenge to the legality of a measure it has supported); *La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest,* 624 F.3d 1083, 1088 (9th Cir. 2010) (intervention proper where litigation would frustrate prospective intervenor's historical advocacy efforts); *Washington State Bldg. & Constr. Trades Council v. Spellman*, 684 F.2d 627 (9th Cir. 1982) (advocacy group that had sponsored antinuclear statute had sufficient interest in suit challenging that statute).

*b. Patagonia's interest in sustainable rural economic development*

Patagonia sells outdoor apparel and gear to hundreds of specialty flyshops and outdoor retailers located in rural communities. Manning Decl. at ¶ 5. It has a mutually-beneficial business interest in the sustainable economic development of these communities. *Id*. at ¶¶ 5, 6. If clean water for outdoor recreation is no longer accessible to Patagonia's customers and others, the economy of these rural communities and Patagonia's sales there will shrink.

The Company has spoken out about the negative economic impacts of the Navigable Waters Rule. *See* Patagonia's Comments to the EPA, citing adverse impacts on the "Outdoor



**CASCADIA LAW GROUP PLLC**
1201 Th rd Avenue, Su te 320 Seatt e, WA 98101
Te : (206) 292 6300 Fax: (206) 292 6301

Recreation Economy," and the Company's Environmental Advocate's op-ed urging opposition to the Navigable Waters Rule, characterizing clean water as "an economic necessity." Sheehy Decl., Exs. A, D. The Company's concerns reflect the goals of the Clean Water Rule, including the assertion made by the White House in 2015 in support of that Rule: the recreational economy "depend[s] on clean water to function and flourish." McCarthy Analysis, at https://obamawhitehouse.archives.gov/blog/2015/05/27/reasons-we-need-clean-water-rule.

*c. Patagonia's financial interest*

An entity whose commercial interests and profitability will likely be adversely affected by an unfavorable outcome in a case is entitled to intervene under Rule 24(a)(2), if such interests are not shared by existing parties to the action. For example, in *County of St. Louis v. Thomas*, 162 F.R.D. 583 (D. Minn. 1995), an outdoor recreation company succeeded in intervening in a challenge to restrictions on visitor use of the Boundary Waters wilderness area. The court noted:

> Wilderness Inquiry, Inc., is a profit-oriented business which provides "integrated wilderness adventures" for its clients, who seek "a true wilderness experience, rather than a wilderness trip modified for people with disabilities," and who would be less likely to utilize Wilderness Inquiry's services if the Defendants' restrictions are sustained resulting in a probable financial loss to the company.

*Id.* at 587 n. 12 (quoting an affidavit). It then ruled that these interests, and the company's earlier administrative participation, justified intervention under Rule 24(a).

This principle has been routinely recognized by courts evaluating motions to intervene. *See, e.g., County of San Miguel v. MacDonald*, 244 F.R.D. 36, 47–48 (D.D.C. 2007) (in a suit by county and environmental groups over an Endangered Species Act (ESA) listing determination, recognizing trade organization's interest in protecting members' business operations and economic livelihoods); *People for Ethical Treatment of Animals v. Babbitt*, 151 F.R.D. 6, 7–8 (D.D.C. 1993) (in a suit by an animal-rights group alleging the government violated the ESA by allowing a performer to use orangutans in a nightclub act, recognizing



**CASCADIA LAW GROUP PLLC**
1201 Th rd Avenue, Su te 320 Seatt e, WA 98101
Te : (206) 292 6300 Fax: (206) 292 6301

performer's economic interest in preserving his right to do so); *Natural Resources Defense Council, Inc. v. Envtl. Prot. Agency*, 99 F.R.D. 607, 610 (D.D.C. 1983) (in suit challenging EPA's reforms of pesticide regulations, recognizing pesticide manufacturers' financial interest in continued registration of their pesticide products); *Natural Res. Def. Council v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977) (same).

In its Comments on the Navigable Waters Rule, Patagonia noted that the ephemeral streams that the Rule's definition of WOTUS removed from CWA jurisdiction are "the very streams that feed the waters anglers rely upon for trout and other fisheries." Sheehy Decl. Ex. A at 29. Through its Business Unit – Fly Fishing and other retail divisions, Patagonia sells clothing, equipment, and other gear to recreational users of these streams. Manning Decl. ¶¶ 3–5. The environmental impairment of these habitats would, without question, adversely affect consumer demand for and sales of these products.

2. <u>The Existing Parties Cannot Adequately Protect Patagonia's Unique Interests.</u>

An intervenor is adequately represented only if "(1) the interests of a present party to the suit are such that it will undoubtedly make all of the intervenor's arguments; (2) the present party is capable of and willing to make such arguments; and (3) the intervenor would not offer any necessary element to the proceedings that the other parties would neglect." *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003), *as amended* (May 13, 2003). In other words, the proper test of adequate representation is whether each of the dual interests may "always dictate precisely the same approach to the conduct of the litigation." *Trbovich v. United Mine Workers of Am.,* 404 U.S. 528, 539, 92 S. Ct. 630 (1972). Where "multiple interests have the potential of dictating a different approach to the conduct of the litigation," intervention is justified. *United Guar. Residential Ins. Co. of Iowa v. Philadelphia Sav. Fund Soc'y*, 819 F.2d 473, 475–76 (4th Cir. 1987). The "most important factor" is, therefore, "'how the interest [claimed by the prospective intervenor] compares with the interests of existing parties.'" *Citizens for Balanced Use v. Mountain Wilderness Ass'n*, 647 F.3d 839, 898 (9th Cir. 2011).



**CASCADIA LAW GROUP PLLC**
1201 Th rd Avenue, Su te 320 Seatt e, WA 98101
Te : (206) 292 6300 Fax: (206) 292 6301

"[T]he burden of … showing [inadequate representation] should be treated as minimal." *Trbovich*, 404 U.S. at 538 n. 10.

Plaintiffs, none of whom are for-profit businesses serving outdoor recreationalists, cannot possibly adequately represent Patagonia's private interests in challenging the Navigable Waters Rule. *See McDonald v. Coyle*, 175 F. App'x 947, 949 (10th Cir. 2006) ("Generally, a litigant 'must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.'") (quoting *Kowalski v. Tesmer*, 543 U.S. 125, 129, 125 S. Ct. 564 (2004)). While Patagonia shares environmental advocacy and conservation goals with plaintiffs, its specific priorities regarding these objectives, and the arguments it will make in furtherance of them, will likely differ. In addition, the fact that Patagonia's individual financial interest is dependent on intact healthy ecosystems and waterways will entitle (and require) it to make arguments that plaintiffs are unable to make, both in support of their case-in-chief and in rebuttal. In such instances, courts have granted the prospective intervenor's motion. *See, e.g., New York Pub. Interest Research Group, Inc. v. Regents of Univ. of N.Y.*, 516 F.2d 350, 352 (2d Cir. 1975) (intervention appropriate where a prospective intervenor "will make a more vigorous presentation of the economic side of the argument than would [an existing party]"); *Puget Soundkeeper All. v. United States EPA*, No. C13-1839-JCC, 2014 U.S. Dist. LEXIS, 189913, at *8 (W.D. Wash. Feb. 18, 2014) (granting intervention to private parties where existing parties could not adequately protect private parties' interests).

3. <u>The Disposition of This Action May Impair Patagonia's Ability to Protect Its Interests</u>.

The third requirement for intervention is satisfied if the prospective intervenor "would be substantially affected in a practical sense by the determination made in an action." *Southwest Ctr. For Biological Diversity v. Berg*, 268 F.3d 810, 822 (9th Cir. 2001) (quoting Fed. R. Civ. P. 24 advisory committee's notes). This inquiry "presents a minimal burden."



**CASCADIA LAW GROUP PLLC**
1201 Th rd Avenue, Su te 320 Seatt e, WA 98101
Te : (206) 292 6300 Fax: (206) 292 6301

*WildEarth Guardians*, 604 F.3d at 1199. As described above, an adverse decision in this action would impair Patagonia's ability to fulfill its mission and to maintain its profitability.

4. Patagonia's Motion is Timely.

To determine whether Patagonia's motion is timely, the Court must evaluate (a) the stage of this proceeding; (b) the prejudice intervention would cause to other parties; and (c) the reason for and length of any delay caused by allowing Patagonia to intervene. *United States v. Alisal Water Corp.,* 370 F.3d 915 (9th Cir. 2004). "Mere lapse of time alone is not determinative" in deciding the timeliness of a motion to intervene. *County of Orange v. Air California*, 799 F.2d 535 (9th Cir. 1986) (citing *United States v. Oregon*, 745 F.2d 550 (9th Cir. 1984)).

This case is in its earliest stages. Although all parties have formally appeared through counsel, no Answer has yet been filed, and the Court has yet to substantively engage in the issues raised by plaintiffs' Complaint.[4] As such, no credible argument can be made that Patagonia's intervention would cause unreasonable delay or prejudice to any of the parties. *See Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995) (motion to intervene deemed timely when filed four months after complaint and two months after answer but "before any hearings or rulings on substantive matters"); *Nat. Res. Defense Council v. McCarthy*, No. 16-cv-02184-JST, 2016 WL 6520170, at *3 (N.D. Cal. Nov. 3, 2016) (motion deemed timely when filed before an answer and "any substantive orders"). Indeed, Counsel representing Plaintiffs and Defendants have each confirmed that they do not oppose Patagonia's intervention. Tan Decl. ¶ 2. Further, because Patagonia's prospective Complaint in Intervention (attached as Exhibit A to the Tan Decl.) asserts no legal causes of action not already pled and seeks no relief not already requested by existing Plaintiffs, Patagonia's participation in this case will neither complicate the issues nor prolong the litigation.

[4] At the time of the filing of this Motion, the Court has issued no substantive or procedural rulings. A Motion to Intervene filed by business interests in favor of the Navigable Waters Rule remains pending and has not been ruled upon.



CASCADIA LAW GROUP PLLC
1201 Th rd Avenue, Su te 320 Seatt e, WA 98101
Te : (206) 292 6300 Fax: (206) 292 6301

**B. Alternatively, Patagonia Should be Granted Permissive Intervention Under Rule 24(b).**

If the Court finds Patagonia does not satisfy the requirements for intervention as of right, it should grant the Company permission to intervene pursuant to Rule 24(b). "Unlike rule 24(a), a 'significant protectable interest' is not required by Rule 24(b) for intervention; all that is necessary for permissive intervention is that intervenor's 'claim or defense and the main action have a question of law or fact in common.'" *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1108 (9th Cir. 2002) (citing Fed. R. Civ. P. 24(b)).

All matters at issue turn on the same questions of law—whether Defendant Agencies violated the APA and the CWA in enacting the Navigable Waters Rule and the Repeal Rule—and the facts Patagonia will offer to substantiate its claims are consistent with and complement facts likely to be offered by Plaintiffs. For these reasons, Patagonia's "intervention will significantly contribute to . . . the just and equitable adjudication of the legal questions presented." *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977). Accordingly, even if the Court does not grant intervention as of right, permissive intervention is warranted so that Patagonia can continue to protect its interests in accessible clean water. *See, e.g.*, *Puget Soundkeeper All. v. Pruitt*, No. C15-1342-JCC, 2018 U.S. Dist. LEXIS 124517, at *4 (W.D. Wash. July 25, 2018) (granting permissive intervention where prospective intervenor was aligned with existing parties because the prospective intervenor had significant economic and litigation interests at stake).

//

//

//

//

//

//



**CASCADIA LAW GROUP PLLC**
1201 Th rd Avenue, Su te 320 Seatt e, WA 98101
Te : (206) 292 6300 Fax: (206) 292 6301

## V. CONCLUSION

For the foregoing reasons, the Court should grant Patagonia's Motion to Intervene under Rule 24.

RESPECTFULLY SUBMITTED this 20th day of August, 2020.

CASCADIA LAW GROUP PLLC

By s/ Stephen J. Tan
By s/ Meghan E. Gavin

Stephen J. Tan, WSBA No. 22756
Meghan E. Gavin, WSBA No. 50124
Cascadia Law Group PLLC
1201 Third Avenue, Suite 320
Seattle, WA 98101
Telephone: (206) 292-6300
Facsimile: (206) 292-6301
Email: stan@cascadialaw.com;
mgavin@cascadialaw.com

Robert D. Tadlock,
Admission *pro hac vice* Pending
Avi S. Garbow,
Admission *pro hac vice* Pending
Patagonia, Inc.
259 W. Santa Clara Street
Ventura, CA 93001
Telephone: (800) 638-6464
Email: Robert.Tadlock@patagonia.com;
Avi.Garbow@patagonia.com

Attorneys for Plaintiff-Intervenor
Patagonia Works

**CERTIFICATE OF SERVICE**

I hereby certify that on the 20th day of August, 2020, the foregoing was electronically filed with the Clerk of the Court using the Court's electronic filing system, which will send notification of said filing to the attorneys of record that have, as required, registered with the Court's system.

DATED this 20th day of August, 2020 at Seattle, Washington.

By___s/ Stephen J. Tan_____

Stephen J. Tan, WSBA No. 22756
Cascadia Law Group PLLC
1201 Third Avenue, Suite 320
Seattle, WA 98101
Email: stan@cascadialaw.com

**From:** Fugh, Justina
**To:** avi garbow
**Subject:** RE: financial disclosure report
**Date:** Thursday, January 21, 2021 1:46:00 PM

---

Nope.

**From:** avi garbow (b) (6) [redacted]
**Sent:** Thursday, January 21, 2021 1:45 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Re: financial disclosure report

Thanks. (b) (6) [redacted]. One question I need to check is whether we have (b) (6) [redacted] in our portfolio. If we do, do they count as a sector specific fund that needs to be reported?

Avi

On Thu, Jan 21, 2021 at 1:12 PM Fugh, Justina <Fugh.Justina@epa.gov> wrote:

> Hi Avi,
> As an SGE receiving compensation, you have to complete a financial disclosure report. But, this time, given your pay level, you will NOT file the public financial disclosure report through INTEGRITY. Instead, attached is the report we use for SGEs, which is a confidential report so will not be disclosed to the public. You'll see also that there is less information that needs to be reported, so my hope is that it will easier for you to complete. This report is often used for FACA appointments, so if there's something that does not apply to you, enter NONE or NO, not "N/A." We hate "N/A."
> I believe that the form I sent you is a fill and print pdf so you should be able to just pdf it back to me. I'm reachable if you want to talk further about this form or your ethics obligations.
> Cheers,
> Justina
> Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

--
Avi

| | |
|---|---|
| **From:** | Fugh, Justina |
| **To:** | Garbow, Avi |
| **Subject:** | RE: Hi -- question for you |
| **Date:** | Monday, March 01, 2021 9:20:00 PM |

Thanks! So that means you and Patagonia had an interest in the case but were not actually parties to it, which also means that you did not work personally and substantially in that specific party matter. Very helpful to know for my analysis.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Garbow, Avi <Garbow.Avi@epa.gov>
**Sent:** Monday, March 01, 2021 9:13 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: Hi -- question for you

Patagonia did move to intervene in a challenge to the Navigable Waters Protection Rule brought by certain NGO's, but the motion was never granted (as far as I know). Though I was identified as pro hac vice on it, that has since been withdrawn. I am active in the Washington, D.C. bar, and inactive in Virginia. Let me know if that's helpful or if you would like more information. Thanks,

Avi

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Monday, March 1, 2021 9:03 PM
**To:** Garbow, Avi <Garbow.Avi@epa.gov>
**Subject:** Hi -- question for you

Hi Avi,

I've been asked by the Water Law Office whether you may be consulted about certain WOTUS litigation. I understand that Patagonia had filed a motion to intervene in the Puget Soundkeeper Alliance v. EPA case, and your name is on it. Did the court grant the motion to intervene? In trying to sort out the ethics obligations, I may need to look at your bar rules. Are you admitted to practice in Washington State? In any other jurisdiction? Or were you not planning on participating in this case anyway?

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

| | |
|---|---|
| **From:** | Fugh, Justina |
| **To:** | Garbow, Avi |
| **Subject:** | RE: post-EPA employment discussion |
| **Date:** | Tuesday, June 22, 2021 3:39:00 PM |

Hi,
I'm free from 1 to 3:30 this Thursday, and from 10 to 1 on Wednesday of next week.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Garbow, Avi <Garbow.Avi@epa.gov>
**Sent:** Tuesday, June 22, 2021 3:37 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: post-EPA employment discussion

Sure – would be good. What's your schedule look like Thursday afternoon, or next Wednesday?

avi

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Tuesday, June 22, 2021 3:35 PM
**To:** Garbow, Avi <Garbow.Avi@epa.gov>
**Subject:** post-EPA employment discussion

Hi Avi,
I understand that your SGE appointment will end 6/30/21. Shall we schedule a post-employment discussion soon?
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Fugh, Justina
**To:** avi garbow
**Subject:** RE: reply
**Date:** Saturday, January 16, 2021 7:15:00 PM

---

Well, I didn't make 6 pm, but I did get the info to you just now. I think that serving as an SGE will work out for you:

- You remain employed at Patagonia;
- They keep paying your salary;
- You decline compensation from EPA and then you don't have to file the financial disclosure report (I think) and won't have a one year cooling off period with EPA afterwards; and
- You don't have to sign an ethics pledge.

Of course, if Patagonia wants you to take a leave of absence with no salary, then let me know.
Justina

**From:** avi garbow (b) (6) [redacted]
**Sent:** Saturday, January 16, 2021 4:15 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Re: reply
Thx
On Sat, Jan 16, 2021 at 4:06 PM Fugh, Justina <Fugh.Justina@epa.gov> wrote:

> Hi Avi and Matt,
> I should be able to get you some information by 6 pm tonight. I just need to set up INTEGRITY accounts for several people starting next week.
> Justina
> Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772
>
> **From:** avi garbow <(b) (6) [redacted]
> **Sent:** Saturday, January 16, 2021 3:07 PM
> **To:** Fugh, Justina <Fugh.Justina@epa.gov>
> **Subject:** Checking in
> Justina
> Sorry to bother you on a weekend. I know you are jammed with a million things to do. I wanted to circle back and see when you might be able to send Fritz and me the parameters of the SGE authority that we might use to bring me onboard for 130 days. Thx again for your work on this. Call any time if you have questions.
> Avi
> --
> Avi

--
Avi

**From:** Fugh, Justina
**To:** Garbow, Avi
**Subject:** RE: speaker invitation! upcoming environmental policy panel
**Date:** Monday, April 12, 2021 9:09:00 PM

---

Well, you really could do this in your personal capacity or as a Patagonia employee. I mean, Fashion Law and Social Justice seem like a perfect fit (no pun intended) for you!

---

**From:** Garbow, Avi <Garbow.Avi@epa.gov>
**Sent:** Monday, April 12, 2021 9:03 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Re: speaker invitation! upcoming environmental policy panel

Got it. I will decline. Thx.

Avi Garbow
Senior Counselor to the Administrator
U.S. EPA
Sent from my iPhone

On Apr 12, 2021, at 8:48 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi Avi,
It appears they want you to speak in your official EPA capacity, but I can't think of an instance in which EPA has permitted an SGE to represent us a speaker. In fact, EPA's Order on the Employment of Experts and Consultants, which is how you were hired as a non-FACA SGE, specifically provides that "[e]xperts and consultants will … not … represent the Agency to outside parties without appropriate federal supervision and proper management controls … or perform the duties of regular employees." I could ask the employment lawyers to opine, but from an ethics perspective, I have been asked to remind SGEs that they *cannot* represent EPA. If you recall Dr. Deborah Swackhamer, an EPA SGE who testified before a House subcommittee about the Agency's changes to FACA committees, she spoke in her personal capacity only. *See* her 7/16/19 statement.

You, too, could speak in your personal capacity only, as former EPA General Counsel, but you could not do so on EPA time or with reference solely to your current EPA position. But you would need to be sure that the requestor understands that you are not representing EPA. Or you can direct the requestor to OPA or to another office to provide an official EPA speaker. I just don't see how you can be that person.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Garbow, Avi <Garbow.Avi@epa.gov>
**Sent:** Monday, April 12, 2021 6:20 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** FW: speaker invitation! upcoming environmental policy panel

Justina,

Hope all's well. I received the attached (and below) invitation to speak on a panel re: environmental law and policy. Please let me know if you have any ethics issues with my accepting this invitation. Thanks,

Avi

---

**From:** Kenya Wiley <kenya@fashinnovation.com>
**Sent:** Monday, April 12, 2021 1:27 PM
**To:** Garbow, Avi <Garbow.Avi@epa.gov>
**Subject:** speaker invitation! upcoming environmental policy panel

Dear Mr. Garbow,

Congratulations on your new position at EPA! I'm a former Senate committee counsel and I'm currently a part of the faculty at Georgetown University and Fordham Law School—where I focus on fashion law and social justice. We're planning our Fashion Policy and Social Justice Summit (virtual) for June 10, and I'd like to invite you to join us as a speaker for our panel on environmental law and policy (invitation letter attached).

The Summit is an extension of my Fashion Law and Social Justice course—where we've had guest speakers join us from Global Fashion Agenda, Fashion for Good and other organizations committed to addressing the climate crisis. We usually run out of time every semester, so the Summit is a way to continue the conversation outside of class and open these much-needed discussions to other students and industry professionals in design, communications, legal, public policy, supply chain and sustainability.

We'll have speakers throughout the Summit from government, industry and academia, including Rep. Grace Meng, a senior advisor for the Senate Environment and Public Works Committee, sustainability designer and SCAD educator Mimi Plange, and representatives from Louis Vuitton Americas, Kering and the Fashion Law Institute at Fordham Law School.

I look forward to discussing further, and please feel free to reach out with any questions.

Thank you and stay safe.

Best,
Kenya

Kenya N. Wiley |Founder and Policy Counsel |Fashion Innovation Alliance |kenya@fashinnovation.com |www.fashinnovation.com
Adjunct Professor, Georgetown University Communication, Culture and Technology Master's Program and the Fashion Law Institute at Fordham Law School

**From:** Fugh, Justina
**To:** avi garbow
**Subject:** RE: Special Government Employee appointment
**Date:** Sunday, January 17, 2021 4:36:00 PM

---

Yep. Land line is best: (b) (6) [redacted]
**From:** avi garbow (b) (6) [redacted]
**Sent:** Sunday, January 17, 2021 3:32 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Re: Special Government Employee appointment
So you have a minute or two for quick call?
On Sat, Jan 16, 2021 at 7:27 PM Fugh, Justina <Fugh.Justina@epa.gov> wrote:

> Hi Avi,
> I don't see that you would have to resign or take a leave from either board. Instead, we will treat them as financial conflicts of interest for you. Won't be able to work as part of official duty on any particular matter that has a direct and predictable financial effect upon either board. We would just navigate around them in a recusal statement.
> Justina
> **From:** Matt Fritz <mfritz@jbrpt.org>
> **Sent:** Saturday, January 16, 2021 7:20 PM
> **To:** avi garbow <(b) (6) [redacted]
> **Cc:** Fugh, Justina <Fugh.Justina@epa.gov>
> **Subject:** Re: Special Government Employee appointment
> Avi,
> No comments on my end.
> On Sat, Jan 16, 2021 at 7:18 PM avi garbow (b) (6) [redacted] > wrote:
>
> > Very helpful. Thank you.
> > Matt - let me know if you have any comments. I plan on reaching out to our CEO tonight.
> > Justina - what about two boards that I serve on? Rare is an enviro ngo focusing on behavior change and sustainable fisheries and also in the Organic Trade Associstion board. Could I take a leave of absence from them and just be bound by same restrictions going forward?
> > Avi
> > On Sat, Jan 16, 2021 at 7:08 PM Fugh, Justina <Fugh.Justina@epa.gov> wrote:
> >
> > > Hi there,
> > > The PTT is interested in Avi Garbow joining EPA in some capacity to work with Michael Regan, the EPA Administrator nominee, and the incoming Biden Administration, but still allow him to retain his current position as Environmental Advocate with Patagonia. I suggested that you appoint Avi as a Special Government Employee (SGE), which is a type of appointment for people recruited for temporary service to the Government because they provide outside expertise or perspectives that might be unavailable among the agency's regular employees. SGEs are subject to less restrictive conflict of interest requirements than regular employees, but also to more restrictive requirements than non-employees, who generally are not covered by the conflict of interest laws at all.

DEFINITION OF SPECIAL GOVERNMENT EMPLOYEE

An SGE is provides temporary service to the Federal Government with or without compensation for not more than 130 days during a consecutive 365-day period. See 18 U.S.C. § 202(a). The individual can be brought on board through retention, designation or appointment and can fulfill his temporary duties either full-time or intermittently. Any portion of a day worked, however, counts as a full day toward that 130 day limit.

I expect that EPA will appoint Avi under the assumption that he will serve for no more than 130 days in the ensuing consecutive 365-day period. If he unexpectedly serves longer than 130 days, he is still deemed SGE for the remainder of the 365 day period. But for next 365 days, EPA should re-evaluate whether he is really an SGE expected to serve 130 days in the next ensuing 365 day period. So the limit is 130 days, but it's possible to slip beyond that time period and still be an SGE.

WHAT'S THE BENEFIT TO AVI?

He can remain an employee of Patagonia and still receive his full salary from them. Doing so is perfectly legal because SGEs are exempt from 18 U.S.C. § 209, the supplementation of salary statute. He may also receive compensation from EPA in addition to his Patagonia salary, or he may choose to serve without compensation by the government. If he chooses not to receive federal compensation, then I believe he would be excused from filing a public financial disclosure report. I will have to seek confirmation from OGE on that point, but generally speaking, to meet the filing requirement, the SGE has to serve for 60 days AND meet the pay conditions.

ETHICAL OBLIGATIONS FOR SGEs

How the criminal ethics laws apply to SGEs differ a bit depending on their length of service so, again, I'm going to assume that Avi will serve for more than 60 days, which is the tipping point for the ethics rules. Here's how the ethics rules will apply to Avi as an SGE and afterwards:

- Representational conflict of interest statutes, 18 U.S.C. § 203 and 18 U.S.C. § 205 -- These statutes contain identical provisions that substantially narrow the prohibitions with respect to SGEs. Avi will be restricted from acting as agent or attorney for another (e.g., Patagonia) only in connection with "particular matters involving specific parties" in which he participated personally and substantially as an employee or SGE or that is pending at EPA.

  To remind, a "specific party matter" is something which (to remind) typically involve a specific proceeding affecting the legal rights of parties, or an isolatable transaction or related set of transactions between identified parties. Examples are contracts, grants, applications, requests for rulings, litigation, or investigations. Unlike regular employees, he will be permitted to represent others or receive compensation for representational services in connection with particular matters of general applicability -- such as broadly applicable policies, rulemaking proceedings, and legislation – that do not involve specific parties. Also, since I assume that Avi will serve for more than 60 days, he will not be permitted to represent another back on any covered matter that is pending at EPA.

- Financial conflict of interest statute, 18 U.S.C. § 208 – Assuming no investment conflicts, then Avi will still have a financial conflict of interest with Patagonia and

cannot work on any particular party matter in which they are a party or represent a party.

- Post-employment statute, 18 U.S.C. § 207 – After the SGE service (assuming it's more than 60 days), Avi will be bound by the post-employment statute, again, but this time, only subject 18 U.S.C. § 207(a)(1), which is the permanent restriction. He will not be permitted to represent the interests of another back to the United States on the same specific party matters he worked on while at EPA. He will not be able to make an appearance or communication with the intent to influence a government official. But if Avi declines compensation from EPA, then he will not be bound by 18 U.S.C. § 207(c), which is the one year cooling off period with EPA because he won't meet the rate of pay threshold.

- Other Ethics Rules – During the period of service as an SGE, Avi will be a federal employee subject to the federal ethics laws and regulations. He'll have to abide by the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, including the misuse of position and gift rules. He will also be subject to the Hatch Act as a "lesser restricted" employee. But he will not be required to sign any ethics pledge because he will not be a political appointee.

I hope this information is helpful to you both!
justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

--
Avi

--
Avi

**From:** Fugh, Justina
**To:** avi garbow
**Subject:** RE: thanks for your submission ...
**Date:** Thursday, January 21, 2021 6:33:00 PM

---

Hi,

(b) (6), (b) (3) (A) [redacted]

Bottom line is that you don't present any likely financial conflicts issues so I can certify your report.

I hear you're starting tomorrow, so we'll do your ethics onboarding briefing soon!

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** avi garbow (b) (6) [redacted]
**Sent:** Thursday, January 21, 2021 6:25 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Re: thanks for your submission ...

(b) (6) [redacted]

Avi

On Thu, Jan 21, 2021 at 4:21 PM Fugh, Justina <Fugh.Justina@epa.gov> wrote:

> Now, in order to work through possible conflicts issues, can you tell me the value of the (b) (6), (b) (3) (A) [redacted] Do you own more than $15,000 in any of them? If so, which ones? Do you own more than $25,000 in any of them and, if so, which ones?
>
> Thanks!
>
> Justina
>
> Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Fugh, Justina
**To:** Garbow, Avi
**Subject:** summary of post-employment advice
**Date:** Friday, June 25, 2021 12:18:00 AM

---

Hi Avi,
Thanks for chatting with me on 6/24/21 to go over your post-employment obligations as you near the end of your SGE appointment on 6/30/21. As you know, the SGE position was not a political one so you were not required to sign the Biden ethics pledge and are not subject to Executive Order 13989. Since you served as an SGE for more than 60 days, you are bound by the permanent restriction of the post-employment statute, specifically 18 U.S.C. § 207(a)(1). If you worked personally and substantially on a specific party matter, then you are prohibited from representing the interests of another back to the United States on that same specific party matter. You cannot make an appearance or communication with the intent to influence any federal official -- not just EPA -- on that same matter. This restriction is permanent, meaning for your lifetime or the lifetime of the matter.

Your participation is considered "substantial" if you participated directly in the matter, and "substantial" if, at the time of your involvement, it was of significance to the matter, which may include decision-making, reviewing, or recommending an action to be taken. The term does not ,however, include ministerial acts relating to the matter. Please note that this post-employment restriction is a representational bar only. It does not prohibit "behind the scenes" consultation, but instead prohibits your making any appearance or communication back to the United States on those same specific party matters. That said, be mindful of your own bar restrictions. In DC, for example, bar rule 1.11 prohibits even "behind the scenes" consultation. EPA Ethics does not provide bar advice so you'll need to consult bar counsel if necessary. With respect to the other post employment restrictions, you were not a supervisor so not subject to 18 U.S.C. § 207(a)(2), and were not considered a former "senior official" so the one year cooling off period with EPA pursuant to 18 U.S.C. § 207(c) does not apply to you.

We understand from our colleagues in OGC that you participated in a number of cases in which political OGC leadership was otherwise recused. I expect that your participation in the following cases would be deemed personal and substantial, thus triggering the post-employment prohibition. Please note that, for the Water cases, OGC identified the subject matter, not the actual cases themselves. Please let me know if you need the names of each of the cases too.

**CLEAN AIR ACT CASES**

- 2015 Ozone Transport Deadline Suits and NOI
  - *Our Children's Earth Foundation v. Regan*, 1:20-cv-8232 (S.D.N.Y.) filed October 2, 2020 - No OGC front office recusals (1 transport claim)
  - Our Children's Earth Foundation NOI containing 23 transport claims – No OGC front office recusals, and no lawsuit, yet
  - *New York, et al. v. Regan, et al.*, No. 1:21-cv-252 (S.D.N.Y) filed January 12, 2021 - Melissa

Hoffer is recused (6 transport claims)
    - *Downwinders at Risk, et al. v. Regan*, 4:21-cv-3551 (N.D. Cal.) filed May 12, 2021 - Dimple Chaudhary and Marianne Engelman Lado are recused (32 transport claims, including all 7 claims already included in the S.D.N.Y. cases)

- Power Plant GHG Cases
    - *North Dakota v. EPA*, No. 15-1381 (D.C. Cir.) (consolidated petitions to review "Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units; Final Rule," 80 Fed. Reg. 64,510 (Oct. 23, 2015), as well as a subsequent EPA action denying administrative petitions for reconsideration, "Reconsideration of Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units," 81 Fed. Reg. 27,442 (May 6, 2016))
    - *American Lung Ass'n v. EPA*, No. 19-1140 (D.C. Cir.) (consolidated challenges to EPA's repeal of the Clean Power Plan, promulgation of the Affordable Clean Energy Rule, and modifications of the 40 CFR part 60 implementing regulations)

- Rule titled "Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2"
    - *Truck Trailers Manufacturers Ass'n v. EPA*, No. 16-1430 (D.C. Cir.)

**CLEAN WATER ACT CASES**

- WOTUS litigation under the Clean Water Act -- specifically the 15 cases challenging the 2020 Navigable Waters Protection Rule (NWPR), some of which also include challenges to the 2019 Repeal Rule or the 2015 Clean Water Rule.

- Litigation on state certification under section 401 of the Clean Water Act

**TOXIC SUBSTANCES CONTROL ACT**

- *LULAC et al. v. EPA* (9th Cir. No. 19-79719). On April 29, 2021, the Court issued an order in petitioners' favor that required EPA to (1) grant the petitioners' petition to revoke chlorpyrifos tolerances; (2) issue by August 20, 2021, a final rule under FFDCA either revoking or modifying chlorpyrifos tolerances; and (3) cancel or modify chlorpyrifos food-use registrations under FIFRA in a timely fashion.

- *CFS, et al. v. Wheeler* (9th Cir. No. 19-72109 and 19-72280). Petitioners sought review of EPA's approval of various uses of the insecticide sulfoxaflor based on their concerns for effects on pollinators and EPA's failure to make an effects determination under the ESA. On April 19, 2021, EPA filed a response brief requesting remand of the registration to complete effects determinations and due to intervening court decisions that may impact EPA's decision under FIFRA.

Finally, in our conversation, you asked whether your participation in discussions about Pebble

Mine/Bristol Bay and possible actions may trigger the post-employment statute. For example, the discussion included a possible CWA 404(c) action, but there is no such action contemplated at this time and the Administrator hasn't been briefed. You wondered if, two years from now, EPA does in fact take a CWA 404(c) action, and your employer wishes to join or opine in some way, would you be precluded from doing so. I will provide you with written advice on that point later this week. I want to be sure that my preliminary response is correct, so stay tuned for that.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Garbow, Avi <Garbow.Avi@epa.gov>
**Sent:** Wednesday, June 16, 2021 9:53 AM
**To:** Payne, James (Jim) <payne.james@epa.gov>
**Subject:** recusals

Jim,

Hope all's well. As I think you know, I am nearing the end of my temporary return stint to EPA, and my last day before a return to Patagonia will be June 30th. Some of my work while here has been with you and your team due to the recusals of some of the OGC political deputies. Can you have folks pull together a list of ongoing litigation in the various law offices for which Melissa/Dimple/Marianne are recused, with quick status update of those cases (2 sentences is plenty)? I would need this by next Tuesday the 22nd.

Avi

Avi Garbow
Senior Counselor to the Administrator
U.S. EPA
(202) 308-7716

**From:** Fugh, Justina
**To:** Garbow, Avi
**Subject:** addendum to post-employment advice
**Date:** Wednesday, June 30, 2021 12:40:00 PM

---

Hi Avi,

I am writing to provide you with advice about the remaining question you have posed:

> You asked whether your participation in discussions about Pebble Mine/Bristol Bay and possible actions may trigger the post-employment statute. For example, the discussion included a possible CWA 404(c) action, but there is no such action contemplated at this time and the Administrator hasn't been briefed. You wondered if, two years from now, EPA does in fact take a CWA 404(c) action, and your employer wishes to join or opine in some way, would you be precluded from doing so.

I understand that there was a policy discussion about Pebble Mine/Bristol Bay that included the Administrator, OW and Region 10 although OGC was not present. The meeting was described to me as considering various options including the possible timing of a 404(c) action. Because the discussion centered on a specific site, we know the identities of the involved parties, so we are talking about a specific party matter. Upon further reflection, then, my answer is YES, you would be precluded form representing Patagonia back to the United States on the 404(c) action if adopted. Here's why:

- The Pebble Mine site is a specific party matter;
- The parties affected by any action undertaken by the Agency are known and identified (i.e., the owners of the site);
- The particular matter involves specific parties at the time you participated and also at the time in the future when you might make a communication or appearance, even though the parties need not be identical at both times. *See* 5 CFR 2641.201(h)(3);
- Preliminary or informal action is covered by the prohibition, provided that specific parties to the matter have been identified. *See* 5 CFR 2641.203(h)(4);
- The 404(c) action, for example, will be the same particular matter involving specific parties in which you participated; and
- Your participation was personal and substantial because you were involved in considering the options and rendering advice about the options.

Example 1 following 5 CFR 2641.201(h)(4) is particularly instructive:

> A Government employee participated in internal agency deliberations concerning the merits of taking enforcement action against a company for certain trade practices. He left the Government before any charges were filed against the company. He has participated in a particular matter involving specific parties and may not represent another person in connection with the ensuing administrative or judicial proceedings against the company.

If the Agency pursues a 404(c) action against Pebble Mine, then my advice is that you should refrain from making an appearance or communication with the intent to influence any federal official on that action.

Justina
Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Fugh, Justina
**Sent:** Friday, June 25, 2021 12:18 AM
**To:** Garbow, Avi <Garbow.Avi@epa.gov>
**Subject:** summary of post-employment advice

Hi Avi,

Thanks for chatting with me on 6/24/21 to go over your post-employment obligations as you near the end of your SGE appointment on 6/30/21. As you know, the SGE position was not a political one so you were not required to sign the Biden ethics pledge and are not subject to Executive Order 13989. Since you served as an SGE for more than 60 days, you are bound by the permanent restriction of the post-employment statute, specifically 18 U.S.C. § 207(a)(1). If you worked personally and substantially on a specific party matter, then you are prohibited from representing the interests of another back to the United States on that same specific party matter. You cannot make an appearance or communication with the intent to influence any federal official -- not just EPA -- on that same matter. This restriction is permanent, meaning for your lifetime or the lifetime of the matter.

Your participation is considered "substantial" if you participated directly in the matter, and "substantial" if, at the time of your involvement, it was of significance to the matter, which may include decision-making, reviewing, or recommending an action to be taken. The term does not ,however, include ministerial acts relating to the matter. Please note that this post-employment restriction is a representational bar only. It does not prohibit "behind the scenes" consultation, but instead prohibits your making any appearance or communication back to the United States on those same specific party matters. That said, be mindful of your own bar restrictions. In DC, for example, bar rule 1.11 prohibits even "behind the scenes" consultation. EPA Ethics does not provide bar advice so you'll need to consult bar counsel if necessary. With respect to the other post employment restrictions, you were not a supervisor so not subject to 18 U.S.C. § 207(a)(2), and were not considered a former "senior official" so the one year cooling off period with EPA pursuant to 18 U.S.C. § 207(c) does not apply to you.

We understand from our colleagues in OGC that you participated in a number of cases in which political OGC leadership was otherwise recused. I expect that your participation in the following cases would be deemed personal and substantial, thus triggering the post-employment prohibition. Please note that, for the Water cases, OGC identified the subject matter, not the actual cases themselves. Please let me know if you need the names of each of the cases too.

**CLEAN AIR ACT CASES**

- 2015 Ozone Transport Deadline Suits and NOI
  - *Our Children's Earth Foundation v. Regan*, 1:20-cv-8232 (S.D.N.Y.) filed October 2, 2020 - No OGC front office recusals (1 transport claim)
  - Our Children's Earth Foundation NOI containing 23 transport claims – No OGC front office recusals, and no lawsuit, yet
  - *New York, et al. v. Regan, et al.*, No. 1:21-cv-252 (S.D.N.Y) filed January 12, 2021 - Melissa

Hoffer is recused (6 transport claims)
    - *Downwinders at Risk, et al. v. Regan*, 4:21-cv-3551 (N.D. Cal.) filed May 12, 2021 - Dimple Chaudhary and Marianne Engelman Lado are recused (32 transport claims, including all 7 claims already included in the S.D.N.Y. cases)
- Power Plant GHG Cases
    - *North Dakota v. EPA*, No. 15-1381 (D.C. Cir.) (consolidated petitions to review "Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units; Final Rule," 80 Fed. Reg. 64,510 (Oct. 23, 2015), as well as a subsequent EPA action denying administrative petitions for reconsideration, "Reconsideration of Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units," 81 Fed. Reg. 27,442 (May 6, 2016))
    - *American Lung Ass'n v. EPA*, No. 19-1140 (D.C. Cir.) (consolidated challenges to EPA's repeal of the Clean Power Plan, promulgation of the Affordable Clean Energy Rule, and modifications of the 40 CFR part 60 implementing regulations)
- Rule titled "Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2"
    - *Truck Trailers Manufacturers Ass'n v. EPA*, No. 16-1430 (D.C. Cir.)

**CLEAN WATER ACT CASES**

- WOTUS litigation under the Clean Water Act -- specifically the 15 cases challenging the 2020 Navigable Waters Protection Rule (NWPR), some of which also include challenges to the 2019 Repeal Rule or the 2015 Clean Water Rule.
- Litigation on state certification under section 401 of the Clean Water Act

**TOXIC SUBSTANCES CONTROL ACT**

- *LULAC et al. v. EPA* (9th Cir. No. 19-79719). On April 29, 2021, the Court issued an order in petitioners' favor that required EPA to (1) grant the petitioners' petition to revoke chlorpyrifos tolerances; (2) issue by August 20, 2021, a final rule under FFDCA either revoking or modifying chlorpyrifos tolerances; and (3) cancel or modify chlorpyrifos food-use registrations under FIFRA in a timely fashion.
- *CFS, et al. v. Wheeler* (9th Cir. No. 19-72109 and 19-72280). Petitioners sought review of EPA's approval of various uses of the insecticide sulfoxaflor based on their concerns for effects on pollinators and EPA's failure to make an effects determination under the ESA. On April 19, 2021, EPA filed a response brief requesting remand of the registration to complete effects determinations and due to intervening court decisions that may impact EPA's decision under FIFRA.

Finally, in our conversation, you asked whether your participation in discussions about Pebble Mine/Bristol Bay and possible actions may trigger the post-employment statute. For example, the discussion included a possible CWA 404(c) action, but there is no such action contemplated at this time and the Administrator hasn't been briefed. You wondered if, two years from now, EPA does in fact take a CWA 404(c) action, and your employer wishes to join or opine in some way, would you be precluded from doing so. I will provide you with written advice on that point later this week. I want to be sure that my preliminary response is correct, so stay tuned for that.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Garbow, Avi <Garbow.Avi@epa.gov>
**Sent:** Wednesday, June 16, 2021 9:53 AM
**To:** Payne, James (Jim) <payne.james@epa.gov>
**Subject:** recusals

Jim,

Hope all's well. As I think you know, I am nearing the end of my temporary return stint to EPA, and my last day before a return to Patagonia will be June 30th. Some of my work while here has been with you and your team due to the recusals of some of the OGC political deputies. Can you have folks pull together a list of ongoing litigation in the various law offices for which Melissa/Dimple/Marianne are recused, with quick status update of those cases (2 sentences is plenty)? I would need this by next Tuesday the 22nd.

Avi

Avi Garbow
Senior Counselor to the Administrator
U.S. EPA
(202) 308-7716

| | |
|---|---|
| **From:** | Fugh, Justina |
| **To:** | Waterhouse, Carlton |
| **Cc:** | Griffo, Shannon; Mosley, Ferne; Breen, Barry; Utech, Dan |
| **Subject:** | Approval of your request to engage in compensated outside activity |
| **Date:** | Thursday, March 18, 2021 3:35:29 PM |
| **Attachments:** | approval for Carlton Waterhouse to teach at Howard Law Spring 2021.pdf |

---

Hi Carlton,

Dan Utech, Chief of Staff, concurred in your request for approval of compensated outside activity, and Jim Payne, Designated Agency Ethics Official, approved it. See attached. This approval extends only to your teaching property law at Howard University School of Law in the Spring 2021 semester. If you are invited to teach a different course or this same course in a different semester, then you will need to seek prior approval of that new activity. Please bear in mind that as a non-career SES appointee, you are subject to the outside earned income cap for 2021 pursuant to 5 C.F.R. § 2636.304. The approval includes the pro-rated cap that applies to you for CY 2021.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Approval of Outside Teaching Activity

FROM: James Payne JAMES PAYNE Digitally signed by JAMES PAYNE Date: 2021 03.18 14:48:07 -04'00'
Designated Agency Ethics Official and Deputy General Counsel for
Environmental Media and Regional Law Offices

TO: Carlton Waterhouse
Deputy Assistant Administrator
Office of Land and Emergency Management

I have received your request to continue to engage in compensated outside employment as an adjunct professor at the Howard University School of Law during the Spring semester of 2021. You will be teaching a property law course. Based on the information you have provided, I am approving your request as consistent with 5 Code of Regulations (C.F.R.) Part 2635, Subpart H, and as required by 5 C.F.R. § 2636.307. I want to remind you of the relevant ethics obligations as you undertake this activity:

Financial Conflicts of Interest and Impartiality Rules

Because you will be compensated by Howard University, you may be considered to be an employee (as opposed to an independent contractor). If so, you have an imputed financial interest in the law school pursuant to the criminal conflict of interest law, 18 United States Code (U.S.C.) § 208. This means that you may not participate in an EPA or other government matter that will have a direct and predictable effect on the law school's financial interests. As such, you may not participate personally and substantially in a particular matter that affects the financial interests of the law school as a specific party, such as a grant or procurement, or a decision for the Agency to financially support a conference at the law school. Also, you may not participate in an EPA matter of general applicability that will affect the law school's financial interests as a member of a discreet and identifiable class, such as a regulatory or legislative matter affecting all laws schools.

In addition, or, in the alternative if you are not an "employee," you have a "covered relationship" with the law school during the term of your teaching activity and for a year after the activity ends pursuant to the impartiality regulations. This means that

you may not participate in a specific party matter at EPA in which the law school is a party or represents a party if a reasonable person will question your impartiality, unless you are authorized to do so by me or Justina Fugh. *See* 5 C.F.R. § 2535.502. For example, you may not participate in your official capacity in a decision to grant a meeting with a law school representative, participate in, or recommend a colleague to participate in, a conference at the law school.

Representational restrictions

You are also prohibited by a criminal law from acting as an agent or attorney for the law school before a federal agency or court in any matter in which the United States is a party or has a direct and substantial interest. *See* 18 U.S.C § 205. In your capacity as an adjunct faculty member, you may not appear before or communicate with an officer or employee of a federal agency or court on behalf of the law school, which includes contacting federal employees to speak before your law school classes or at other law school activities in their official capacities.

Misuse of position

You may not use government time or resources, such as the official time of a subordinate, or your official title, other than as part of general biographical information that is given no more prominence than other aspects of your professional or educational background. Also, you may not use or disclose non-public information for the furtherance of this activity, or otherwise use your official position for the private gain of the law school. *See generally*, 5 C.F.R. Part 2635, Subpart G.

Outside earned income limitation

Because you are a non-career member of the Senior Executive Service, your outside earned income from all sources during 2021 may not exceed $25,596[i].

Finally, you will have to report both the income and the outside teaching position on your relevant financial disclosure form. As always, if you have any questions, please feel free to contact me at 202-564-0212 or Justina Fugh at 202-564-1786.

---

[i] This amount is pro rated, as required by 5 C.F.R. § 2636.304(b).

| | |
|---|---|
| **From:** | Fugh, Justina |
| **To:** | Waterhouse, Carlton |
| **Cc:** | Mosley, Ferne |
| **Subject:** | draft recusal statement |
| **Date:** | Thursday, September 23, 2021 9:12:05 AM |
| **Attachments:** | Waterhouse recusal draft.docx |

---

Hi Carlton,

Before she went on vacation, Ferne sent me a draft recusal for you (see attached). I've been mulling over whether you should issue it now, as DAA, or if we should issue it later if (when!) you get a new position. How about if you review it now, as is, so you are reminded of what your obligations are? If we wait a bit, then we can insert Barry Breen as the "go to" person in the event something arises that's a conflict for you.

Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Carlton Waterhouse
**To:** Fugh, Justina
**Subject:** Form attached
**Date:** Wednesday, December 22, 2021 2:18:46 PM
**Attachments:** (b) (6) [redacted]

---

Hi Justina,

Please find the requested form attached. (b) (6) [redacted] I hope you and your loved ones are well. Happy Holidays to you all!!

--

Carlton Waterhouse, J.D., Ph.D.

| | |
|---|---|
| **From:** | Waterhouse, Carlton |
| **To:** | Fugh, Justina; Mosley, Ferne |
| **Subject:** | FW: Invitation to Deliver Keynote Address IICLR Symposium |
| **Date:** | Wednesday, October 13, 2021 11:13:16 AM |
| **Attachments:** | Dr. Waterhouse Keynote Invitation.pdf |

---

I want to confirm that this does not raise any red flags. Can you share your views?

Carlton Waterhouse, J.D., Ph.D.
Deputy Assistant Administrator
Office of Land and Emergency Management
United States Environmental Protection Agency
Waterhouse.carlton@epa.gov

---

**From:** Waterhouse, Carlton (b) (6) [redacted]
**Sent:** Wednesday, October 13, 2021 9:58 AM
**To:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Subject:** [WARNING: DMARC validation failed] Fw: Invitation to Deliver Keynote Address IICLR Symposium

Carlton Waterhouse, J.D., Ph.D.
Professor of Law
Environmental Justice Center, Director
Howard University School of Law
(b) (6) [redacted]

---

**From:** Carlton Waterhouse (b) (6) [redacted]
**Sent:** Tuesday, October 12, 2021 11:06 PM
**To:** Waterhouse, Carlton (b) (6) [redacted] >
**Subject:** Fwd: Invitation to Deliver Keynote Address IICLR Symposium

**External Email Warning**

**WARNING!** Please proceed with caution as this message could be a scam. The sender's account may have been compromised and used to send malicious messages. If this message seems suspicious, please **DO NOT CLICK** any of the links and/or attachments. If you believe the contents of this email may be unsafe, please send it as an attachment to the ETS Information Security Team: ets-infosec@howard.edu.

---------- Forwarded message ---------

Dear Dr. Waterhouse,

The *Indiana International and Comparative Law Review (IICLR)* Symposium Staff is pleased to extend an invitation for you to deliver the keynote address during our upcoming Symposium, **International Law and the Environment: Sustainability, Justice, and Climate Change Around the World**. Specifically, we would like your keynote to address environmental justice. Given your extensive experience on the topic, we feel you will provide a captivating speech and raise poignant issues for our audience. We understand that, should your appointment to the Environmental Protection Agency be confirmed prior to the Symposium, you would appear in an official capacity.

Due to ongoing COVID-19 concerns, the Symposium will be held virtually via Zoom on Friday, March 4, 2022, from approximately 9:00 a.m. to 2:00 p.m. EST. We would like for your

keynote to be delivered at 1:00 p.m. EST, though times are flexible, and we can schedule your appearance based on your availability.

Your keynote address will be preceded by two different panel discussions that will focus on sustainability and climate change. Our confirmed panelists include environmental law professors, attorneys, and professionals from both the public and private sectors.

We request that you respond to this invitation no later than Tuesday, November 30, 2021. Thank you for your consideration of our invitation to deliver the keynote address at IICLR's 2022 Symposium. You may contact Brittany Doyle at bddoyle@iu.edu or 317-504-2853 should you have additional questions. We wish you the best with your pending confirmation hearings.

Sincerely,

Brittany Doyle
Executive Symposium Live Editor
Analiese Smith
Executive Symposium Publication Editor
*Indiana International and Comparative Law Review*
Indiana University - Robert H. McKinney School of Law
bddoyle@iu.edu | 317-504-2853

**INDIANA INTERNATIONAL AND COMPARATIVE LAW REVIEW SYMPOSIUM**
Volume XXXII 2021-2022

October 8, 2021

Indiana International and Comparative Law Review
Indiana University Robert H. McKinney School of Law
530 W New York St.
Indianapolis, IN 46204

Dear Dr. Waterhouse,

The *Indiana International and Comparative Law Review (IICLR)* Symposium Staff is pleased to extend an invitation for you to deliver the keynote address during our upcoming Symposium, **International Law and the Environment: Sustainability, Justice, and Climate Change Around the World**. Specifically, we would like your keynote to address environmental justice. Given your extensive experience on the topic, we feel you will provide a captivating speech and raise poignant issues for our audience. We understand that, should your appointment to the Environmental Protection Agency be confirmed prior to the Symposium, you would appear in an official capacity.

Due to ongoing COVID-19 concerns, the Symposium will be held virtually via Zoom on Friday, March 4, 2022, from approximately 9:00 a.m. to 2:00 p.m. EST. We would like for your keynote to be delivered at 1:00 p.m. EST, though times are flexible, and we can schedule your appearance based on your availability.

Your keynote address will be preceded by two different panel discussions that will focus on sustainability and climate change. Our confirmed panelists include environmental law professors, attorneys, and professionals from both the public and private sectors.

We request that you respond to this invitation no later than Tuesday, November 30, 2021. Thank you for your consideration of our invitation to deliver the keynote address at IICLR's 2022 Symposium. You may contact Brittany Doyle at bddoyle@iu.edu or 317-504-2853 should you have additional questions. We wish you the best with your pending confirmation hearings.

Sincerely,

Brittany Doyle
Executive Symposium Live Editor

Analiese Smith
Executive Symposium Publication Editor
*Indiana International and Comparative Law Review*

| | |
|---|---|
| **From:** | Mosley, Ferne |
| **To:** | Griffo, Shannon |
| **Cc:** | Fugh, Justina |
| **Subject:** | FW: NRDC request for meeting with Carlton Waterhouse |
| **Date:** | Wednesday, December 15, 2021 1:28:35 PM |
| **Attachments:** | C Waterhouse Recusal Memo December 2021.pdf |

FYI in case you've had a request for this. I'll put it in the shared folder.

Ferne

*Ferne L. Mosley, Attorney-Advisor*
Office of the General Counsel/Ethics Office
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW WJC Bldg, (North)
Washington, DC 20460
202-306-2998 (mobile)
202-564-8046 (desk)

---

**From:** Brooks, Becky <Brooks.Becky@epa.gov>
**Sent:** Wednesday, December 15, 2021 1:24 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Goldberg, Ruby <Goldberg.Ruby@epa.gov>
**Cc:** Mosley, Ferne <mosley.ferne@epa.gov>
**Subject:** RE: NRDC request for meeting with Carlton Waterhouse

Please find the signed memo attached. Barry has a copy. I will get a copy to our CMS folks to put into CMS for recordkeeping purposes. Thanks.

*Becky Brooks*
*Special Assistant*
*Office of Land and Emergency Management*
*U.S. Environmental Protection Agency*
*Cell ph. 202-281-9653*
*Office ph. 202-566-2762*

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Thursday, December 09, 2021 2:39 PM
**To:** Brooks, Becky <Brooks.Becky@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Goldberg, Ruby <Goldberg.Ruby@epa.gov>
**Cc:** Mosley, Ferne <mosley.ferne@epa.gov>
**Subject:** RE: NRDC request for meeting with Carlton Waterhouse

Hi Becky,
Oh, you're right, I can't finalize that statement because I don't have your letterhead! Duh! Yes, please if you could nail down whom he wants to include as the POCs and then get it finalized, I'd be

grateful. Would you also please send a copy along to Ferne and me when signed?
Many thanks,
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Brooks, Becky <Brooks.Becky@epa.gov>
**Sent:** Thursday, December 9, 2021 2:11 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Hilosky, Nick <Hilosky.Nick@epa.gov>; Goldberg, Ruby <Goldberg.Ruby@epa.gov>
**Cc:** Mosley, Ferne <mosley.ferne@epa.gov>
**Subject:** RE: NRDC request for meeting with Carlton Waterhouse

Hi Justina – Thank you so much for looping us in on this. Barry's title is correct; he is the Acting Assistant Administrator for OLEM. In the past, Nick and I have been identified in recusal memos as contacts. We can confirm with Carlton who he wants.

He is on travel today, so it will be Monday before we speak with him. Would you like us to get this on OLEM letterhead and finalized for him to sign?

Thanks again. Becky

*Becky Brooks*
*Special Assistant*
*Office of Land and Emergency Management*
*U.S. Environmental Protection Agency*
*Cell ph. 202-281-9653*
*Office ph. 202-566-2762*

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Thursday, December 09, 2021 12:58 PM
**To:** Hilosky, Nick <Hilosky.Nick@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>; Goldberg, Ruby <Goldberg.Ruby@epa.gov>
**Cc:** Mosley, Ferne <mosley.ferne@epa.gov>
**Subject:** NRDC request for meeting with Carlton Waterhouse

Hi there,
I have responded separately to Carlton that he is *not permitted to accept this meeting* for ethics reasons. He can't be involved in this meeting, including weighing in on who should attend, at all. Prior to joining federal service, he served on the NRDC board so he has both an impartiality issue and a pledge restriction with them. *See* 5 C.F.R. § 2635.502(b)(1)(4) and Executive Order 13989. He

therefore cannot participate in any specific party matter in which they or any of the following entities is a party or represents a party: Howard University School of Law, Environmental Law Institute, BARBRI, iLaw/BarBri Legal Ed, or the National Legal Aid and Defender Association. He can't answer their emails, take their phone calls, or even attend any meeting organized by them or at which any of them is present, unless he first consults with OGC/Ethics. For our part, we will not agree to allow his participation in any meeting or other communication unless the subject matter is a matter of general applicability that is open to all interested parties. To be clear, even though the subject of the meeting described below is not a specific party matter, the list of attendees is too limited (only NRDC and EarthJustice) to be permissible.

Please decline on Carlton's behalf because of his recusal issues and, instead, you may consult with Barry Breen without any involvement, coordination, or contact with Carlton.

We had drafted a recusal statement for Carlton (see attached) that hasn't yet been signed. We had held off, thinking that his confirmation was imminent, but given this occasion, we now believe that we should ask him to issue the recusal to stave off any further confusion. I am concerned, however, that this version does not have Barry Breen's correct title. Can one of you please confirm Barry's title? We can make the change, if necessary, and send to Carlton a pdf for his digital signature and distribution.
Thanks,
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Sent:** Thursday, December 9, 2021 12:33 AM
**To:** Hilosky, Nick <Hilosky.Nick@epa.gov>
**Cc:** Brooks, Becky <Brooks.Becky@epa.gov>; Goldberg, Ruby <Goldberg.Ruby@epa.gov>
**Subject:** Re: Request for meeting with Deputy Assistant Administrator Waterhouse

I am but I need to confirm that I do not have a recusal issue with NRDC. I am checking with OGC.

Sent from my iPhone

> On Dec 8, 2021, at 10:48 AM, Hilosky, Nick <Hilosky.Nick@epa.gov> wrote:
>
> Carlton – wanted you to be aware of this request…are you ok with taking the meeting.
> If so we will work with them on some dates and times.

Nick

---

**From:** Adam Kron <akron@earthjustice.org>
**Sent:** Monday, December 6, 2021 4:21 PM
**To:** Hilosky, Nick <Hilosky.Nick@epa.gov>
**Cc:** Brooks, Becky <Brooks.Becky@epa.gov>; amall@nrdc.org; jknicley@nrdc.org; mhunter@earthjustice.org; jyskamp@earthjustice.org
**Subject:** Request for meeting with Deputy Assistant Administrator Waterhouse

Mr. Hilosky,

We'd be interested in scheduling a meeting with Deputy Assistant Administrator Waterhouse regarding oil and gas extraction, development, and production wastes ("E&P wastes") and EPA's regulation of those wastes under RCRA. The attendees for the meeting would be the following individuals (also cc'd to this email):

- From Natural Resources Defense Council (NRDC): Amy Mall and Jared Knicley;
- From Earthjustice: Adam Kron, Megan Hunter, and James Yskamp.

Thanks for your help,

Adam

Adam Kron
Senior Attorney
1001 G St NW, Suite 1000
Washington, D.C. 20001
(202) 794-8039
*he/him/his*
earthjustice.org

<ATT00001.gif>

*The information contained in this email message may be privileged, confidential and protected from disclosure.*
*If you are not the intended recipient, any dissemination, distribution or copying is strictly prohibited.*
*If you think that you have received this email message in error, please notify the sender by reply email and delete the message and any attachments.*

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

December 15, 2021

OFFICE OF
LAND AND EMERGENCY
MANAGEMENT

**MEMORANDUM**

SUBJECT: Recusal Statement

FROM: Carlton Waterhouse
Deputy Assistant Administrator

CARLTON WATERHOUSE Digitally signed by CARLTON WATERHOUSE Date: 2021.12.15 13:12:08 -05'00'

TO: Barry N. Breen
Acting Assistant Administrator

I have consulted with the Office of General Counsel/Ethics (OGC/Ethics) and have been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed.

*FINANCIAL CONFLICTS OF INTEREST*

As required by the criminal financial conflict of interest law, 18 U.S.C. § 208(a), I may not participate personally and substantially in any particular matter having a direct and predictable effect on my financial interests, or the financial interests of a person or entity whose financial interests are imputed to me, unless I first obtain a written waiver pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption as outlined in 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: my spouse and minor child; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner, or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have been advised by OGC/Ethics that I have a financial interest in the **Howard University School of Law** in Washington, DC from which I have taken a two-year, unpaid leave of absence. Therefore, I may not participate personally and substantially in any particular matter that, to my knowledge, has a direct and predictable effect on the financial interests of Howard University School of Law unless I first obtain a written waiver or my participation is permitted by a regulatory exemption, including the exemption for employees on leave from institutions of higher learning allowing participation in certain matters of general applicability at 5 C.F.R. § 2640.203(b). This latter exemption allows me to participate in a particular matter of general applicability, such as a rulemaking, so long as it does not have a distinct effect on either of the institution other than as part of class.

*OBLIGATIONS UNDER EXECUTIVE ORDER 13989 (the Ethics Pledge)*

Pursuant to Section 1, Paragraph 2 of Executive Order 13989, I have additional ethics

obligations with respect to the **National Resources Defense Council** and the **Environmental Law Institute** due to my former board memberships, and for **BARBRI, iLaw/BarBri Legal Ed,** and the **National Legal Aid and Defender Association**, for which I provided personal services. The Executive Order provides more restrictions than the federal ethics rules and require that I recuse myself from participating in EPA matters in which any of these entities is a party or represents a party for two years from my EPA appointment date, or **until February 2, 2023**, unless I receive a waiver of these provisions by the EPA Designated Agency Ethics Official after consultation with the White House.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term "particular matters involving specific parties" is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term "open to all interested parties" means that the meeting should include a multiplicity of parties. If, for example, there is "a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client."1 Such a meeting must also include a diversity of interests. Should a question arise as to whether a specific forum qualifies as "open to all interested parties," then I will consult with OGC/Ethics.

*OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS*

Pursuant to the federal impartiality standards at 5 C.F.R. § 2635.502(a), I have a "covered relationship" with the **Howard University School of Law** for the period of my leave of absence and for one year thereafter. Therefore, I may not participate in a particular matter involving specific parties in which any of this entity is a party or represents a party during the time period of my recusal, unless I am authorized to participate by OGC/Ethics pursuant to 5 C.F.R. § 2635.502(d).

*DIRECTIVE AND CONCLUSION*

To avoid participating in all of the matters outlined above from which I am recused, please direct them to the attention of Becky Brooks or Nick Hilosky without my knowledge or involvement. Should these recusals have a significant impact on my ability to perform my duties, I will seek additional guidance from OGC/Ethics and will consult with them to revise my recusal statement if my circumstances change, including changes in my financial interests, my personal or business relationships, or my EPA duties, and provide a copy to you and the Ethics Office.

cc: Justina Fugh, Director, Ethics Office
Becky Brooks, OLEM
Nick Hilosky, OLEM
Ruby Goldberg, OLEM

---

1 *See* Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

| | |
|---|---|
| **From:** | Fugh, Justina |
| **To:** | (b) (6) [redacted] |
| **Subject:** | FW: summary of our conversation |
| **Date:** | Tuesday, December 29, 2020 2:34:00 AM |
| **Attachments:** | Welcome to the wonderful world of public financial disclosure reporting - preliminary note.docx |

Hi,
I'm sorry, but I must have written your email down incorrectly. I got your resume from Sinceré Harris, so am sending you the message to the email address included there.
Justina

---

**From:** Fugh, Justina
**Sent:** Tuesday, December 29, 2020 2:05 AM
**To** (b) (6) [redacted]
**Subject:** summary of our conversation

Hi there,
This note summarizes our conversations on Tuesday, 12/22 and Monday, 12/28. On or after January 20, 2021, you are slated to join EPA as the Deputy Assistant Administrator for the Office of Land and Emergency Management, which is a non-career SES appointment. As such, you will be subject to the federal ethics laws and regulations, the criminal conflict of interest statutes, the Hatch Act (that governs the political activity of federal employees) and, of course, your own bar rules. In addition, like Presidents Clinton, Obama and Trump before him, President Biden may require that his political appointees sign an ethics pledge with additional obligations. If so, then in this position, you will be required to sign that p ledge. You will also be required to submit a public financial disclosure report, called the OGE 278, that is completed electronically. That report is due no later than 30 days after you start at EPA though you may as well get started now. It's a beast. Using your personal email address, I have assigned you the new entrant report and attached some additional information to this message. You should have received a notification from integrity.gov. If not, then go to www.integrity.gov to see if you can gain access that way.
In our conversation, we discussed a variety of issues that I've summarized below:

- You are a tenured professor at Howard University. I advised you that, in the past, the White House Counsel's office and the Office of Government Ethics have allowed tenured professors to take a leave of absence consistent with established faculty rules rather than to resign. I informed you that, in the Obama Administration, one PAS appointee and one non-career SES appointee served at EPA while on approved leaves of absence from their respective universities. Assuming that this practice is continued in the Biden Administration, then I explained you would remain on the Howard faculty and would have a financial conflict of interest with it that we would reflect in your recusal statement.
    - REMINDER: Confirm with the White House Counsel's office that you may take a leave of absence rather than resign.
- You sought preliminary advice regarding a number of non-EPA related work

commitments, including teaching in the Spring 2021 semester; finishing, updating or revising a number of books, articles or other publications; pre-recording a virtual presentation on behalf of a non-profit on racial justice and the criminal justice system to be shown after you join EPA; lecturing for BAR BRI on administrative law and landlord-tenant law; and presenting or speaking at conferences in your personal capacity. I advised you that, as a federal employee, you may not be able to accept compensation for certain teaching, speaking or writing that relates in significant part to any EPA program, policy or operation, and that we would have to be consider carefully each of these situations. I advised you that, in the past, the Administration has not permitted its political appointees to hold any positions outside of federal service. I can provide you with the ethics advice, but you will first need their permission to pursue these outside activities after you become an EPA employee.

  - REMINDER: Confirm with the White House Counsel's office that you may pursue these activities even as an EPA employee
  - Assuming that the White House Counsel's office agrees, then you could be permitted to engage in these activities though in your personal capacity only, meaning on your own time and not using any EPA resources. You would likely need to seek approval of the outside activities after you join EPA, have to report on these arrangements on your financial disclosure report, and may need advice about using a disclaimer and whether or not you could receive compensation.
  - From a federal ethics perspective, I also advised you that, as a non-career SES appointee, you will be subject to an outside earned income threshold. The amount changes each January, but as of January 2020, the cap is $28,845, which is cumulative. You will not be able to earn more than that cap amount in the calendar year from any source outside of the United States government. See Title V of the Ethics In Government Act, 5 U.S.C. app. § 501 et seq.

- You indicated that you have a consultancy through which you receive payment for your presentations. I advised you that you will not need to dissolve this consultancy but it needs to be held in abeyance or otherwise inactive. I reminded you that you will have to report this entity, position and any gross income on the financial disclosure report.

This is a lot of information, so feel free to peruse it at your leisure and get back in touch if you have follow up or other questions.

All the best,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Welcome to the wonderful world of public financial disclosure reporting! Given your position at EPA, you will be required by the Ethics in Government Act of 1978 to file the Public Financial Disclosure. In addition, you will need to report on certain stock transactions on a periodic basis. But let's start with the report itself.

**DEADLINE FOR SUBMITTING THE REPORT**

Technically, your "new entrant" report is due no later than 30 days from the date you start, which we are anticipating to be January 20, 2021. Your due date will be 2/19/21 and you can get started on it now. You may not be able to submit it until after your start date, but we can still view it in progress in case you need help. If you need additional time, you must contact ethics@epa.gov before your deadline expires. There is a limit to how much additional time we can give you, and we can't grant any extension after the fact.

**THE FINANCIAL DISCLOSURE REPORT, OGE-278e**

EPA uses an electronic filing system (www.INTEGRITY.gov) for the public financial disclosure reports that is operated and secured by the U.S. Office of Government Ethics (OGE). You are required by law to complete the form, and we will use it to determine whether you have any financial conflicts of interest or other ethics concerns.

We created an account for you in INTEGRITY and have assigned you a "new entrant" report. Your filer category is "noncareer SES" and your filer status is "full time." For help in INTEGRITY, check out the OGE Public Financial Disclosure Guide. The email from INTEGRITY.gov will provide you with specific instructions to log into the federal government's max.gov site, the gateway to INTEGRITY. If you don't receive your account notification within three days, then please check your clutter box for messages from INTEGRITY.gov, or contact ethics@epa.gov. Your user ID for now is your personal email address. When you get an EPA email address, we'll change your user ID.

There are several important things to know about the OGE-278e: (1) it is a public form (which means that anyone can ask for a copy of your form after it's submitted but it will not be posted directly to the internet; (2) you have to fill it out every year you are in this position; (3) when you leave the position, you have to file a termination report (so remember to notify us); and (4) <u>you will be subject to a late filing fee of $200 for not filing your report timely</u>. There are also civil and criminal penalties for failure to file at all or for inaccurate reporting.

**REQUIREMENT TO ANSWER ANY FOLLOW UP QUESTIONS WITHIN 14 DAYS**

We will review your report as quickly as possible. If we have any questions, then we will notify you. At that point, you will have 14 calendar days to respond and resubmit your report back to us with any necessary changes.

**REPORTING TRANSACTIONS**

After you join EPA in this position, you will be required to report any purchase, sale or exchange of stocks, bonds, commodities futures or other forms of securities when the amount of the transaction exceeds $1000. Use INTEGRITY to disclose reportable transactions *within 30 days of receiving notification of the transaction, but not later than 45 days after the transaction occurs*. You will have to report transactions that occur within brokerage accounts, managed accounts, or other investment

vehicles that you own or jointly own with your spouse or another person, as well as transactions of your spouse or dependent children. We will provide you with a comprehensive review of reportable transactions during your initial ethics training and underscore that you are responsible for reporting transactions, even if you have a managed account, and you will be fined for a tardy periodic transaction report.

**YES, *YOU CAN BE FINED* FOR NOT FILING PROMPTLY**

It's worth repeating that you can be fined $200 for not meeting the submission deadline (and you still have to file that report). PLEASE pay attention to your filing requirements! If you need an extension, then you must ask before your deadline expires. There is a limit to how much additional time you may receive.

HELPFUL HINTS FOR FILLING OUT THE FORM

- This is a wretched and exacting form, so just know that you will have to provide a lot of information.
- You will get three different places to report assets: filer's employment-related assets and income, spouse's employment related assets and income, and other assets and income. You must report assets for yourself, your spouse and any dependent children. We don't really care where you report your assets, just that you do report them all someplace.
- You must include any investment asset that is worth more than $1000. Include any income from any source that exceeded $200 during the reporting period (including outside jobs or hobbies, rental income). Include any cash/savings accounts that have more than $5000.
- Enter each asset separately. Don't lump items together on one line. Be sure to provide the valuation of the asset AND the amount of the income. For assets that aren't mutual funds, you also have to report the type of income (e.g., dividends, cap gains).
- For 401(k) or IRA plans, provide the name of each of the underlying assets. Don't just write "Vanguard IRA" or "mutual fund." You must specify each asset separately and give the valuation but, for these assets in tax deferred instruments, you do not need to provide the amount of income accrued.
- Do not report your federal salary, your spouse's federal salary, or Thrift Savings Plan information
- If you (not your spouse) have any earned income (e.g., outside job, paid pension), you have to report the actual amount of that income.
- If your spouse works outside of federal service, then include your spouse's employer but not the amount of your spouse's salary. If you are not legally married, do not report your significant other's employer.
- Don't forget to include any life insurance policies (whole life or variable life) as well as the underlying investments. Do not report term life insurance.

- If you have nothing to report in a section, be sure to click the “nothing to report” button
- Remember to check out the Office of Government Ethics’ Public Financial Disclosure Guide or to contact EPA/Ethics for help.

If you have any questions regarding this message or your obligations, then please contact me directly or anyone in the EPA Ethics Office at ethics@epa.gov. We’ll be happy to assist you.

## Clarke, Victoria

**From:** Mosley, Ferne
**Sent:** Wednesday, August 18, 2021 5:05 PM
**To:** Thornton, Kecia
**Subject:** RE: Carlton Waterhouse Invitation: Satcher Health Leadership Environmental Health and Justice Webinar Series

Ok, sounds good. Let me know if there are any questions.

Ferne

*Ferne L. Mosley, Attorney-Advisor*
U.S. Environmental Protection Agency
Ethics Office/Office of General Counsel
William Jefferson Clinton Building North, Room 4113A
1200 Pennsylvania Ave, NW
Washington, DC 20460
(202) 564-8046 (desk)
(202) 306-2998 (mobile)
mosley.ferne@epa.gov

---

**From:** Thornton, Kecia <Thornton.Kecia@epa.gov>
**Sent:** Wednesday, August 18, 2021 4:58 PM
**To:** Mosley, Ferne <mosley.ferne@epa.gov>
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: Carlton Waterhouse Invitation: Satcher Health Leadership Environmental Health and Justice Webinar Series

Thank you very much, Ferne! I will share this with Carlton's special assistant asap and we will work with the White House liaison!

Kecia Thornton
OLEM Audit liaison
(202) 566-1913

---

**From:** Mosley, Ferne <mosley.ferne@epa.gov>
**Sent:** Wednesday, August 18, 2021 4:55 PM
**To:** Thornton, Kecia <Thornton.Kecia@epa.gov>
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** FW: Carlton Waterhouse Invitation: Satcher Health Leadership Environmental Health and Justice Webinar Series

Hi, Kecia – Justina asked me to get back to you about this invitation to Carlton. There are a couple of other issues regarding this invitation besides the honorarium. First, as a full-time EPA employee appearing in his official capacity, Carlton cannot speak about any environmental initiatives being undertaken at Howard University as Morehouse is requesting; he may only speak about the environmental initiatives and views of the EPA. So, please advise Morehouse that his remarks will be limited to the work of the EPA.

Next, because he is a nominee for a Senate-confirmed position, he will need to get approval from the White House via the White House Liaison, Sincere Harris, before he agrees to accept any speaking engagements from non-federal entities. Therefore, please run this through Sincere before he accepts or appears at this engagement.

As you mention, he must decline the honorarium. You can advise Morehouse that, as a federal employee speaking in his official capacity, Mr. Waterhouse is prohibited from accepting an honorarium for his appearance.

Following these guidelines, and with approval of the White House, we do not see any other ethics issues with him speaking as a panel member on behalf of EPA.

Please let me know if you have any other questions.

Sincerely, Ferne

*Ferne L. Mosley, Attorney-Advisor*
U.S. Environmental Protection Agency
Ethics Office/Office of General Counsel
William Jefferson Clinton Building North, Room 4113A
1200 Pennsylvania Ave, NW
Washington, DC 20460
(202) 564-8046 (desk)
(202) 306-2998 (mobile)
mosley.ferne@epa.gov

---

**From:** Thornton, Kecia <Thornton.Kecia@epa.gov>
**Sent:** Wednesday, August 18, 2021 10:46 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Carlton Waterhouse Invitation: Satcher Health Leadership Environmental Health and Justice Webinar Series

Good morning, Justina!

I hope your day is off to a good start! OLEM's DAA (AA Nominee) Carlton Waterhouse has been invited to participate in a webinar with the Morehouse School of Medicine. The school has offered a $250 honorarium which we know Carlton cannot accept. How would you recommend we decline the honorarium… would your office decline on the Agency's behalf or do you have standard language that we should use? Thank you very much!

Kecia Thornton
OLEM
(202) 566-1913

---

**From:** Stroud, Jareese <jstroud@msm.edu>
**Sent:** Tuesday, August 17, 2021 8:49 PM
**To:** Goldberg, Ruby <Goldberg.Ruby@epa.gov>
**Subject:** Re: Special Invitation: Satcher Health Leadership Environmental Health and Justice Webinar Series

Hi Ruby

I hope you are having a wonderful day! Below you will find the registration for the webinar if you would like to disseminate it among your colleagues. The next communication/advertisement will feature Dr. Waterhouse and our policy speakers for promotion of the event. Also, please review the final agenda to ensure accuracy of Dr. Waterhouse's information and reminders/updates below.

- The webinar will be recorded for archival, distribution, and future educational opportunities. If you do not give permission to be recorded, you must contact us 24hrs prior to the event via email.
- Powerpoint presentations are due to Jareese Stroud (jstroud@msm.edu) no later than 8/19 (if you are displaying slides)
- Please complete and return your W9 and vendor form to Jareese Stroud to receive a $250 honorarium
- Review the attached agenda for accuracy of your information.
- Please share the event registration with your colleagues: https://satcherinstitute.org/programs/climate-change-and-environmental-health-equity/webinar-series/

Webinar Series - Satcher Health Leadership Institute

The Satcher Health Leadership Institute (SHLI) at Morehouse School of Medicine and the Environmental Defense Fund (EDF) have partnered to provide a bi-monthly lunch and learn series for legislators, policymakers, institutional leaders, and community advocates.

satcherinstitute.org

---

**From:** Stroud, Jareese <jstroud@msm.edu>
**Sent:** Friday, August 6, 2021 1:03 PM
**To:** Waterhouse.carlton@epa.gov <Waterhouse.carlton@epa.gov>
**Cc:** Standifer, Maisha <mstandifer@msm.edu>
**Subject:** Special Invitation: Satcher Health Leadership Environmental Health and Justice Webinar Series

Greetings Dr. Waterhouse:

**You are cordially invited to participate in our virtual webinar series that will examine environmental health inequities and the impact of the climate crisis on vulnerable populations. Specifically, we would like you to provide insight related to your work in environmental health and vulnerable communities as well as Howard University's environmental health initiatives during the webinar on August 25, 2021**.

The Satcher Health Leadership Institute (SHLI) at Morehouse School of Medicine and the Environmental Defense Fund (EDF) have partnered to provide a bi-monthly brown bag learning series for legislators, policymakers, institutional leaders, and community advocates. The series will focus on topics related to addressing voting access and democracy, water quality, carbon emissions, energy and power conservation, and climate change effects on vulnerable communities through a policy and health equity lens.

In general, the virtual webinars will last no longer than 1.5 hours beginning August 2021 and concluding December 2021. **The webinars will take place from 12:00PM-1:30PM EST** and will build upon SHLI's mission to create systemic change at the intersection of policy and equity.

For questions regarding the webinar series and to confirm your participation, please contact me at mstandifer@msm.edu and cc: Jareese Stroud at jstroud@msm.edu. Once confirmed, you will receive a Zoom invitation within 1 week of the actual webinar. Thank you for your consideration of this request.

Your support will enable us to approach the disparate nature of environmental health inequities with solutions towards equitable outcomes impacting vulnerable populations.

Sincerely,

Maisha Standifer, PhD, MPH

Director, Health Policy

Satcher Health Leadership Institute

Morehouse School of Medicine

---

*CONFIDENTIALITY/DISCLAIMER NOTICE: This email message including any attachments is intended for the named addressee above. It may contain information that is confidential, proprietary, privileged and/or exempt from disclosure under applicable law. If you are not the intended recipient, any review, disclosure, copying, distribution, dissemination or use of the information contained in, or attached to, this message is strictly prohibited. Morehouse School of Medicine disclaims all responsibility and liability for the accuracy and content of the message, its attachments, and for any damages or losses related to viruses they may contain. If you have received this email in error, please delete it and all copies from any device/media where this message is stored, and notify the sender by replying to this message.*

**From:** Mosley, Ferne
**To:** Thornton, Kecia
**Cc:** Keith, Jennie
**Subject:** RE: A question about lodging
**Date:** Thursday, September 09, 2021 9:41:00 AM

---

Hello, I'm copying Jennie Keith as she handles ethics issues relating to official travel, but official travel rules are set out by the GSA travel regulations, not the OGE ethics regulations.
Also, please send inquiries to ethics@epa.gov instead of me personally so we can assign tasks accordingly.
Thanks, Ferne

*Ferne L. Mosley, Attorney-Advisor*
U.S. Environmental Protection Agency
Ethics Office/Office of General Counsel
William Jefferson Clinton Building North, Room 4113A
1200 Pennsylvania Ave, NW
Washington, DC 20460
(202) 564-8046 (desk)
(202) 306-2998 (mobile)
mosley.ferne@epa.gov

---

**From:** Thornton, Kecia <Thornton.Kecia@epa.gov>
**Sent:** Thursday, September 9, 2021 8:51 AM
**To:** Mosley, Ferne <mosley.ferne@epa.gov>
**Subject:** A question about lodging

Good morning, Ferne!
I hope your day is off to a great start! I have a question for you. The OLEM AA Appointee (Carlton Waterhouse) will be going out to Pocatello, ID in October to meet with the Shoshone-Bannock tribe. The tribe runs a hotel and casino and invited Carlton to stay there.
The OLEM DEO (Barry Breen) wanted to make sure there were no restrictions we needed to be aware of before making reservations with the hotel. I checked the Agency's travel guidance and did not see anything specific about restrictions of government employees staying in casino hotels. Do you know if there are any concerns from the ethics perspective? When I researched the OGE website, I found information which prohibits gambling on federal property and during official hours. I did not find any information specific to this topic.
Thank you very much for any advice you can provide.
Kecia Thornton
OLEM Audit liaison
(202) 566-1913

| | |
|---|---|
| **From:** | Mosley, Ferne |
| **To:** | Waterhouse, Carlton; Fugh, Justina |
| **Cc:** | Keith, Jennie |
| **Subject:** | RE: Again: Congratulations! |
| **Date:** | Tuesday, January 25, 2022 9:42:00 AM |
| **Attachments:** | 211209_Waterhouse_invitation.pdf<br>image001.png |

---

Hello, Carlton = we have no ethics objection to you participating in this conference in your official capacity; the Agency has authority to accept travel reimbursement from the offeror to facilitate your participation if certain criteria are met. Jennie Keith will assist you with the necessary travel form requirements.

Sincerely, Ferne

*Ferne L. Mosley, Attorney-Advisor*
Office of the General Counsel/Ethics Office
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW WJC Bldg, (North)
Washington, DC 20460
202-306-2998 (mobile)
202-564-8046 (desk)

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Sent:** Tuesday, January 25, 2022 9:28 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Mosley, Ferne <mosley.ferne@epa.gov>
**Subject:** FW: Again: Congratulations!

I have received the following speaking invitation. Can you let me know if you have any concerns with this event? What about the offer to pay for travel?

Carlton Waterhouse, J.D., Ph.D.
Deputy Assistant Administrator
Office of Land and Emergency Management
United States Environmental Protection Agency
Waterhouse.carlton@epa.gov

---

**From:** Peter Dobers <peter.dobers@sh.se>
**Sent:** Thursday, December 9, 2021 2:27 AM
**To:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Cc:** ISDRS 2022 Conference <isdrs2022@isdrsconferences.org>
**Subject:** Re: Again: Congratulations!

Dear Carlton,

Attached is a formal invitation, if needed.

Also, please mail to Johanna at isdrs2022@isdrsconferences.org

- a photo of your choice,
- a brief bio of about 100 words,
- a title and
- three pair of key words you wish to signal your talk with.

… for us to publish on the conference site.

Best wishes,
Peter

---

ISDRS Conference 2022 on ”Sustainable Development and Courage. Culture, Art and Human Rights”
https://2022.isdrsconferences.org

14 June: PhD Day and Workshop Day
15-17 June: Conference Days
18 June: Sustainability Tours

---

**PETER DOBERS** PROFESSOR
School of Social Sciences
Dean of the Faculty Board
+46 722 372 282
Let’s meet in my Zoom:
https://sh-se.zoom.us/my/peterdobers

**SÖDERTÖRN UNIVERSITY** | STOCKHOLM
Alfred Nobels Allé 7, Flemingsberg
141 89 Huddinge, Sweden
+46 8 608 40 00
sh.se

signature_362496171

---

President 2021-2022 of ISDRS
International Sustainable Development Research Society
www.isdrs.org

*När du skickar e-post till Södertörns högskola innebär detta att Södertörns högskola kommer att behandla dina personuppgifter. Du kan läsa mer om hur Södertörns högskola behandlar personuppgifter här. E-post skickad till och från Södertörns högskola kan betraktas som allmän och offentlig handling.*

*Sending an e-mail to Södertörn University will result in Södertörn University processing your personal data. More information about how Södertörn University processes personal data is available here. E-mail correspondence with Södertörn University may be classified as official and public documents.*

---

**Från:** "Waterhouse, Carlton" <Waterhouse.Carlton@epa.gov>
**Datum:** torsdag 9 december 2021 06:40
**Till:** Peter Dobers <peter.dobers@sh.se>
**Kopia:** ISDRS 2022 Conference <isdrs2022@isdrsconferences.org>
**Ämne:** Re: Again: Congratulations!

Thanks Peter for invitation to speak. I would welcome the chance to provide official remarks as a keynote speaker at the conference. We have some significant circular economy, recycling, food waste, plastics, and other issues managed within my office that match very well with the conference.

Sent from my iPhone

> On Dec 8, 2021, at 4:14 AM, Peter Dobers <peter.dobers@sh.se> wrote:
>
> Dear Carlton,
>
> I am sure you're stuck deep in piles of work, and that is so good for you! I mean, you finishing your book some 10 months ago, and then in the summer, having asked to join the Biden-Harris Administration must be a once in a life time possibility! I take it that the senate hearings in September, after all, landed well, despite the attacs of Senator Tom Cotton.
>
> I am reaching out to you for asking you if you could consider playing a part in the upcoming ISDRS 2022 conference 15-17 June, 2022 in Stockholm and online. As part of some kind of key note event. It would be sooo valuable to have your insights as part of the ISDRS community, your thoughts and experiences from your tenure as the Assistant Administrator of the EPA for Land and Emergency Management, and Solid Waste.
>
> It would be so highly appreciated! Anyhow, hope all is well with you and that make progress in your many responsibilites at EPA.

My best,
Peter

---

ISDRS Conference 2022 on ”Sustainable Development and Courage. Culture, Art and Human Rights”
https://2022.isdrsconferences.org

14 June: PhD Day and Workshop Day
15-17 June: Conference Days
18 June: Sustainability Tours

---

**PETER DOBERS** PROFESSOR
School of Social Sciences
Dean of the Faculty Board
+46 722 372 282
Let’s meet in my Zoom:
https://sh-se.zoom.us/my/peterdobers

**SÖDERTÖRN UNIVERSITY** | STOCKHOLM
Alfred Nobels Allé 7, Flemingsberg
141 89 Huddinge, Sweden
+46 8 608 40 00
sh.se

<image001.png>

---

President 2021-2022 of ISDRS
International Sustainable Development Research Society
www.isdrs.org

*När du skickar e-post till Södertörns högskola innebär detta att Södertörns högskola kommer att behandla dina personuppgifter. Du kan läsa mer om hur Södertörns högskola behandlar personuppgifter här. E-post skickad till och från Södertörns högskola kan betraktas som allmän och offentlig handling.*

*Sending an e-mail to Södertörn University will result in Södertörn University processing your personal data. More information about how Södertörn University processes personal data is available here. E-mail correspondence with Södertörn University may be classified as official and public documents.*

Professor Peter Dobers
December 9, 2021

Professor Carlton Waterhouse
Assistant Administrator of the Environmental Protection Agency of the USA
for Land and Emergency Management, and Solid Waste

## Invitation as keynote person to ISDRS 2022 Conference on June 15-17, 2022, in Stockholm, Sweden

I am writing to you as one of the chairs of the upcoming annual conference of the International Sustainable Development Research Society coming up in Stockholm, Sweden, on June 15-17, 2022. We would be honored if you would join us as one of our keynote persons on any of the dates, preferably on June 16 when participants will be invited to Södertörn University.

We are planning for an on-campus event as the main conference format. Needless to say, as a sustainability-related conference we will and must have online formats available as well. Hopefully online participation will be a choice, and not forced upon us by the pandemic as the only format. If you were to join in person, we would cover your travel, hotel and conference costs; if you were to join online, we would of course waiver all costs as well.

Stay safe, and my best wishes to you,

Peter Dobers
Professor at Södertörn University, Sweden
ISDRS President
ISDRS 2022 Organizing Committee

**From:** Fugh, Justina
**To:** Waterhouse, Carlton
**Subject:** RE: As discussed
**Date:** Tuesday, December 21, 2021 1:50:00 PM

---

Remember that the (b) (6) [redacted]

Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Waterhouse, Carlton (b) (6) [redacted]
**Sent:** Tuesday, December 21, 2021 1:25 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** [WARNING: DMARC validation failed] Re: As discussed

I started to (b) (6) [redacted]

Carlton Waterhouse, J.D., Ph.D.
Professor of Law
Environmental Justice Center, Director
Howard University School of Law
(b) (6) [redacted]

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Monday, December 20, 2021 12:32 AM
**To:** Waterhouse, Carlton (b) (6) [redacted]
**Subject:** RE: As discussed

Hi Carlton,
Please (b) (6) [redacted] I can ascertain what additional steps, if any, you need to take to avoid

any potential conflicts.
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Waterhouse, Carlton (b) (6) [redacted]
**Sent:** Saturday, December 18, 2021 3:01 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** [WARNING: DMARC validation failed] Re: As discussed

Thank you, Justina. (b) (6) [redacted]

Carlton Waterhouse, J.D., Ph.D.
Professor of Law
Environmental Justice Center, Director
Howard University School of Law
carlton.waterhouse@howard.edu

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Tuesday, December 7, 2021 12:25 AM
**To:** Waterhouse, Carlton (b) (6) [redacted]
**Subject:** As discussed

> You don't often get email from fugh.justina@epa.gov. Learn why this is important

**External Email Warning**

**WARNING!** Please proceed with caution as this message could be a scam. The sender's account may have been compromised and used to send malicious messages. If this message seems suspicious, please **DO NOT CLICK** any of the links and/or attachments. If you believe the contents of this email may be unsafe, please send it as an attachment to the ETS Information Security Team: ets-infosec@howard.edu.

Hi there,
Attached is the (b) (6) [redacted] I've also attached a "cheat sheet" created last year that goes over the concepts for you.
Good luck!
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

| | |
|---|---|
| **From:** | Griffo, Shannon |
| **To:** | Waterhouse, Carlton |
| **Cc:** | Fugh, Justina |
| **Subject:** | RE: CFD Extension |
| **Date:** | Friday, February 26, 2021 12:46:00 PM |

---

Thanks Carlton. You have been granted a 45 day extension and your new due date is April 18th.
Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Sent:** Friday, February 26, 2021 12:12 PM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: CFD Extension
Hi Shannon,
Thank you for your prompt reply and support! My substantial workload in addition to transition and onboarding obligations necessitate my extension request in addition to my need to gather relevant materials . If you need more details regarding either of these please let me know.
Carlton Waterhouse, J.D., Ph.D.
Deputy Asistant Administrator
Office of Land and Emergency Management
United States Environmental Protection Agency
Waterhouse.carlton@epa.gov

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Sent:** Friday, February 26, 2021 11:55 AM
**To:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: CFD Extension
Hi Carlton,
To request an extension of time to file your public financial disclosure report, you'll need to articulate why you need one (e.g., workload, travel, need to gather materials) and say whether you need 30 or 45 days. We can only grant extensions for "good cause." You can just respond to this email and I'll work with you on the extension.
Thanks,
Shannon
Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Sent:** Friday, February 26, 2021 10:07 AM

**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** CFD Extension
I would like to request an extension to complete this process. Is there a process I can follow to do so?
Carlton Waterhouse, J.D., Ph.D.
Deputy Asistant Administrator
Office of Land and Emergency Management
United States Environmental Protection Agency
Waterhouse.carlton@epa.gov

**From:** Griffo, Shannon
**To:** Waterhouse, Carlton
**Subject:** RE: Follow-up from OGC/Ethics - outside activity approvals
**Date:** Tuesday, March 09, 2021 4:04:00 PM

---

Hi Carlton,
Yes, that means the amount has decreased this year for you. It is now $**25,596**. To get this pro-rated amount, I used the formula found at 5 C.F.R. § 2636.304(b), and the day that you became subject to the limitation – which is when you actually converted to the non-career SES position, February 19th.
And now that you've converted, here is a summary of those additional restrictions related to outside activities that non-career SESers must abide by:

- Most EPA employees may not receive any compensation for teaching, speaking or writing (including consulting) that relates in significant part to your assigned EPA duties, duties to which you've been assigned in the previous year, or to any ongoing Agency program, policy or operation. But the restriction is even broader for a non-career SES employee: you may not receive compensation at all for any teaching, speaking or writing that relates to your official duties or even to EPA's general subject matter area, industry, or economic sector primarily affected by EPA's programs and operations. 5 C.F.R. § 2635.807(a)(2)(i)(E)(3);
- You are subject to the outside earned income cap which we've been discussing;
- You cannot receive compensation for practicing a profession that involves a fiduciary relationship; affiliating with or being employed by a firm or other entity that provides professional services involving a fiduciary relationship; or teaching without prior approval. *See* note to 5 C.F.R. § 2635.804(b) and 5 C.F.R. § 2636.305;
- You may be permitted to serve as an officer or member of the board of any association, corporation or other entity, but cannot be compensated for such service. *See* 5 C.F.R. § 2636.306; and
- You may not receive compensation for any other teaching unless specifically authorized in advance by OGC/Ethics (specifically, the Designated or Alternate Designated Agency Ethics Official). *See* 5 C.F.R. § 2636.307. So please try to get your request in to Justina as soon as you can.

Thanks!
Shannon
Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Sent:** Tuesday, March 09, 2021 11:55 AM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Follow-up from OGC/Ethics - outside activity approvals
Thank you for sharing this Shannon. I have a couple of follow up messages questions. You wrote, "if you start after January 1, then the amount of earned income you can receive is pro-rated by the number of days in the calendar year that you hold the non-career SES position. " Does that mean that the amount decreased from $29,595 since I began on February 1? If so can you share my

prorated limit? The second question related to my beginning position as a GS – 15 and later shift to SES and whether it had any impact on the outside employment criteria?

Carlton Waterhouse, J.D., Ph.D.
Deputy Asistant Administrator
Office of Land and Emergency Management
United States Environmental Protection Agency
Waterhouse.carlton@epa.gov

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Sent:** Tuesday, March 9, 2021 11:40 AM
**To:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Subject:** RE: Follow-up from OGC/Ethics - outside activity approvals

Hi Carlton,

One follow-up to this email exchange – I just heard from Justina that Dan Utech will be considered the "supervisor" for purposes of outside activity approvals for political appointees. This means that you don't need to include Barry on your outside activity request. Instead, send the request directly to Justina (if you haven't already done so) and then she will coordinate with Dan.

Also, I wanted to mention something else that recently came up related to the outside earned income cap. Note that this amount is actually pro-rated. So if you start after January 1, then the amount of earned income you can receive is pro-rated by the number of days in the calendar year that you hold the non-career SES position.

Thanks,

Shannon
Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Sent:** Tuesday, February 16, 2021 2:51 PM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Follow-up from OGC/Ethics - outside activity approvals

Thank you Shannon!

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Sent:** Tuesday, February 16, 2021 12:08 PM
**To:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Subject:** RE: Follow-up from OGC/Ethics - outside activity approvals

Hi Carlton,

In your other email you asked "what is the grade equivalent, if any, for non-governmental employment." I think you're asking about the directions on the outside activity request that require you to tell us your title and "grade"? That part of the form has to do with your EPA employment, and you can say Schedule C, Grade 15 (if that's what you still are). Non-career SES appointees are subject to that outside earned income cap which is set each January. As of January 2021, that amount is $29,595. *See* 5 C.F.R. § 2635.804(b) and 5 C.F.R. § 2636.304. This amount is the gross income – so before any taxes or deductions. Now for your benefits question - I brought this up during our Ethics

team meeting this morning, and we all agreed that benefits would not need to be included in the "outside earned income." Just remember that certain benefits may need to be reported on the 278.
Thanks,
Shannon
Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Sent:** Saturday, February 13, 2021 11:19 AM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** Re: Follow-up from OGC/Ethics - outside activity approvals
Thank you Shannon. I have a compensation limit question. Is the outside compensation cap based on after tax receipts? Also, I would like to know how benefits fit into that if at all. Can you help with these questions?

Sent from my iPhone

> On Feb 12, 2021, at 1:47 PM, Griffo, Shannon <Griffo.Shannon@epa.gov> wrote:
>
> Hi Carlton,
> I know that you and Justina have had some previous discussions about your outside activities/employment. And as I understand, you are teaching a course at Howard University School of Law this semester (property law - so not related to your official EPA duties or to any EPA program, policy or operation). But this means that you will need to submit a request for outside activity approval pursuant to EPA's supplemental ethics regulations found at 5 C.F.R. § 6401.103. You should send an email to Justina, and cc your immediate supervisor. Justina, as Deputy Ethics Official, will provide the actual determination but she'll want to see that Barry is aware. Your note should address the following:
> - name, title and grade;
> - the nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected;
> - the name and business of the person or organization for which the work will be done;
> - the estimated time to be devoted to the activity;
> - whether the service will be performed entirely outside of normal duty hours (if not, estimate the number of hours of absence from work required);
> - a statement that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment;
> - the basis for compensation (e.g., fee, per diem, per annum, etc.)
> - a statement that you have read, are familiar with, and will abide by the restrictions described in 5 CFR Part 2635 (Subpart H on "Outside Activities) and 5 C.F.R. § 6401.103 (EPA's Supplemental Regulations); and

- an identification of any EPA assistance agreements or contracts held by a person to or for whom services would be provided.

In the meantime, please let me know if you have any other questions, especially as you are working on your financial disclosure report. Until we get your 278, I can't finalize any recusal statement for you. But so far we know that you have recusals with **Howard** (financial conflict of interest); and **NRDC** and **ELI** (served on Boards so "former employers" under the Ethics Pledge - 2 year recusal for specific party matters where NRDC or ELI is involved).

Thanks and have a great weekend!

Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

**From:** Waterhouse, Carlton
**To:** Fugh, Justina
**Cc:** Mosley, Ferne
**Subject:** RE: Heads up: release of your uncertified disclosure report
**Date:** Wednesday, June 09, 2021 4:34:19 PM

---

Thank you for identifying these!

Carlton Waterhouse, J.D., Ph.D.
Deputy Assistant Administrator
Office of Land and Emergency Management
United States Environmental Protection Agency
Waterhouse.carlton@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Wednesday, June 9, 2021 4:19 PM
**To:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Cc:** Mosley, Ferne <mosley.ferne@epa.gov>
**Subject:** RE: Heads up: release of your uncertified disclosure report

Hi Carlton,
In case it's helpful, here are the pdfs of your current reports, as well as a quick side-by-side comparison:

(b) (6), (b) (3) (A)

[redacted]

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room

4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Sent:** Wednesday, June 09, 2021 2:39 PM
**To:** Mosley, Ferne <mosley.ferne@epa.gov>
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: Heads up: release of your uncertified disclosure report

I did not know I could do that. That is a big help, thank you!

Carlton Waterhouse, J.D., Ph.D.
Deputy Assistant Administrator
Office of Land and Emergency Management
United States Environmental Protection Agency
Waterhouse.carlton@epa.gov

---

**From:** Mosley, Ferne <mosley.ferne@epa.gov>
**Sent:** Wednesday, June 9, 2021 2:35 PM
**To:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: Heads up: release of your uncertified disclosure report

Unfortunately not since you filed the new entrant report first; it would work the other way around… you should be able to print the nominee report and then just put in the edits by hand using it as a reference.

Sincerely, Ferne

*Ferne L. Mosley, Attorney-Advisor*
U.S. Environmental Protection Agency
Ethics Office/Office of General Counsel
William Jefferson Clinton Building North, Room 4113A
1200 Pennsylvania Ave, NW
Washington, DC 20460
(202) 564-8046 (desk)
(202) 306-2998 (mobile)
mosley.ferne@epa.gov

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>

**Sent:** Wednesday, June 9, 2021 2:23 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Mosley, Ferne <mosley.ferne@epa.gov>
**Subject:** RE: Heads up: release of your uncertified disclosure report

That reminds me that I wanted to ask if the info from the candidate report can be pulled into the new entrant report.

Carlton Waterhouse, J.D., Ph.D.
Deputy Assistant Administrator
Office of Land and Emergency Management
United States Environmental Protection Agency
Waterhouse.carlton@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Wednesday, June 9, 2021 2:13 PM
**To:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Cc:** Mosley, Ferne <mosley.ferne@epa.gov>
**Subject:** Heads up: release of your uncertified disclosure report

Hi Carlton,
Pursuant to the Ethics In Government Act, 5 USC app § 105(b)(1), your public financial disclosure report must be released to the public within 30 days of submission if requested. We have been holding a request for your report in the hopes that you would address the remaining issues. Since you haven't yet had time to do so, I am writing to let you know that we will be releasing your report *uncertified* as that is the only version we have, and we've had it for more than 30 days. You will receive a notification by email when we release your report and will also see who requested it.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Waterhouse, Carlton
**To:** Mosley, Ferne
**Subject:** RE: Heads up: release of your uncertified disclosure report
**Date:** Thursday, June 10, 2021 3:19:42 PM

---

Done, thank you!
Carlton Waterhouse, J.D., Ph.D.
Deputy Assistant Administrator
Office of Land and Emergency Management
United States Environmental Protection Agency
Waterhouse.carlton@epa.gov

---

**From:** Mosley, Ferne <mosley.ferne@epa.gov>
**Sent:** Thursday, June 10, 2021 3:14 PM
**To:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Subject:** RE: Heads up: release of your uncertified disclosure report
Oh, for the new entrant report, you actually don't have to include (b) (6) [redacted] (that's only for Senate-confirmed appointees), so I can delete that once it comes over to me.

*Ferne L. Mosley, Attorney-Advisor*
U.S. Environmental Protection Agency
Ethics Office/Office of General Counsel
William Jefferson Clinton Building North, Room 4113A
1200 Pennsylvania Ave, NW
Washington, DC 20460
(202) 564-8046 (desk)
(202) 306-2998 (mobile)
mosley.ferne@epa.gov

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Sent:** Thursday, June 10, 2021 3:11 PM
**To:** Mosley, Ferne <mosley.ferne@epa.gov>
**Subject:** RE: Heads up: release of your uncertified disclosure report
Not sure, how to do that.
Carlton Waterhouse, J.D., Ph.D.
Deputy Assistant Administrator
Office of Land and Emergency Management
United States Environmental Protection Agency
Waterhouse.carlton@epa.gov

---

**From:** Mosley, Ferne <mosley.ferne@epa.gov>
**Sent:** Thursday, June 10, 2021 3:10 PM
**To:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Subject:** RE: Heads up: release of your uncertified disclosure report
**Importance:** High
Hi, I see you made some edits to your report yesterday; are you finished making all of the edits? If so, please resubmit it in the system so it comes back to me…it's still in your queue so I can't do anything with it until it's returned.

Thanks, Ferne

*Ferne L. Mosley, Attorney-Advisor*
U.S. Environmental Protection Agency
Ethics Office/Office of General Counsel
William Jefferson Clinton Building North, Room 4113A
1200 Pennsylvania Ave, NW
Washington, DC 20460
(202) 564-8046 (desk)
(202) 306-2998 (mobile)
mosley.ferne@epa.gov

---

**From:** Mosley, Ferne
**Sent:** Wednesday, June 9, 2021 2:55 PM
**To:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Subject:** RE: Heads up: release of your uncertified disclosure report

They should mirror except for your salary from Howard may be a little bit lower on the new entrant report if you received an additional pay check after the date you signed the new entrant report and before the date you filed the nominee report. If your salary stopped prior to filing both, then they should mirror each other.

Ferne

*Ferne L. Mosley, Attorney-Advisor*
U.S. Environmental Protection Agency
Ethics Office/Office of General Counsel
William Jefferson Clinton Building North, Room 4113A
1200 Pennsylvania Ave, NW
Washington, DC 20460
(202) 564-8046 (desk)
(202) 306-2998 (mobile)
mosley.ferne@epa.gov

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Sent:** Wednesday, June 9, 2021 2:50 PM
**To:** Mosley, Ferne <mosley.ferne@epa.gov>
**Subject:** RE: Heads up: release of your uncertified disclosure report

Thanks, can you remind me if the date ranges are different or if the forms should mirror one another?

Carlton Waterhouse, J.D., Ph.D.
Deputy Assistant Administrator
Office of Land and Emergency Management
United States Environmental Protection Agency
Waterhouse.carlton@epa.gov

---

**From:** Mosley, Ferne <mosley.ferne@epa.gov>
**Sent:** Wednesday, June 9, 2021 2:49 PM
**To:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Subject:** RE: Heads up: release of your uncertified disclosure report

Yes, here it is for you in a PDF…

*Ferne L. Mosley, Attorney-Advisor*
U.S. Environmental Protection Agency
Ethics Office/Office of General Counsel
William Jefferson Clinton Building North, Room 4113A
1200 Pennsylvania Ave, NW
Washington, DC 20460
(202) 564-8046 (desk)
(202) 306-2998 (mobile)
mosley.ferne@epa.gov

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Sent:** Wednesday, June 9, 2021 2:39 PM
**To:** Mosley, Ferne <mosley.ferne@epa.gov>
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: Heads up: release of your uncertified disclosure report
I did not know I could do that. That is a big help, thank you!
Carlton Waterhouse, J.D., Ph.D.
Deputy Assistant Administrator
Office of Land and Emergency Management
United States Environmental Protection Agency
Waterhouse.carlton@epa.gov

---

**From:** Mosley, Ferne <mosley.ferne@epa.gov>
**Sent:** Wednesday, June 9, 2021 2:35 PM
**To:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: Heads up: release of your uncertified disclosure report
Unfortunately not since you filed the new entrant report first; it would work the other way around… you should be able to print the nominee report and then just put in the edits by hand using it as a reference.
Sincerely, Ferne
*Ferne L. Mosley, Attorney-Advisor*
U.S. Environmental Protection Agency
Ethics Office/Office of General Counsel
William Jefferson Clinton Building North, Room 4113A
1200 Pennsylvania Ave, NW
Washington, DC 20460
(202) 564-8046 (desk)
(202) 306-2998 (mobile)
mosley.ferne@epa.gov

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Sent:** Wednesday, June 9, 2021 2:23 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Mosley, Ferne <mosley.ferne@epa.gov>
**Subject:** RE: Heads up: release of your uncertified disclosure report
That reminds me that I wanted to ask if the info from the candidate report can be pulled into the new entrant report.
Carlton Waterhouse, J.D., Ph.D.

Deputy Assistant Administrator
Office of Land and Emergency Management
United States Environmental Protection Agency
Waterhouse.carlton@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Wednesday, June 9, 2021 2:13 PM
**To:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Cc:** Mosley, Ferne <mosley.ferne@epa.gov>
**Subject:** Heads up: release of your uncertified disclosure report

Hi Carlton,

Pursuant to the Ethics In Government Act, 5 USC app § 105(b)(1), your public financial disclosure report must be released to the public within 30 days of submission if requested. We have been holding a request for your report in the hopes that you would address the remaining issues. Since you haven't yet had time to do so, I am writing to let you know that we will be releasing your report *uncertified* as that is the only version we have, and we've had it for more than 30 days. You will receive a notification by email when we release your report and will also see who requested it.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Mosley, Ferne
**To:** Waterhouse, Carlton; Fugh, Justina
**Subject:** RE: Invitation to Deliver Keynote Address IICLR Symposium
**Date:** Wednesday, October 13, 2021 12:54:00 PM

---

OK, that makes more sense but sending it to you at Howard and because it was from another law school, etc. seemed like that was why they asked you, but of course, I defer to your understanding, but then the caveat of "if you're confirmed, it would be an official speech," was a little confusing. So, let's just assume you will be confirmed by March 2022 and treat this as a request for an official speech and not one you will give in your personal capacity.
Since they don't need an answer until next month, I think we should hold off giving them a firm answer now, pending your confirmation and also, my concern is that since they want you to speak about "environmental justice" and there's a different office in EPA that handles that, there would have to be a determination made in the front office that as the OLEM AA, you are the EPA representative to speak at the law symposium on this topic on behalf of the Administration, as opposed to another EPA appointee with direct responsibilities for that subject matter. That's not an Ethics call, however, but a policy decision that you'd have explore with the Chief of Staff. We generally don't have to approve official speeches but just look at gift issues, which, in the virtual environment, are rare, unless they send you a thank you gift after the fact.

Can you respond that you've received the invitation and are seeking counsel on its acceptance and will be responding before the deadline? In the event that you are not confirmed before their deadline of November 30, we can explore the options further.
Thanks, Ferne

*Ferne L. Mosley, Attorney-Advisor*
Office of the General Counsel/Ethics Office
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW WJC Bldg, (North)
Washington, DC 20460
202-306-2998 (mobile)
202-564-8046 (desk)

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Sent:** Wednesday, October 13, 2021 12:21 PM
**To:** Mosley, Ferne <mosley.ferne@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: Invitation to Deliver Keynote Address IICLR Symposium
Outside of how this invitation is responded to I have some thoughts I would like to share. As a former professor at IU Law where my expertise and research is well known, I do not think this invitation should be seen as being related to my position at Howard Law School. I do not think the use of the email address which is the last known email address I have for the public indicates a Howard University rather than a personal request. Faculty member status does not render research or outside speaking engagements as "university activities." I also think the quote below suggest that the invitation is personal rather than a request for a generic Howard faculty member to participate. Other than the use of the Howard email address was there something else that you believe made this a Howard versus a personal invitation?
"We understand that, should your appointment to the Environmental Protection Agency be

confirmed prior to the Symposium, you would appear in an official capacity."
I will place the out of office email in place pronto!
Carlton Waterhouse, J.D., Ph.D.
Deputy Assistant Administrator
Office of Land and Emergency Management
United States Environmental Protection Agency
Waterhouse.carlton@epa.gov

---

**From:** Mosley, Ferne <mosley.ferne@epa.gov>
**Sent:** Wednesday, October 13, 2021 11:55 AM
**To:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: Invitation to Deliver Keynote Address IICLR Symposium
Hello, Carlton – because this invitation was sent to you in your capacity as a professor at Howard Law, and you are currently on a leave of absence and not performing duties in that capacity, you should inform the requestor of that fact and refer them to someone else at Howard who can respond to their request for a speaker. Since this was not a request for you to you to speak in your official EPA capacity, it will not be appropriate for you to suggest to them that you speak in that capacity as an alternative as that could likely deprive Howard of the opportunity to send a representative.
We also suggest that you create an out of office message on your HU Law email to inform people that you are in a leave status and provide them with an alternate person at HU Law to refer matters in your absence (if you have not already done so ) to make it clear that you are not performing duties for HU Law while you are serving at EPA. Other than the approved research papers and/or book deal that you were involved in prior to your arrival at EPA that the White House is allowing you to continue, there shouldn't be any new matters that you consider participating in arising from your affiliation with the university. Finally, due to your status as a nominee, any outside speaking requests in your official or personal capacity should also be approved in advance by the White House.
Please let me or Justina know if you have any other questions.
Sincerely, Ferne
*Ferne L. Mosley, Attorney-Advisor*
Office of the General Counsel/Ethics Office
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW WJC Bldg, (North)
Washington, DC 20460
202-306-2998 (mobile)
202-564-8046 (desk)

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Sent:** Wednesday, October 13, 2021 11:13 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Mosley, Ferne <mosley.ferne@epa.gov>
**Subject:** FW: Invitation to Deliver Keynote Address IICLR Symposium
I want to confirm that this does not raise any red flags. Can you share your views?
Carlton Waterhouse, J.D., Ph.D.
Deputy Assistant Administrator
Office of Land and Emergency Management
United States Environmental Protection Agency

Waterhouse.carlton@epa.gov

**From:** Waterhouse, Carlton (b) (5) [redacted]
**Sent:** Wednesday, October 13, 2021 9:58 AM
**To:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Subject:** [WARNING: DMARC validation failed] Fw: Invitation to Deliver Keynote Address IICLR Symposium

Carlton Waterhouse, J.D., Ph.D.
Professor of Law
Environmental Justice Center, Director
Howard University School of Law
(b) (5) [redacted]

---

**From:** Carlton Waterhouse <(b) (5) [redacted]
**Sent:** Tuesday, October 12, 2021 11:06 PM
**To:** Waterhouse, Carlton <(b) (5) [redacted]
**Subject:** Fwd: Invitation to Deliver Keynote Address IICLR Symposium

**External Email Warning**

**WARNING!** Please proceed with caution as this message could be a scam. The sender's account may have been compromised and used to send malicious messages. If this message seems suspicious, please **DO NOT CLICK** any of the links and/or attachments. If you believe the contents of this email may be unsafe, please send it as an attachment to the ETS Information Security Team: ets-infosec@howard.edu.

---------- Forwarded message ---------

Dear Dr. Waterhouse,

The *Indiana International and Comparative Law Review (IICLR)* Symposium Staff is pleased to extend an invitation for you to deliver the keynote address during our upcoming Symposium, **International Law and the Environment: Sustainability, Justice, and Climate Change Around the World**. Specifically, we would like your keynote to address environmental justice. Given your extensive experience on the topic, we feel you will provide a captivating speech and raise poignant issues for our audience. We understand that, should your appointment to the Environmental Protection Agency be confirmed prior to the Symposium, you would appear in an official capacity.

Due to ongoing COVID-19 concerns, the Symposium will be held virtually via Zoom on Friday, March 4, 2022, from approximately 9:00 a.m. to 2:00 p.m. EST. We would like for your keynote to be delivered at 1:00 p.m. EST, though times are flexible, and we can schedule your appearance based on your availability.

Your keynote address will be preceded by two different panel discussions that will focus on sustainability and climate change. Our confirmed panelists include environmental law professors, attorneys, and professionals from both the public and private sectors.

We request that you respond to this invitation no later than Tuesday, November 30, 2021. Thank you for your consideration of our invitation to deliver the keynote address at IICLR's 2022 Symposium. You may contact Brittany Doyle at bddoyle@iu.edu or 317-504-2853 should you have additional questions. We wish you the best with your pending confirmation hearings.

Sincerely,

Brittany Doyle
Executive Symposium Live Editor
Analiese Smith
Executive Symposium Publication Editor
*Indiana International and Comparative Law Review*
Indiana University - Robert H. McKinney School of Law
bddoyle@iu.edu | 317-504-2853

| | |
|---|---|
| **From:** | Mosley, Ferne |
| **To:** | Waterhouse, Carlton |
| **Cc:** | Fugh, Justina |
| **Subject:** | RE: Invitation to Speak: ACS Admin Law Convening on Equity |
| **Date:** | Thursday, October 21, 2021 2:42:50 PM |

Hello, Carlton – we have no ethics objection to you speaking at this event, but, because your nomination is pending, you should coordinate any official speaking engagements with Radha Adhar.

Sincerely, Ferne

*Ferne L. Mosley, Attorney-Advisor*
Office of the General Counsel/Ethics Office
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, NW WJC Bldg, (North)
Washington, DC 20460
202-306-2998 (mobile)
202-564-8046 (desk)

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Sent:** Thursday, October 21, 2021 1:57 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Mosley, Ferne <mosley.ferne@epa.gov>
**Subject:** Fwd: Invitation to Speak: ACS Admin Law Convening on Equity

Do you see a problem with this?

Sent from my iPhone

Begin forwarded message:

> **From:** Debra Perlin <dperlin@acslaw.org>
> **Date:** October 21, 2021 at 12:49:22 PM CDT
> **To:** "Waterhouse, Carlton" <Waterhouse.Carlton@epa.gov>
> **Subject: RE: Invitation to Speak: ACS Admin Law Convening on Equity**
>
> Hi Professor Waterhouse –
>
> I hope you are doing well. I wanted to follow-up on this invitation to see if you will be able to join us on December 10th.
>
> Please let me know if you have any question, we look forward to hearing from you soon.
>
> Thanks,

Debra

**Debra Perlin**
ACS, Director of Policy & Program
pronouns: she/her/hers
202.741.0694
dperlin@acslaw.org
Join or Renew | Blog | Facebook | Twitter

---

**From:** Debra Perlin
**Sent:** Friday, October 15, 2021 10:06 AM
**To:** waterhouse.carlton@epa.gov
**Subject:** Invitation to Speak: ACS Admin Law Convening on Equity

Professor Waterhouse --

I hope you are doing well. ACS is hosting a private convening on Friday December 10th for scholars and advocated on how to include marginalized communities in administrative law processes (both rulemakings and adjudications).

I am reaching out to follow-up on our invitation for you to be one of the speakers for part one of the convening which will run from 11am-12pm ET on Friday December 10th. During this session we are hoping to hear from executive branch leaders on what work is already being done to advance equity through regulatory processes, what work is left to be done, and what academic and advocacy thinking and support is needed. Sharon Block, Acting Administrator of OIRA, has already agreed to participate and we are pleased that Columbia Law Professor Kate Andrias will moderate. We hope that this session will allow for an exchange of ideas between executive branch leaders and convening participants. Given your leadership in this area and your current role at the EPA, we would love for you to participate.

Please let me know if you have any questions or if you'd like to discuss this further. I am pasting below a description of the convening and the sessions that we have planned.

Thanks so much for your consideration.

Debra

******

On his first day in office, President Biden issued two presidential actions, an *Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* and a presidential memoranda on *Modernizing Regulatory Review*, that together attempt to dismantle structural racism using the federal rulemaking process. These actions are an important first step, but more needs to be done to examine the entirety of the regulatory process and identify and implement interventions to build a robust, responsive, and inclusive regulatory system. To that end, this convening will approach regulatory reform through an equity lens. We will examine how academic theories designed to tackle systemic racism operate in the real world and move beyond the current notice and comment hegemony to explore other avenues to increase equity and promote meaningful and inclusive public participation.

Part One: What is the federal government currently doing? In this session we will hear from government representatives on their progress so far, what roadblocks have been discovered, and what academic thinking is needed. (Sharon Block, Acting Administrator of OIRA; Moderated by Kate Andrias)

Part Two: The academic laboratory. In this session we will examine how academic ideas operate in the real world and what obstacles might exist. Half of this session will be spent in small groups focused on discussions of equity assessment, CBA/social cost of carbon, and critical race theory. (Facilitators: Bernard Bell, Lisa Heinzerling, and Olati Johnson)

Part Three: Moving beyond Notice and Comment. Although the Biden administration EO and Presidential Memoranda focus largely on rulemaking, the regulatory process is much broader. In this session, we will explore both in small groups and in full session other avenues to increase equity (advisory committees, informal lobbying, adjudications reform; offices of public participation). Prior to the convening, participants will write a short (1-2 paragraph) proposal for how, outside of notice and comment rulemaking, to design an equitable regulatory system. Those papers will be the basis for the discussion. (Facilitators: Catherine Kim and Bijal Shah)

**Debra Perlin**
ACS, Director of Policy & Program
pronouns: she/her/hers

202.741.0694
dperlin@acslaw.org
Join or Renew | Blog | Facebook | Twitter

**From:** Fugh, Justina
**To:** Carlton Waterhouse
**Subject:** RE: (b) (6) [redacted]
**Date:** Friday, January 14, 2022 2:48:00 PM

---

Nope, nothing more to do other than to tell me. Thanks!

---

**From:** Carlton Waterhouse (b) (6) [redacted]
**Sent:** Friday, January 14, 2022 2:43 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Re: (b) (6) [redacted]

Happy New Year Justina! (b) (6) [redacted] l. Is there a formal process for removing the recusal?

On Thu, Dec 30, 2021 at 10:55 AM Fugh, Justina <Fugh.Justina@epa.gov> wrote:

> Hi Carlton,
> Just a note to say that I received (b) (6) [redacted]. I forgot to formally acknowledge receipt last week!
> Happy new year!
> justina
>
> Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772
>
> ---
>
> **From:** Carlton Waterhouse (b) (6) [redacted]
> **Sent:** Wednesday, December 22, 2021 2:23 PM
> **To:** Fugh, Justina <Fugh.Justina@epa.gov>
> **Subject:** (b) (6) [redacted]
>
> Please find the signed form attached. I apologize but my prayer message did not include the signed form.

--
Carlton Waterhouse, J.D., Ph.D.

| | |
|---|---|
| **From:** | Waterhouse, Carlton |
| **To:** | Fugh, Justina |
| **Cc:** | Griffo, Shannon |
| **Subject:** | RE: Outside Employment |
| **Date:** | Wednesday, March 17, 2021 12:27:38 PM |

---

No worries, I get it! Thank you for letting me know.
Carlton Waterhouse, J.D., Ph.D.
Deputy Assistant Administrator
Office of Land and Emergency Management
United States Environmental Protection Agency
Waterhouse.carlton@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Wednesday, March 17, 2021 12:07 PM
**To:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Cc:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Outside Employment

Hi Carlton,

Yes, I got it from Shannon and apologize for my delay in responding. I'm a little swamped, so I'm going to ask our colleague, Ferne Mosley, to draft the response and check my math (arguably shaky) on your compensation level. Your approval must be signed by the Designated Agency Ethics Official (or by me in his absence), so it needs to be teed up for him. There's no problem with your request, just a problem with my bandwidth.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Sent:** Wednesday, March 17, 2021 8:26 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Outside Employment

I am checking in to make sure my response below was received.
Carlton Waterhouse, J.D., Ph.D.
Deputy Assistant Administrator
Office of Land and Emergency Management
United States Environmental Protection Agency
Waterhouse.carlton@epa.gov

---

**From:** Waterhouse, Carlton
**Sent:** Saturday, March 13, 2021 9:48 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Utech, Dan <Utech.Dan@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Outside Employment

Based on my a non-career SES appointment date of 2/19/21, I expect to receive $(b) (6) in compensation from this employment. Please let me know if you need any additional information or

if I should revise the memo provided below to include that information.

Carlton Waterhouse, J.D., Ph.D.
Deputy Assistant Administrator
Office of Land and Emergency Management
United States Environmental Protection Agency
Waterhouse.carlton@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Friday, March 12, 2021 11:19 PM
**To:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Cc:** Utech, Dan <Utech.Dan@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Outside Employment

Hi Carlton,

Because you are a non-career SES appointee, you are subject to a cap on your outside earned income. *See* 5 C.F.R. § 2636.304. In order to consider your request, I will need to know the amount of compensation you expect to receive for teaching the Property Law in the spring 2021 semester.

Thanks,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Sent:** Friday, March 12, 2021 5:13 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Utech, Dan <Utech.Dan@epa.gov>
**Subject:** Outside Employment

Hi Justina,

Please find my request for outside employment below and attached.

Memo

From: Carlton Waterhouse, Deputy Assistant Administrator Office of Land and Emergency Management

To: Justina Fugh, Ethics Official, Office of General Counsel

Date: 3/12/21

Re: Outside Employment

The purpose of this memo is to request authorization for outside employment. The activity is the continued teaching of Property law at the Howard University School of Law. The employment began prior to my appointment and I am seeking approval to complete the semester. All work is done outside of EPA time. The hours are 4:30 – 6:00 pm Mondays and Wednesdays including office hours. My schedule work hours are 8 to 4:30 pm daily. No official duty time or Government property, resources, or facilities not available to the general public will be used in connection with this employment. My pay is per annum and will conclude on April 9. I have read and I am familiar with, and will abide by the restrictions described in 5 CFR Part 2635 (Subpart H on "Outside Activities) and 5 C.F.R. § 6401.103 (EPA's Supplemental Regulations). There are no EPA assistance agreements or contracts held by a person to or for whom services would be provided.

Please let me know if you any additional information is needed.

Carlton Waterhouse, J.D., Ph.D.
Deputy Asistant Administrator
Office of Land and Emergency Management
United States Environmental Protection Agency
Waterhouse.carlton@epa.gov

**From:** Mosley, Ferne
**To:** Waterhouse, Carlton
**Subject:** RE: Publishing limits
**Date:** Wednesday, June 02, 2021 8:30:00 AM

---

Oh, ok – sorry about that. Hopefully, everything will go smoothly with the rest of the process and your nomination will be announced soon. I'll keep you posted.
Sincerely, Ferne

*Ferne L. Mosley, Attorney-Advisor*
U.S. Environmental Protection Agency
Ethics Office/Office of General Counsel
William Jefferson Clinton Building North, Room 4113A
1200 Pennsylvania Ave, NW
Washington, DC 20460
(202) 564-8046 (desk)
(202) 306-2998 (mobile)
mosley.ferne@epa.gov

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Sent:** Tuesday, June 1, 2021 11:54 PM
**To:** Mosley, Ferne <mosley.ferne@epa.gov>
**Subject:** Re: Publishing limits

Thank you for the clarification. I asked based on research I conducted in 2018 during my Fulbright research fellowship. I had a student translating documents from Portuguese last semester who has now completed that process. (b) (6) [redacted]
Thank you for getting the answer back so quickly!

Sent from my iPhone

On Jun 1, 2021, at 8:25 PM, Mosley, Ferne <mosley.ferne@epa.gov> wrote:

Hello, Carlton – (b) (5) [redacted]
Please let me know if you have any questions.
Sincerely, Ferne

*Ferne L. Mosley, Attorney-Advisor*
U.S. Environmental Protection Agency
Ethics Office/Office of General Counsel
William Jefferson Clinton Building North, Room 4113A
1200 Pennsylvania Ave, NW

Washington, DC 20460
(202) 564-8046 (desk)
(202) 306-2998 (mobile)
mosley.ferne@epa.gov

---

**From:** Mosley, Ferne
**Sent:** Tuesday, June 1, 2021 12:14 PM
**To:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Subject:** RE: Publishing limits

Hello, I'll check on this with Justina to find out the White House's guidelines on non-career Senior Executives and Senate-confirmed appointees publishing in a personal capacity; (b) (5) [redacted]

Per the ethics rules, there is no general prohibition on publishing in a personal capacity even as a non-career Senior Executive, but there is a prohibition on accepting compensation if the subject matter deals in significant part with the ongoing programs of the EPA. Also, even when uncompensated, there are limits on how you can reference your official title, and depending on the subject, prior approval may be required by the Designated Ethics Official.

Let me check, but as a Senate-confirmed appointee, (b) (5) [redacted]

*Ferne L. Mosley, Attorney-Advisor*
U.S. Environmental Protection Agency
Ethics Office/Office of General Counse
William Jefferson Clinton Building North, Room 4113A
1200 Pennsylvania Ave, NW
Washington, DC 20460
(202) 564-8046 (desk)
(202) 306-2998 (mobile)
mosley.ferne@epa.gov

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Sent:** Tuesday, June 1, 2021 11:46 AM
**To:** Mosley, Ferne <mosley.ferne@epa.gov>
**Subject:** Publishing limits

Hi Ferne,

Can you clarify some questions for me about publishing rules in my current position and the senate confirmed position I am being considered for regarding my off duty hours? Some of this is based on past research I have completed and me considering when and how it can be published and some results from questions asked by fellow academics I have worked with and some is just to make sure that I understand the differences between the rules/expectations for each position.

Is there a prohibition on publications broadly? Is there a subject specific prohibition? Is editing work prohibited without compensation? Am I allowed to provide comments to scholars on their work (this is always uncompensated)? If this is prohibited is it subject related or across fields? Does this simply depend, as each matter requires ethics review

or is everything mentioned above categorically prohibited?

Carlton Waterhouse, J.D., Ph.D.
Deputy Assistant Administrator
Office of Land and Emergency Management
United States Environmental Protection Agency
Waterhouse.carlton@epa.gov

**From:** Waterhouse, Carlton
**To:** Griffo, Shannon
**Cc:** Fugh, Justina; Breen, Barry
**Subject:** Re: Request for Meeting with Carlton Waterhouse
**Date:** Thursday, February 11, 2021 4:21:17 PM

---

Thanks for digging into this Shannon and for the quick review. That helps a lot!

Sent from my iPhone

> On Feb 11, 2021, at 3:44 PM, Griffo, Shannon <Griffo.Shannon@epa.gov> wrote:

Hi Carlton,
First, I just wanted to say thanks for flagging this and recognizing that you have ethics obligations related to this organization. I'll be following-up with you separately about the scope of your recusals and outside activity, so it's good to know that you recently served on the Board of Trustees and NRDC will be considered a "former employer" for purposes of Paragraph 2 of the Ethics Pledge. So now we need to determine whether this meeting falls within that exception Justina articulates below.
Upon closer look at the purpose of the meeting and proposed attendees, I conclude that this meeting does meet the exception found within the Ethics Pledge. When OGC/Ethics is determining whether a meeting or communication is "open to all interested parties" for purposes of the Ethics Pledge, we have to ensure that there is a multiplicity of parties present. Based on guidance from the Office of Government Ethics, this means that *at least four other parties are present* (in addition to your former employer) and a *diversity of viewpoints* is represented. For this proposed meeting, there are more than five stakeholders (including NRDC) who wish to discuss a rule or policy (particular matter of general applicability). And although these organizations are interested in discussing the same issues and rule, they all have their own distinct missions and diverse perspectives on the topics on which they are aligned. This means that you may participate in discussions about whether to accept the meeting request, and you may attend the meeting itself.
Please let us know if you have any other questions.
Thanks!
Shannon
Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Sent:** Thursday, February 11, 2021 3:42 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>

**Cc:** Breen, Barry <Breen.Barry@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** Re: Request for Meeting with Carlton Waterhouse
Thanks Justina! I look forward to hearing back once Shannon has a chance to dig into this.

Sent from my iPhone

> On Feb 10, 2021, at 11:35 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:
>
> Hi Carlton,
> Shannon Griffo, copied here, is going to be your ethics point of contact. But in answer to your question, yes, because you served on the NRDC board in a fiduciary role, even if uncompensated, you have a recusal issue with NRDC and it will be included on your list of recusals. Under the Biden ethics pledge that you signed, NRDC is considered a "former employer" of yours. Absent a pledge waiver, for the next two years, you cannot interact with NRDC on any specific party matter in which it is a party or represents a party. As defined at Section 2, paragraph j of the pledge, a "specific party matter" under the pledge includes "any meeting or other communication relating to [your] official duties …, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties."
> What's interesting to us as ethics nerds is the possibility that this particular meeting mentioned below may in fact fall within the articulated exception. Until Shannon has an opportunity to digest the information, my advice is that you recuse yourself from the discussion within OLEM about whether to take this meeting with Lisa Evans. Nick and Barry will have to talk about that without your knowledge or involvement for now.
> Justina
> Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772
>
> ---
>
> **From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
> **Sent:** Wednesday, February 10, 2021 10:50 PM
> **To:** Fugh, Justina <Fugh.Justina@epa.gov>
> **Cc:** Breen, Barry <Breen.Barry@epa.gov>
> **Subject:** FW: Request for Meeting with Carlton Waterhouse

Hi Justina,
I sat on the board of NRDC, for 6 or 7 weeks, before resigning effective February 1. Would I need to recuse myself from a meeting where they are present or represented?

---

**From:** Hilosky, Nick <Hilosky.Nick@epa.gov>
**Sent:** Wednesday, February 10, 2021 2:38 PM
**To:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>
**Cc:** Brooks, Becky <Brooks.Becky@epa.gov>
**Subject:** FW: Request for Meeting with Carlton Waterhouse
Carlton and Barry,
Wanted you to be aware of this incoming request from Earthjustice. I'll raise in our morning meeting tomorrow for discussion.
Nick
Nicholas J. Hilosky
Acting Chief of Staff
Office of Land and Emergency Management
US Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, DC 20460
ph: 202-566-1942; fax: 202-566-0207
mobile: 202-368-0724

---

**From:** Lisa Evans <levans@earthjustice.org>
**Sent:** Wednesday, February 10, 2021 11:41 AM
**To:** Hilosky, Nick <Hilosky.Nick@epa.gov>; Brooks, Becky <Brooks.Becky@epa.gov>
**Subject:** Request for Meeting with Carlton Waterhouse
Dear Becky and Nick;
I hope this email finds you both well.
I am writing to request a virtual meeting/call with Deputy Assistant Administrator Carlton Waterhouse and Acting Administrator Barry Breen as soon as convenient on the issue of coal ash.
I am requesting this meeting on behalf of Clean Power Lake County (IL), Clean Water Action, Comité Dialogo Ambiental, Diné CARE (AZ, NM), Earthjustice, Environmental Integrity Project, GreenLatinos, Hoosier Environmental Council, Just Transition Northwest Indiana, League of Conservation Voters, Natural Resource Defense Council, Prairie Rivers Network (IL), Sierra Club, Southern Environmental Law Center, Tó Nizhóní Ání, Waterkeepers Alliance, and Western Organizations of Resource Councils.
The above-named groups have numerous concerns regarding the ongoing toxic exposure from coal ash pollution, especially in communities of color and low-income communities. We would like to

discuss EPA's oversight and enforcement of the Coal Combustion Residuals (CCR) Rule as well as opportunities to strengthen the rule and increase its effectiveness in protecting health and the environment.

Thank you in advance for your assistance with this request.

Sincerely,

Lisa

Lisa Evans
Senior Counsel
Earthjustice
21 Ocean Ave.
Marblehead, MA 01945
T: (781) 631-4119
C: (b) (6) [redacted]
www.earthjustice.org

*please consider the environment before printing

The information contained in this email message may be privileged, confidential and protected from disclosure. If you are not the intended recipient, any dissemination, distribution or copying is strictly prohibited. If you think that you have received this email message in error, please notify the sender by reply email and delete the message and any attachments.

**From:** Fugh, Justina
**To:** Waterhouse, Carlton; (b) (6) [redacted]
**Cc:** Mosley, Ferne; Griffo, Shannon
**Subject:** RE: seeking details about your NRDC board service
**Date:** Tuesday, May 04, 2021 5:32:48 PM

---

Thanks, Carlton! We actually don't yet know whether there is any need for you to have to interact with NRDC (b) (5) [redacted] it's useful to have this information. Now that you're back, please tackle those follow up questions from Ferne and the Office of Government Ethics!

justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Sent:** Tuesday, May 04, 2021 2:52 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; (b) (6) [redacted]
**Cc:** Mosley, Ferne <mosley.ferne@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: seeking details about your NRDC board service

Thank you Justina. I was appointed to the board in December of 2020. I resigned in January 2021. I attended the December board meeting. I am not sure about "substantive" decisions. The only votes I recall related to committee formation and initiation of a search committee to replace Gina McCarthy.

Carlton Waterhouse, J.D., Ph.D.
Deputy Assistant Administrator
Office of Land and Emergency Management
United States Environmental Protection Agency
Waterhouse.carlton@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Monday, May 3, 2021 11:45 AM
**To:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>; (b) (6) [redacted]
**Cc:** Mosley, Ferne <mosley.ferne@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** seeking details about your NRDC board service

Hi there,

First of all, congratulations on (b) (6) [redacted] !

Onto more prosaic things … (b) (5) [redacted] As I recall, you had served for only about 6 weeks, but I indicated to you way back in January, before you joined EPA, that nonetheless we would have to include NRDC as a "former employer" for the purposes of the Biden ethics pledge. You have been prohibited from interacting with NRDC as part of your official EPA duties since joining EPA, and this prohibition will last for two years, which is the length of your current leave of absence from Howard. (b) (5) [redacted] we first need to know more details

about your NRDC service:

- When were you appointed to the board? When did you resign? Wasn't it January 2021?
- Did you attend any board meetings?
- Did you participate in any substantive decisions or votes, do you think?

(b) (5) [redacted]

[redacted] any additional details would be appreciated!

justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

| | |
|---|---|
| **From:** | Mosley, Ferne |
| **To:** | Waterhouse, Carlton |
| **Subject:** | RE: Signed Ethics Pledge |
| **Date:** | Thursday, February 04, 2021 2:39:00 PM |

---

Thank you! Looking forward to working with you.
Sincerely, Ferne

*Ferne L. Mosley, Attorney-Advisor*
U.S. Environmental Protection Agency
Ethics Office/Office of General Counsel
William Jefferson Clinton Building North, Room 4113A
1200 Pennsylvania Ave, NW
Washington, DC 20460
(202) 564-8046 (desk)
(202) 306-2998 (mobile)
mosley.ferne@epa.gov

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Sent:** Thursday, February 4, 2021 2:36 PM
**To:** Mosley, Ferne <mosley.ferne@epa.gov>
**Cc:** ethics@epa.gov.
**Subject:** Signed Ethics Pledge
Please find my digitally signed pledge attached.

# ETHICS PLEDGE

I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. *Lobbyist Gift Ban*. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

2. *Revolving Door Ban — All Appointees Entering Government*. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

3. *Revolving Door Ban — Lobbyists and Registered Agents Entering Government*. If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 *et seq*., or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 *et seq*., within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

   (a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;

   (b) participate in the specific issue area in which that particular matter falls; or

   (c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.

4. *Revolving Door Ban — Appointees Leaving Government*. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.

5. *Revolving Door Ban — Senior and Very Senior Appointees Leaving Government*. If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections' implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.

6. *Revolving Door Ban — Appointees Leaving Government to Lobby*. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.

7. *Golden Parachute Ban*. I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.

8. *Employment Qualification Commitment*. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.

9. *Assent to Enforcement*. I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Personnel," issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.

Waterhouse, Carlton Digitally signed by Waterhouse, Carlton Date: 2021.02.04 13:31:21 -05'00'

Signature

2/4, 2021

Date

Name (Type or Print): Carlton Waterhouse

**From:** Mosley, Ferne
**To:** Waterhouse, Carlton
**Subject:** RE: Teaching at Howard Law
**Date:** Friday, April 23, 2021 1:58:00 PM

---

OK, thanks…I suspect the semester will be over in a couple of weeks! Graduation time again…

*Ferne L. Mosley, Attorney-Advisor*
U.S. Environmental Protection Agency
Ethics Office/Office of General Counsel
William Jefferson Clinton Building North, Room 4113A
1200 Pennsylvania Ave, NW
Washington, DC 20460
(202) 564-8046 (desk)
(202) 306-2998 (mobile)
mosley.ferne@epa.gov

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Sent:** Friday, April 23, 2021 1:53 PM
**To:** Mosley, Ferne <mosley.ferne@epa.gov>
**Subject:** RE: Teaching at Howard Law

Thanks Ferne, that is correct!

Carlton Waterhouse, J.D., Ph.D.
Deputy Assistant Administrator
Office of Land and Emergency Management
United States Environmental Protection Agency
Waterhouse.carlton@epa.gov

---

**From:** Mosley, Ferne <mosley.ferne@epa.gov>
**Sent:** Friday, April 23, 2021 1:00 PM
**To:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Subject:** Teaching at Howard Law

Hi, Carlton – I just want to confirm that after the spring semester ends, you do not have an agreement to teach another class at Howard Law (b) (5) [redacted]

Thanks, Ferne

*Ferne L. Mosley, Attorney-Advisor*
U.S. Environmental Protection Agency
Ethics Office/Office of General Counsel
William Jefferson Clinton Building North, Room 4113A
1200 Pennsylvania Ave, NW
Washington, DC 20460
(202) 564-8046 (desk)
(202) 306-2998 (mobile)
mosley.ferne@epa.gov

**From:** Fugh, Justina
**To:** Chase, Joann; Engelman-Lado, Marianne; Frey, H; Michalos, Maria; Nunez, Alejandra; Waterhouse, Carlton
**Cc:** Mosley, Ferne; Griffo, Shannon; Clarke, Victoria; Ross, Margaret
**Subject:** Initial Ethics Training (alas, it"s mandatory)
**Attachments:** Ethics Briefing Packet for Political Appointees.pdf
Biden Ethics Pledge for digital signature.pdf

---

Welcome to EPA and your initial ethics training! By regulation, this session is one hour long, so please be present for the entire time Your session will be led by Ferne Mosley, a senior attorney with more than 20 years of federal ethics service Attached is the briefing material that she'll reference together with the Biden ethics pledge that you must sign and return to ethics@epa gov <mailto:ethics@epa gov> All of you are required to file a public financial disclosure report and, bBefore this session, you'll be notified by email of that assignment

---

Microsoft Teams meeting

Join on your computer or mobile app

Click here to join the meeting (b) (6) [redacted]

Or call in (audio only)

(b) (6) [redacted] United States, Washington DC

Phone Conference ID: (b) (6) [redacted] #

(b) (6) [redacted]

---

# Ethics Briefing

## 1. The Ethics Program at the Environmental Protection Agency

You have ethics officials in the Office of General Counsel who can assist you:

| | |
|---|---|
| **Jim Payne**<br>Designated Agency Ethics Official<br>(202) 564-0212 payne.james@epa.gov | |
| **Justina Fugh**<br>Alternate Agency Ethics Official and Director of Ethics Office<br>(202) 564-1786 fugh.justina@epa.gov | |
| **Shannon Griffo**<br>Ethics Attorney<br>(202) 564-7061<br>griffo.shannon@epa.gov | **Margaret Ross**<br>Ethics Officer<br>(202) 564-3221<br>ross.margaret@epa.gov |
| **Jennie Keith**<br>Ethics Officer<br>(202) 564-3412<br>keith.jennie@epa.gov | **Victoria Clarke**<br>Ethics Attorney<br>202-564-1149<br>clarke.victoria@epa.gov |
| **Ferne Mosley**<br>Ethics Attorney<br>(202) 564-8046<br>mosley.ferne@epa.gov | **OGC/Ethics**<br>All Staff and Helpline<br>(202) 564-2200<br>ethics@epa.gov |

You can also visit the OGC/Ethics SharePoint site for more information.

## 2. The General Principles of Ethical Conduct

As public servants, we have a duty to ensure that every citizen has complete confidence in the integrity of the United States and that we are not putting personal or private interests ahead of the public trust. There are 14 principles that form your basic obligation of public service that we'll address in this briefing material.

## 3. The President's Executive Order (for political appointees only)

On January 20, 2021, President Biden issued an Executive Order that includes an ethics pledge you must sign as a condition of your appointment. You are agreeing to a broader "ethics in government" plan to restore and maintain public trust in government, so please review the preamble carefully. The significant points of the pledge itself are described below:

*If you were a federally registered lobbyist or registered foreign agent in the past 2 years:*

- For the next 2 years, do not participate in any particular matter on which you lobbied or were registrable for under the Foreign Agents Registration Act within the previous 2 years and do not participate in the specific issue area in which that particular matter falls.

- Do not seek or accept employment with any government agency that you lobbied or engaged in registrable activity under FARA within the past 2 years.

*While you are a federally employee:*

- Do not accept any gifts from a registered lobbyist, including attendance at a widely attended gathering. There are a few exceptions (e.g., preexisting personal relationship, discount or benefit available to all government employees) but check with an ethics official for guidance.

- For 2 years from the date of your appointment, do not participate in any particular matter involving specific parties that is directly and substantially related to your former employer or former clients, including regulations and contracts.

    - Note: The definition of *former employer* excludes the federal government, state or local governments, D.C., Native American tribes, U.S. territories or possessions, or any international organization in which the U.S. is a member state. But under the federal impartiality rules, you will still have a one-year cooling off period with those entities (except if your former employer was already the US government).

- Any hiring or other employment decisions that you make will be based on the candidate's qualifications, competence and experience.

- Do not accept any salary or cash payment or any other non-cash benefit from a former employer for entering into government service.

*When you leave federal service, you are agreeing to the following:*

- If you are a "senior employee" subject to the one-year cooling off period under 18 U.S.C. § 207(c), your cooling off period will be extended by another year, for a total of two years.

- If you are a "senior employee" subject to either 18 U.S.C. § 207(c) or (d), for one year following your departure from federal service, you will not work behind the scenes to materially assist others in making communications or appearances to the United States Government that you would otherwise be unable to make under the post-employment restrictions.

- You will not lobby any covered executive branch official or non-career SES appointee for the remainder of this Administration or for 2 years following the end of your appointment, whichever is later.

- You will not engage in any activity on behalf of a foreign government or foreign political party

that would require you to register under the Foreign Agents Registration Act for the remainder of this Administrator or 2 years following the end of your appointment, whichever is later.

A copy of the Executive Order and the Biden Ethics Pledge that you must sign are included in this packet of materials.

## 4. Financial Disclosure Reporting

In your position, you are required to complete a public financial disclosure report as you begin the federal service and every year thereafter. You will file this report in INTEGRITY, an electronic system managed by the Office of Government Ethics. When you leave EPA, you will be required to submit a termination financial disclosure report. In addition, you are required to have one hour of ethics training as a new entrant (PAS appointees have an additional requirement for a specialized one-on-one ethics briefing), and also required to have one hour of ethics training each year. The Ethics Office in the Office of General Counsel (OGC/Ethics) provides your training either in person or virtually.

You must report any transaction of securities (stocks or bonds) over $1000 on a periodic basis in INTEGRITY using the 278T. These periodic transactions must be reported the earlier of 30 days after learning of the transaction or 45 days after the transaction takes place. Failure to file timely results in late fees that are assessed as a matter of law.

In addition, you are required to notify OGC/Ethics within three days of beginning to negotiate for employment with any non-federal entity. To do so, use our Notification of Negotiation form.

Included in this packet of materials are reminders about the types of transactions that are to be reported periodically and not being tardy in filing any reports with OGC/Ethics.

## 5. Attorney Client Privilege & FOIA

By regulation, disclosure by an employee to an ethics official is not protected by the attorney-client privilege. 5 C.F.R. § 2635.107(b). This means that if our records (or yours) are requested under the Freedom of Information Act (FOIA), then we will not be able to redact our advice to you using the attorney-client privilege. However, we can -- and do -- assert personal privacy and deliberative process privileges where applicable. For example, the deliberative process privilege may apply to pre-decisional ethics advice documents, but please note that our final advice to you is generally releasable.

This should **not** stop you from seeking the advice of your ethics officials! Not only does it show you are being a steward of the public trust, but good faith reliance on advice received from your ethics officials after disclosing all relevant facts can shield you from disciplinary action and is a factor that the Department of Justice considers when deciding which cases they wish to prosecute.

## 6. Conflicts of Interest

Do not participate as an agency official in any matter if there is an actual conflict of interest or even the appearance of a conflict of interest. It's a crime to participate *personally and substantially* in *any particular matter* in which, to your knowledge, you or a person whose interests are imputed to you has a financial interest if the particular matter will have a *direct and predictable effect* on that interest.

Example: you own a lot of stock in XYZ Corporation, which is a chemical manufacturer. If your office is considering taking an enforcement action against XYZ Corporation, you must disqualify yourself from participating in the decision. Even if your mother gave your 10-year old twins the stock, you can't participate in the matter because their interest is imputed to you.

Remember, the interests of your spouse, dependent children, general business partner, and any organization in which you serve as officer, director, trustee or employee are imputed to you. This means that, under the criminal statute, it's the same thing as if you held those assets. So, you can't participate in any particular matter that may have a financial impact on the interests that are imputed to you.

**7. <u>Appearance of a Loss of Impartiality</u>**

Even if an action is not strictly prohibited, it is prudent to be careful of any action that a reasonable person with knowledge of the relevant facts may perceive as a violation of the ethics rules, or (if applicable) your ethics pledge and the Executive Order. You must avoid even the appearance of a loss of impartiality when performing official duties.

When we consider impartiality, we expand the ambit of relationships beyond the conflicts realm of "imputed interests." We consider all of your "covered relationships," which includes a lot more people: anybody with whom you have a business, contractual or financial relationship that is more than just a routine consumer transaction; any member of your household or a relative with whom you are close; the employer/partner or prospective employer/partner of your spouse, parent or dependent child; any person or organization for which you have served in the last year as an officer, agent, employee, etc.; and any organization in which you are an active participant.

You should refrain from engaging in official acts that may be perceived as an "appearance problem" by a reasonable person (and the reasonable person is not you, but rather your ethics officials).

Ethics officials can provide advice and determine whether a proposed course of action is appropriate by issuing an impartiality determination, but we cannot provide cover if you have already done the deed.

**8. <u>No representation back to the federal government</u>**

As a federal employee, you are prohibited from representing the interest of any other entity back to the federal government, whether you are paid for those services or not. For the purposes of these criminal statues, 18 U.S.C. §§ 203 and 205, it does not matter that you are representing the interests of another in your private capacity. You cannot serve as agent or attorney for another entity back to the United States on a particular matter in which the US is a party or has a direct and substantial interest.

## 9. Acceptance of Gifts

Be careful of any gift from people outside the Agency, particularly those that are worth more than $20. Gifts are anything of value and include allowing others to pick up the lunch tab, free tickets, invitations to receptions, and lovely fruit baskets. There are only a few exceptions, so consult your ethics officials before accepting any gift. Remember, political appointees can't take gifts from federally registered lobbyists.

EPA does not have broad Agency gift authority, so prohibited gifts must be paid for or returned. You should also not generally accept gifts exceeding $10 from EPA employees, nor give gifts exceeding $10 to your superiors. There are some exceptions, so check with an ethics official. By the way, you may give gifts to any EPA person who makes less money than you provided that person is not your supervisor.

## 10. Attendance at Widely-Attended Gatherings (ethics check required)

Your ethics official must make a written determination in advance as to whether your participation and attendance at certain events meet the criteria for a "widely attended gathering" exception of the gift rule. You can't make that determination yourself (nor can the sponsor of the event). For a WAG determination, your ethics official will consider the type of event, who is attending, and whether your attendance will further an Agency interest. This analysis must be done in writing and in advance of your attending the event. Any WAG that is approved is considered a gift to you, so you will be responsible for reporting the value of the gift on your financial disclose report if it exceeds the reporting threshold. For political appointees, though, please bear in mind that this exception does not apply to federally registered lobbyists. Political appointees cannot accept free attendance at a widely attended gathering that is sponsored by or hosted by a federally registered lobbyist.

IMPORTANT NOTE about **Embedding Ethics into Your Calendaring Process**

> Many ethics issues typically arise through the calendaring process of an EPA principal. Since you are responsible for your ethics obligations, we know you might need a little help. To assist you in navigating calendar and invitation issues, the EPA Ethics Office offers specialized assistance to you and your front office staff to advise on invitations, gifts associated with those invitations, etc. Embedding ethics is a proactive counseling practice that brings together the Principals, their staff, and local Deputy Ethics Officials to establish a process for incorporating ethics vetting into your or the Principal's calendar. Contact Jennie Keith to get started!

## 11. Travel Issues

Approval of gifts of travel, lodging and meals from non-Federal sources for meetings and similar events must be obtained from OGC/Ethics prior to the event. You can't accept such offerings on your own! We have an electronic form that we use to process such requests, and we must report the approvals to the Office of Government Ethics twice a year. See http://intranet.epa.gov/ogc/ethics/travel.htm . Prior to the pandemic, OGC/Ethics accepted over $1 million each year in discretionary travel paid by non-federal sources.

## 12. Preferential Treatment of Non-Federal Entities (Endorsement)

Be careful about showing preferential treatment to any entity. We cannot endorse the products, services or enterprises of another, so you need to be careful about extolling the virtues of a regulated entity, a particular contractor or applicant, etc. Seek ethics advice before collaborating with non-federal entities on initiatives and events because not all of EPA's statutes allow us to cooperate with non-feds.

## 13. Political Activities

You are now bound by the Hatch Act, which governs the political activity of federal employees, even in your personal capacity. Career SES employees are bound by even more restrictions, while Presidentially Appointed and Senate Confirmed (PAS) employees enjoy more liberties. Do not rely on what you think other people can do; find out for yourself by asking your ethics officials.

Some limitations under the Hatch Act are 24/7, meaning that you have restrictions even on your time. For example, you are never permitted to solicit, accept or receive political contributions, not even in your personal time. You can never use your EPA title or position to fundraise in connection with any political activity. Because the Hatch Act rules vary depending on your type of appointment, please see the attached chart and consult your ethics officials.

## 14. Lobbying Issues

EPA employees cannot use appropriated funds to engage in indirect or grassroots lobbying regarding any legislative proposal. Indirect or grassroots lobbying generally means urging members of special interest groups or the general public to contact legislators to support or oppose a legislative proposal. EPA employees cannot make explicit statements to the public to contact members of Congress in support of or in opposition to a legislative proposal. Other prohibited grassroots lobbying includes an employee's explicit request, while on official time, to an outside group asking it to contact Congress to support or oppose EPA's appropriations bill.

In addition, EPA is prohibited from using appropriated funds for activities that would "tend to promote" the public to contact Congress in support of or in opposition to a legislative proposal, even if an EPA employee does not expressly state that the public should contact Congress. This activity is considered "indirect lobbying" and is prohibited. You may, after coordinating with OCIR and Public Affairs, directly contact or lobby members of Congress and their staffs regarding the Administration's legislative proposals. Again, after getting approval from OCIR, you may also educate and inform the public of the Administration's position on legislative proposals by delivering speeches and making public remarks explaining the Administration's position on a legislative proposal.

## 15. Use of Government Personnel and Resources

EPA policy permits employees to "limited use" of government equipment, including the telephone, copying machines, fax machines, etc. Employees cannot, however, engage in outside activity or employment on government time. GSA regulations also prohibit any fundraising on federal property (except for the Combined Federal Campaign), so employees cannot raise money for their favorite charity (i.e., sell cookies, candy or wrapping paper for a "good cause"). They also cannot use the internet connection for gambling or to access pornography. See EPA's Limited Personal Use of Government Equipment Policy. Avoid using your EPA email address for personal matters, and do not use your personal email address for EPA matters.

## 16. Outside Activities

We were advised by the Biden Presidential Transition Team that non-PAS political appointees may have outside positions that are consistent with federal ethics regulations, including the Agency's ethics regulations. Non-Career SES and Schedule C appointees must seek prior approval from EPA Ethics for certain outside activity consistent with EPA's Supplemental Ethics Regulations at 5 C.F.R. § 6401.103. Examples of activity that require prior approval are practicing a profession or teaching, speaking or writing on subjects related to EPA programs, policies or operations. While there is a *de minimis* use of government equipment, that never applies to any compensated outside activity.

Most EPA employees may not receive any compensation for teaching, speaking or writing (including consulting) that relates in significant part to your assigned EPA duties, duties to which you've been assigned in the previous year, or to any ongoing Agency program, policy or operation. But if you are a non-career SES employee, then your restriction is even broader: you may not receive compensation at all for any teaching, speaking or writing that relates to your official duties or even to EPA's general subject matter area, industry, or economic sector primarily affected by EPA's programs and operations. 5 C.F.R. § 2635.807(a)(2)(i)(E)(3).

Non-Career SESers must also abide by these additional restrictions:

- You are subject to the outside earned income cap that is set each January. As of January 2021, that amount is $29,595. See 5 C.F.R. § 2635.804(b) and 5 C.F.R. § 2636.304. This amount changes each year;

- You cannot receive compensation for practicing a profession that involves a fiduciary relationship; affiliating with or being employed by a firm or other entity that provides professional services involving a fiduciary relationship; or teaching without prior approval. See note to 5 C.F.R. § 2635.804(b) and 5 C.F.R. § 2636.305;

- You may be permitted to serve as an officer or member of the board of any association, corporation or other entity, but cannot be compensated for such service. See 5 C.F.R. § 2636.306; and

- You may not receive compensation for any other teaching unless specifically authorized in advance by OGC/Ethics (specifically, the Designated or Alternate Designated Agency Ethics Official listed on the first page of this briefing material). See 5 C.F.R. § 2636.307.

## 17. Ethics Obligations of Supervisors

If you are a supervisor, you must model ethical behavior for your staff. Set forth below are your additional ethics responsibilities, found at 5 C.F.R. § 2638.103:

> Every supervisor in the executive branch has a heightened personal responsibility for advancing government ethics. It is imperative that supervisors serve as models of ethical behavior for subordinates. Supervisors have a responsibility to help ensure that subordinates are aware of their ethical obligations under the Standards of Conduct and that subordinates know how to contact agency ethics officials. Supervisors are also responsible for working with agency ethics officials to help resolve conflicts of interest and enforce government ethics laws and regulations, including those requiring certain employees to file financial disclosure reports. In addition, supervisors are responsible, when requested, for assisting agency ethics officials in evaluating potential conflicts of interest and identifying positions subject to financial disclosure requirements.

Your staff may ask you ethics questions, but unless you are an ethics official, you are not authorized to answer those ethics questions. If you receive an ethics question, then contact your own local Deputy Ethics Official or notify OGC/Ethics at ethics@epa.gov.

## 18. Seeking Employment

It's always odd to talk about seeking employment when we are welcoming you to EPA, but be mindful of the fact that there are restrictions that will apply. You won't be able to participate in a particular matter involving a party with which you are seeking employment, and that obligation starts as soon as you directly or indirectly contact a prospective employer, or as soon as you get a response expressing interest in you. You will need to disqualify yourself from particular matters that may affect the prospective employer.

## 19. Negotiating for Employment

Should your pursuit of future employment advance to "negotiating" for employment with a particular entity, then you will have conflicts of interest. The financial interests of any person or entity with whom you are "negotiating" for employment are imputed to you for the purposes of the criminal conflict of interest statute, 18 U.S.C. § 208. You will need to recuse yourself from participating in any particular matter that will have a direct and predictable effect upon the interests of the prospective employer, either as a specific party or as a member of a class, which will include particular matters that apply generally to the prospective employer's industry or class.

Filers of the public financial disclosure report are further subject to the Ethics In Government Act, as amended by the STOCK Act, which requires you to notify OGC/Ethics within three days of commencing negotiations for future employment with a non-federal employer. Yes, we have a form for that notification.

## 20. Post-Government Employment - Representational Restrictions

Even after you leave federal service, there are federal post-employment restrictions. Your pledge restrictions are supplementary to these restrictions. Your ethics officials are still available to answer your post-employment questions, even after you leave EPA. You will need to have an exit discussion with OGC/Ethics before you leave EPA, but here are the highlights of what we'll discuss regarding the federal law. You will also be bound by the additional restrictions of the Biden Ethics Pledge adumbrated on pp. 2-3 of this briefing material.

Lifetime bar - on particular matters that you worked on

You will be prohibited by criminal statute from representing back to the federal government on any particular matter involving specific parties in which you participated personally and substantially while in federal service. "Representation back""means making an appearance or communication, on behalf of another, with the intent to influence an official action. And the matter must involve the United States or be one in which the US has an interest.

> Example: You are asked by XYZ Corporation to contact EPA about seeking an exemption so that a particular permit you granted while in your position no longer applies to them. You cannot do that because you worked on that matter while at EPA. You are permanently barred from representing another back to the federal government on that same matter.

2-year bar - on EPA matters pending during your last year in federal service

You are prohibited (again, by criminal statute) from representing back to the federal government on any particular matter involving specific parties that was pending under your official responsibility during your last year of federal service. Even if you recuse yourself from a matter, you are still bound by the two-year bar. You are not permanently restricted, since you didn't work on the matter personally and substantially, but you are prohibited from representing another back to the federal government on that matter for two years.

Senior Employee "cooling off restriction" – on any matter

Depending on your rate of pay, you may be considered a "senior official" and will be restricted for one year from making any contact with EPA following your departure (under the federal ethics regulation). Political appointees have additional time restrictions under the Biden Ethics Pledge. This prohibition is not limited to particular matters. Rather, you cannot knowingly make any communication or appearance to EPA employees on behalf of another with the intent to influence in connection with any matter in which you seek official EPA action.

Effective January 3, 2021, the defining rate of pay for "senior officials" is $172,395 per year (excluding locality pay). If you make more than that (before locality pay), then you are a "senior employee" and will be bound by the cooling off period. By the way, SESers do not get locality pay so, most likely, any SESer will be a "senior employee" and subject to this restriction.

Welcome to EPA and thank you for keeping ethics in the forefront of all we do!

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
Washington, D.C. 20460

January 22, 2021

OFFICE OF
GENERAL COUNSEL

**MEMORANDUM**

SUBJECT: Timely filing of Public Financial Disclosure and Periodic Transaction Reports

FROM: Justina Fugh Justina Fugh Digitally signed by Justina Fugh Date: 2021.01.22 12 07:49 -05'00'
Alternate Designated Agency Ethics Official

TO: All EPA Political Appointees

In 1978, Congress enacted the Ethics In Government Act, 5 U.S.C. app. to establish the Executive Branch financial disclosure reporting system that requires mandatory public disclosure of financial and employment information of certain officials and their immediate families. Because you occupy a designated position, you are required by this law to file these reports in the electronic system, *INTEGRITY*. As an executive branch employee, you are bound by federal ethics laws and regulations, including prohibitions against financial conflicts of interest and loss of impartiality. Your disclosures allow the Office of General Counsel's Ethics Office (OGC/Ethics) to assist you in identifying and addressing potential or actual conflicts of interest in order to maintain the integrity of the Agency's programs and operations. These reports are publicly available upon request and the reports of certain Presidential Appointees confirmed by the Senate will be posted on the U.S. Office of Government Ethics' website at www.oge.gov.

This memorandum formally informs you that you are required by law to file timely and accurate Public Financial Disclosure Reports (OGE 278e)[1] and Periodic Transaction Reports (OGE 278-Ts).[2] **Filing a late report will result in a $200 late filing fee** unless you formally request and receive a waiver of the late fee from me or the Designated Agency Ethics Official (DAEO), Jim Payne, after describing extraordinary circumstances that caused you to file a late report.[3] **Unpaid late fees are subject to the Agency's[4] and the government's debt collection procedures and will be referred for collection if left unpaid after 30 days.**

Please refer to this chart for your filing obligations:

---

[1] *See* 5 U.S.C. app. § 101; 5 C.F.R. § 2634.201.
[2] Pub. L. 112-105 § 11 (STOCK Act).
[3] *See* 5 U.S.C. app. § 104(d)(1); 5 C.F.R. § 2634.704(a).
[4] *See* Resource Management Directive System 2540-03-P2 dated 07/12/2016.

| | |
|---|---|
| OGE 278e - New Entrant reports | **Within 30 days** of entering a covered position (either by appointment to a permanent or acting in covered position) |
| OGE 278e – Incumbent reports | **No later than May 15** |
| OGE 278e – Termination reports | **No later than 30 days after** leaving a covered position (either through reassignment, resignation, or the end of acting in a covered position) (Reports may be submitted within 15 days prior to termination) |
| OGE 278T – Periodic transaction reports[5] | **The *earlier of* 30 days** after learning of a transaction or **45 days** of the transaction taking place. |

How to request an extension of the filing deadline:

For good cause (e.g., travel, workload issues, sickness), you may request up to two 45-day extensions. Submit the request by email, including the reason, to ethics@epa.gov **prior to the due date.** Extensions cannot be granted after the due date has passed.

How to request the waiver of a late filing fee:

If *extraordinary circumstances* prevented you from meeting the deadline and OGC/Ethics assessed a late fee, you may request a waiver of the late fee. *See* 5 C.F.R. § 2634.704. Submit your request in writing to ethics@epa.gov describing the extraordinary circumstances and provide any supporting documentation. Please note that vacations or routine work obligations are not "extraordinary" circumstances. The decision to grant or deny a waiver is at the sole discretion of the DAEO/ADAEO and is final.

Your colleagues in OGC/Ethics are available to provide assistance but it is always your obligation to file your reports timely and accurately. In fact, ethics regulations *require* that we refer individuals to the Department of Justice (DOJ) when there is reasonable cause to believe that they have willfully failed to file a required report or provide the information that the report requires. The current maximum civil penalty is $56,216.[6]

As public servants, we hope that you will take your ethics obligations seriously. As such, we expect you to make a good faith effort to adhere to the timeliness and completeness requirements of your financial disclosure reporting obligations. If you have any questions, please contact ethics@epa.gov.

ATTACHMENT - *When to Report Transactions on the OGE 278 and OGE 278-T*

[5] *See* attached guidance – *When to Report Transactions on the OGE 278 and OGE 278-T.*
[6] In 2012, OGC/Ethics referred an individual to DOJ for failure to file a termination report despite repeated reminders and entreaties. That individual paid a civil penalty of $15,000 and still had to file the termination report.

# When to Report Transactions

DUE DATE: The earlier of the following: 30 Days from Notification or 45 Days from Transaction

| Investment Assets | Periodic Transaction Report<br>Report on the OGE 278-T? | Annual and/or Termination Report<br>Report on Part 7 of the OGE 278e? |
|---|---|---|
| Transactions of $1,000 or less | | |
| • Any asset in which the transaction amount is $1,000 or less regardless of the type of asset or who owns the asset | No | No |
| Your investment assets (or jointly held) | | |
| • Your stocks | Yes | Yes |
| • Your bonds (except U.S. Treasury securities) | Yes | Yes |
| • Your commodity futures | Yes | Yes |
| • Your other investment securities | Yes | Yes |
| • Assets listed above in your (joint) brokerage accounts, (joint) managed accounts, IRAs, other retirement accounts, and/or other (joint) investment vehicles | Yes | Yes |
| Your spouse's investment assets | | |
| • Spouse's stocks | Yes | Yes |
| • Spouse's bonds (except U.S. Treasury securities) | Yes | Yes |
| • Spouse's commodity futures | Yes | Yes |
| • Spouse's other investment securities | Yes | Yes |
| • Assets listed above in spouse's <u>own</u> brokerage account, managed accounts, IRAs, other retirement accounts, and/or other investment vehicles | Yes | Yes |
| Your dependent child's investment assets | | |
| • Dependent child's stocks | Yes | Yes |
| • Dependent child's bonds (except U.S. Treasury securities) | Yes | Yes |
| • Dependent child's commodity futures | Yes | Yes |
| • Dependent child's other investment securities | Yes | Yes |
| • Assets listed above in dependent child's <u>own</u> brokerage account, IRAs, and/or other investment vehicles | Yes | Yes |
| Other investment assets irrespective of ownership | | |
| • Real Property | No | Yes[1] |
| • Mutual funds, exchange traded funds, index funds and/or other "excepted investment funds"[2] | No | Yes |
| • Any asset in which the transaction amount is $1,000 or less | No | No |
| • Cash accounts (deposits and/or withdrawals) | No | No |
| • Money market accounts | No | No |
| • Money market funds | No | No |
| • Certificates of deposits | No | No |
| • US Treasury Securities (e.g., T bills, Treasury bonds, U.S. savings bonds) | No | No |
| • Federal Government Retirement Accounts (e.g., Thrift Savings Plan) | No | No |
| • Life insurance and annuities | No | No |
| • Collectibles | No | No |
| • Assets held within an excepted trust[3] | No | No |
| • Transfer of assets between you, your spouse, and your dependent children | No | No |

[1] Do not report the purchase or sale of your personal residence on Part 7 unless you rent it out at any time during the reporting period.

[2] To be an excepted investment fund (EIF), the asset must be:

(a) widely held (more than 100 participants),
(b) independently managed – arranged so that you neither exercise control nor have the ability to exercise control over the financial interests held by the fund, and
(c) publicly traded (or available) or widely diversified.

Managed accounts, investment clubs, trusts, 529 accounts, brokerage accounts, and individual retirement accounts (IRAs) are not excepted investment funds in and of themselves. It may be that individual assets held within these types of investment vehicles may qualify as EIFs if, for example, your IRA holds a publicly-traded mutual fund. But the fact that you have a managed account does not absolve you of your reporting requirements. That account is legally owned by you, and you're responsible for its assets and reporting transactions. If you have questions, contact ethics@epa.gov.

[3] OGC/Ethics must determine that your trust qualifies as an "excepted trust." For help, email ethics@epa.gov.

**REQUIREMENT: Notify OGC/Ethics within 3 business days of commencing the negotiation or agreement for post-government employment or compensation**

## NOTIFICATION OF NEGOTIATION OR AGREEMENT

| | | |
|---|---|---|
| **Your full name** | **Your telephone number*** | **Date negotiation or agreement began** |
| **Your Title / Office / AAship or Region** | **Your email address*** | **Name of non-federal entity that you are negotiating with or have an agreement for employment or compensation** |

* *Provide information for OGC/Ethics to use to contact you as part of our official duty. For this purpose, you may provide a personal email address or cell number.*

## RECUSAL STATEMENT

To assist in identifying your recusal obligations, check the appropriate boxes below:

| | Yes | No | |
|---|---|---|---|
| **1.** | ☐ | ☐ | EPA's programs, policies, or operations affect the non-federal entity with which I am seeking employment. |
| **2.** | ☐ | ☐ | My office in EPA does work that affects the non-federal entity with which I am seeking employment. |
| **3.** | ☐ | ☐ | The work I participate in affects or will affect the non-federal entity with which I am seeking employment. |

Need help answering these statements? See page 2.

**For as long as I am negotiating for, or have an agreement of, employment or compensation with the entity listed above, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of this entity, unless I first obtain from OGC/Ethics a written authorization or waiver consistent with 5 C.F.R. § 2635.605 or 18 U.S.C. § 208(b)(1). I understand that it is my responsibility to consult with OGC/Ethics if I have questions regarding my recusal obligations.**

Sign and submit to ethics@epa.gov:

**Your signature**

**OGC/Ethics Use Only:**

**Statement 1: EPA's programs, policies, or operations affect the non-federal entity with which I am seeking employment.**

If your answer is "yes" to any of the following questions, then you must answer "yes" to statement 1.

- Is the non-federal entity seeking official action from EPA (even if not your own office)?
- Does the non-federal entity do business or seek to do business with the EPA (even if not your own office)?
- Does the non-federal entity conduct activities that EPA regulates (even if not in your own office)?
- Does the non-federal entity have interests that may be substantially affected by the performance or non-performance of your official duties?
- Is the non-federal entity a membership organization in which the majority of the members are described in the preceding questions?

**Statement 2: My office in EPA does work that affects the non-federal entity with which I am seeking employment.**

To answer this question, think about the nexus between the work of your office and the non-federal entity. The closer the nexus, the more likely you will have to check "yes" to statement 2.

- Consider the particular matters your office works on and whether there is any connection to the work of this entity. Does your office work on permits, investigations, litigation, grants, licenses, contracts, applications, enforcement cases, or other similar types of matters where there is an identified non-federal entity (i.e., particular matters involving specific parties)?
- Also consider whether your office is involved in scientific programs, media programs, or other types of policies, procedures, guidance documents, regulations, etc., that would affect this particular industry or sector (i.e., particular matters of general applicability).

**Statement 3: The work I participate in affects or will affect the non-federal entity with which I am seeking employment.**

Think about the nexus between your work and the non-federal entity as well as its respective class, industry or sector. The closer the nexus between your work and the sector the non-federal entity belongs to, the more likely you will check have to check "yes" to statement 3.

- Will the work you do affect the sector? Don't concentrate on whether your personal contributions will be determinative but rather, overall, how the outcome of the work itself will affect the sector and the non-federal entity with which you are negotiating.
- Do you advise on or consult with your colleagues' projects and work? Does their work affect this sector or the non-federal entity?
- Do you actively supervise or assign work to subordinates? Do those assignments affect the sector or the non-federal entity?

**Need help answering these statements? Contact ethics@epa.gov to discuss.**

Updated September 2020

# Political Activities and Federal Employees

The Hatch Act, enacted in 1939, was amended in 1993 and 2012. It regulates the political activities of executive branch employees, excluding the President and Vice President. The following table summarizes what political activities EPA employees can and cannot do based on their appointment. Note: Public Health Service officers must adhere to 45 CFR Part 73, Subpart F, which is most similar to the Career SES/ALJ column.

**Political activity means an activity "directed toward the success or failure of a political party, a candidate for partisan political office, or a partisan political group."**

| Type of Activity | PAS* | Non-Career SES, Schedule C*, Title 42, SL/ST, AD*, GS, Other | Career SES, ALJs |
|---|---|---|---|
| **Personal** (off premises and off duty) | | | |
| Express support for or opposition to a political candidate when off duty | Yes | Yes | Yes |
| Run as a partisan candidate for nomination or office in a partisan election | No | No | No |
| Solicit and accept contributions for your campaign in a non-partisan election | Yes | Yes | Yes |
| Solicit a contribution from a member of your union | N/A | Yes | N/A |
| Work a phone bank asking individuals to volunteer | Yes | Yes | No |
| Campaign on behalf of a candidate in a partisan election | Yes | Yes | No |
| Be active on behalf of a candidate at political rallies or meetings | Yes | Yes | No |
| Attend political rallies and meetings | Yes | Yes | Yes |
| Contribute money to political organizations | Yes | Yes | Yes |
| Work in non-partisan voter registration drives | Yes | Yes | Yes |
| Work in partisan voter registration drives | Yes | Yes | No |
| Register and vote | Yes | Yes | Yes |
| Sign a nominating petition | Yes | Yes | Yes |
| Distribute campaign material in a partisan election | Yes | Yes | No |
| Work as an election judge, poll watcher, clerical worker on election day and receive compensation for that work | Yes | Yes | Yes but nonpartisan only |
| Drive people to polling station on behalf of a campaign | Yes | Yes | No |
| **Affecting Official Resources** | | | |
| Use office time for political activity | Yes; IG-No | No | No |
| Use official space for political activity in general | Yes; IG-No | No | No |
| **Fundraising** | | | |
| Attend a political fundraiser | Yes | Yes | Yes |
| Solicit, accept or receive political contributions in general | No | No | No |
| Solicit or receive a political contribution on government premises | No | No | No |
| Plan or organize a political fundraiser when off duty | Yes | Yes | No |
| Sponsor, host, or allow your name as sponsor/host for a political fundraiser | No | No | No |
| Serve drinks or check coats at a political fundraiser | Yes | Yes | No |
| Speak at a partisan fundraiser without appealing for money | Yes | Yes | No |
| Allow only your name to be listed as speaker on fundraising invitation | Yes | Yes | No |

**PAS = Political Appointee Confirmed by the Senate; Schedule C = political appointees not confirmed by Senate; AD = Administratively Determined; SES = Senior Executive Service*

# EPA Ethics Program

**Counseling Practice Area:** **Vetting Invitations**

## Quick Summary:

One of the more visible ways ethics issues arise are those that come up during the calendaring of events and invitations for an EPA principal and their immediate staff. The ethics issues run the whole gambit:

Recusal Obligations ✦ Gifts ✦ Fundraising ✦ Political Activity ✦ Endorsements
President's Ethics Pledge ✦ Misuse of Position

Embedding ethics is a proactive counseling practice that brings together the Principals, their immediate staff, and Deputy Ethics Officials to establish a process for incorporating ethics vetting into the Principal's calendar. This helps and supports the EPA principal to meet their ethics obligations and maintain integrity of agency programs and operations.

---

## Who:

Principals (Administrator, Deputy Administrator, Assistant Administrators, and Regional Administrators, certain Deputy Associate Administrators), their immediate staff, and Deputy Ethics Officials.

## What:

Preventing conflicts of interest and other ethics issues by embedding ethics review into the calendaring process for principals.

## When:

Upon the appointee's start of EPA service

## Where:

Through coordination in the principal's front office and immediate staff

## Why:

Principals and other political appointees encounter frequent ethics issues arising through acceptance of external events, travel, and meetings with external participants. With increased public scrutiny and ethics legal frameworks, this is a high risk area in the ethics program. It is the principal's responsibility to avoid ethics issues and to maintain public trust in government.

## How:

To navigate these ethics issues, we establish a process, use standard event information gathering forms, and train periodically, so a principal's front office can obtain all relevant information for an event and ethics officials can advise appropriately and timely prior to acceptance.

# Executive Order on Ethics Commitments by Executive Branch Personnel

JANUARY 20, 2021 • PRESIDENTIAL ACTIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Ethics Pledge. Every appointee in every executive agency appointed on or after January 20, 2021, shall sign, and upon signing shall be contractually committed to, the following pledge upon becoming an appointee:

"I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

"Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

"1. Lobbyist Gift Ban. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

“2. Revolving Door Ban — All Appointees Entering Government. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

“3. Revolving Door Ban — Lobbyists and Registered Agents Entering Government. If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 et seq., or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 et seq., within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

(a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;

(b) participate in the specific issue area in which that particular matter falls; or

(c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.

“4. Revolving Door Ban — Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.

“5. Revolving Door Ban — Senior and Very Senior Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections’ implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment,

I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.

"6. Revolving Door Ban — Appointees Leaving Government to Lobby. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.

"7. Golden Parachute Ban. I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.

"8. Employment Qualification Commitment. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.

"9. Assent to Enforcement. I acknowledge that the Executive Order entitled 'Ethics Commitments by Executive Branch Personnel,' issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service."

Sec. 2. Definitions. For purposes of this order and the pledge set forth in section 1 of this order:

(a) "Executive agency" shall include each "executive agency" as defined by section 105 of title 5, United States Code, and shall include the Executive Office of the President; provided, however, that "executive agency" shall include the United States Postal Service and Postal Regulatory Commission, but shall exclude the Government Accountability Office.

(b) "Appointee" shall include every full-time, non-career Presidential or Vice-Presidential appointee, non-career appointee in the Senior Executive Service (or other SES-type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policymaking character (Schedule C and other positions excepted under comparable criteria) in an executive agency. It does not include any person appointed as a member of the Senior Foreign Service or solely as a uniformed service commissioned officer.

(c) "Gift":

(i) shall have the definition set forth in section 2635.203(b) of title 5, Code of Federal Regulations;

(ii) shall include gifts that are solicited or accepted indirectly, as defined in section 2635.203(f) of title 5, Code of Federal Regulations; and

(iii) shall exclude those items excluded by sections 2635.204(b), (c), (e)(1) and (3), and (j) through (l) of title 5, Code of Federal Regulations.

(d) "Covered executive branch official" and "lobbyist" shall have the definitions set forth in section 1602 of title 2, United States Code.

(e) "Registered lobbyist or lobbying organization" shall mean a lobbyist or an organization filing a registration pursuant to section 1603(a) of title 2, United States Code, and in the case of an organization filing such a registration, "registered lobbyist" shall include each of the lobbyists identified therein.

(f) “Lobby” and “lobbied” shall mean to act or have acted as a registered lobbyist.

(g) “Lobbying activities” shall have the definition set forth in section 1602 of title 2, United States Code.

(h) “Materially assist” means to provide substantive assistance but does not include providing background or general education on a matter of law or policy based upon an individual’s subject matter expertise, nor any conduct or assistance permitted under section 207(j) of title 18, United States Code.

(i) “Particular matter” shall have the same meaning as set forth in section 207 of title 18, United States Code, and section 2635.402(b)(3) of title 5, Code of Federal Regulations.

(j) “Particular matter involving specific parties” shall have the same meaning as set forth in section 2641.201(h) of title 5, Code of Federal Regulations, except that it shall also include any meeting or other communication relating to the performance of one’s official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.

(k) “Former employer” is any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner, except that “former employer” does not include any executive agency or other entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, any United States territory or possession, or any international organization in which the United States is a member state.

(l) “Former client” is any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service provided was limited to speeches or similar appearances. It does not include

clients of the appointee's former employer to whom the appointee did not personally provide services.

(m) "Directly and substantially related to my former employer or former clients" shall mean matters in which the appointee's former employer or a former client is a party or represents a party.

(n) "Participate" means to participate personally and substantially.

(o) "Government official" means any employee of the executive branch.

(p) "Administration" means all terms of office of the incumbent President serving at the time of the appointment of an appointee covered by this order.

(q) "Pledge" means the ethics pledge set forth in section 1 of this order.

(r) "Senior White House staff" means any person appointed by the President to a position under sections 105(a)(2)(A) or (B) of title 3, United States Code, or by the Vice President to a position under sections 106(a)(1)(A) or (B) of title 3.

(s) All references to provisions of law and regulations shall refer to such provisions as are in effect on January 20, 2021.

Sec. 3. Waiver. (a) The Director of the Office of Management and Budget (OMB), in consultation with the Counsel to the President, may grant to any current or former appointee a written waiver of any restrictions contained in the pledge signed by such appointee if, and to the extent that, the Director of OMB certifies in writing:

(i) that the literal application of the restriction is inconsistent with the purposes of the restriction; or

(ii) that it is in the public interest to grant the waiver. Any such written waiver should reflect the basis for the waiver and, in the case of a waiver of the restrictions set forth in paragraphs 3(b) and (c) of the pledge, a discussion of the findings with respect to the factors set forth in subsection (b) of this section.

(b) A waiver shall take effect when the certification is signed by the Director of OMB and shall be made public within 10 days thereafter.

(c) The public interest shall include, but not be limited to, exigent circumstances relating to national security, the economy, public health, or the environment. In determining whether it is in the public interest to grant a waiver of the restrictions contained in paragraphs 3(b) and (c) of the pledge, the responsible official may consider the following factors:

(i) the government's need for the individual's services, including the existence of special circumstances related to national security, the economy, public health, or the environment;

(ii) the uniqueness of the individual's qualifications to meet the government's needs;

(iii) the scope and nature of the individual's prior lobbying activities, including whether such activities were de minimis or rendered on behalf of a nonprofit organization; and

(iv) the extent to which the purposes of the restriction may be satisfied through other limitations on the individual's services, such as those required by paragraph 3(a) of the pledge.

Sec. 4. Administration. (a) The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish such rules or procedures (conforming as nearly as practicable to the agency's general ethics rules and procedures, including those relating to designated agency ethics officers) as are necessary or appropriate to ensure:

(i) that every appointee in the agency signs the pledge upon assuming the appointed office or otherwise becoming an appointee;

(ii) that compliance with paragraph 3 of the pledge is addressed in a written ethics agreement with each appointee to whom it applies, which agreement shall also be approved by the Counsel to the President prior to the appointee commencing work;

(iii) that spousal employment issues and other conflicts not expressly addressed by the pledge are addressed in ethics agreements with appointees or, where no such agreements are required, through ethics counseling; and

(iv) that the agency generally complies with this order.

(b) With respect to the Executive Office of the President, the duties set forth in section 4(a) of this order shall be the responsibility of the Counsel to the President.

(c) The Director of the Office of Government Ethics shall:

(i) ensure that the pledge and a copy of this order are made available for use by agencies in fulfilling their duties under section 4(a) of this order;

(ii) in consultation with the Attorney General or the Counsel to the President, when appropriate, assist designated agency ethics officers in providing advice to current or former appointees regarding the application of the pledge; and

(iii) in consultation with the Attorney General and the Counsel to the President, adopt such rules or procedures as are necessary or appropriate:

(A) to carry out the foregoing responsibilities;

(B) to authorize limited exceptions to the lobbyist gift ban for circumstances that do not implicate the purposes of the ban;

(C) to make clear that no person shall have violated the lobbyist gift ban if the person properly disposes of a gift as provided by section 2635.206 of title 5, Code of Federal Regulations;

(D) to ensure that existing rules and procedures for Government employees engaged in negotiations for future employment with private businesses that are affected by the employees' official actions do not affect the integrity of the Government's programs and operations;

(E) to ensure, in consultation with the Director of the Office of Personnel Management, that the requirement set forth in paragraph 6 of the pledge is honored by every employee of the executive branch;

(iv) in consultation with the Director of OMB, report to the President on whether full compliance is being achieved with existing laws and regulations governing executive branch procurement lobbying disclosure. This report shall include recommendations on steps the executive branch can take to expand, to the fullest extent practicable, disclosure of both executive branch procurement lobbying and of lobbying for Presidential pardons. These recommendations shall include both immediate actions the executive branch can take and, if necessary, recommendations for legislation; and

(v) provide an annual public report on the administration of the pledge and this order.

(d) The Director of the Office of Government Ethics shall, in consultation with the Attorney General, the Counsel to the President, and the Director of the Office of Personnel Management, report to the President on steps the executive branch can take to expand to the fullest extent practicable the revolving door ban set forth in paragraph 5 of the pledge to all executive branch employees who are involved in the procurement process such that they may not for 2 years after leaving Government service lobby any Government official regarding a Government contract that was under their official responsibility in the last 2 years of their Government service. This report shall include both immediate actions the executive branch can take and, if necessary, recommendations for legislation.

(e) All pledges signed by appointees, and all waiver certifications with respect thereto, shall be filed with the head of the appointee's agency for permanent retention in the appointee's official personnel folder or equivalent folder.

Sec. 5. Enforcement. (a) The contractual, fiduciary, and ethical commitments in the pledge provided for herein are solely enforceable by the United States pursuant to this section by any legally available means, including debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive, or monetary relief.

(b) Any former appointee who is determined, after notice and hearing, by the duly designated authority within any agency, to have violated his or her pledge may be barred from lobbying any officer or employee of that agency for up to 5 years in addition to the time period covered by the pledge. The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish procedures to implement this subsection, which procedures shall include (but not be limited to) providing for fact-finding and investigation of possible violations of this order and for referrals to the Attorney General for consideration pursuant to subsection (c) of this order.

(c) The Attorney General is authorized:

(i) upon receiving information regarding the possible breach of any commitment in a signed pledge, to request any appropriate Federal investigative authority to conduct such investigations as may be appropriate; and

(ii) upon determining that there is a reasonable basis to believe that a breach of a commitment has occurred or will occur or continue, if not enjoined, to commence a civil action against the former employee in any United States District Court with jurisdiction to consider the matter.

(d) In any such civil action, the Attorney General is authorized to request any and all relief authorized by law, including but not limited to:

(i) such temporary restraining orders and preliminary and permanent injunctions as may be appropriate to restrain future, recurring, or continuing conduct by the former employee in breach of the commitments in the pledge he or she signed; and

(ii) establishment of a constructive trust for the benefit of the United States, requiring an accounting and payment to the United States Treasury of all money and other things of value received by, or payable to, the former employee arising out of any breach or attempted breach of the pledge signed by the former employee.

Sec. 6. General Provisions. (a) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order and other dissimilar applications of such provision shall not be affected.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN JR.

THE WHITE HOUSE,
January 20, 2021.

# ETHICS PLEDGE

I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. *Lobbyist Gift Ban*. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

2. *Revolving Door Ban — All Appointees Entering Government*. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

3. *Revolving Door Ban — Lobbyists and Registered Agents Entering Government*. If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 *et seq*., or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 *et seq*., within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

   (a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;

   (b) participate in the specific issue area in which that particular matter falls; or

   (c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.

4. *Revolving Door Ban — Appointees Leaving Government*. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.

5. *Revolving Door Ban — Senior and Very Senior Appointees Leaving Government*. If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections' implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.

6. *Revolving Door Ban — Appointees Leaving Government to Lobby*. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.

7. *Golden Parachute Ban*. I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.

8. *Employment Qualification Commitment*. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.

9. *Assent to Enforcement*. I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Personnel," issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.

_____ _____, 20_____

Signature Date

Name (Type or Print): _____

**From:** Fugh, Justina
**To:** (b) (6) [redacted]
**Subject:** Hello from the EPA Ethics Office
**Date:** Monday, May 24, 2021 10:57:00 AM

---

Hi there,

My name is Justina Fugh, and I'm the director of EPA's Ethics Office. Can you please contact me by reply email or by calling me at (b) (6) [redacted] (my land line) or the contact information below? I am not entirely comfortable writing to you at a business email address.

Thank you,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

| | |
|---|---|
| **From:** | Li, Jake |
| **To:** | Fugh, Justina |
| **Cc:** | Griffo, Shannon |
| **Subject:** | RE: Here is your approval of the outside activity |
| **Date:** | Thursday, September 16, 2021 11:32:16 AM |

---

Great thank you!

Jake

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Thursday, September 16, 2021 11:17 AM
**To:** Li, Jake <Li.Jake@epa.gov>
**Cc:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** Here is your approval of the outside activity

Enjoy!
justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
Washington, D.C. 20460

September 16, 2021

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Approval of Outside Activity

FROM: Justina Fugh
JUSTINA FUGH
Digitally signed by JUSTINA FUGH
Date: 2021.09.16 11:15:44 -04'00'
Alternate Designated Agency Ethics Official and
Director, Ethics Office

TO: Ya-wei (Jake) Li
Deputy Assistant Administrator for Pesticide Programs
Office of Chemical Safety and Pollution Prevention

I have received your request for approval to participate as an uncompensated outside activity related to the publication of a manuscript by the Environmental Law Institute. You confirmed that the manuscript, "Six Priority Recommendations For Improving Conservation Under The Endangered Species Act," was written and accepted for publication prior to your federal service and that your current EPA position and title will not be referenced at all.

Both Michal Freedhoff, your immediate supervisor, and Dan Utech, Chief of Staff, concur in this request. You are therefore approved for this activity. If you have any questions, please feel free to contact me at (202) 564-1786.

| | |
|---|---|
| **From:** | Li, Jake |
| **To:** | Freedhoff, Michal; Keigwin, Richard; Tyler, Tom; Hughes, Hayley; Diaz, Catherine; Odusote, Gloria; Hanley, Mary |
| **Cc:** | Griffo, Shannon; Fugh, Justina; Richmond, Jonah |
| **Subject:** | My recusal statement |
| **Date:** | Thursday, August 19, 2021 8:52:04 AM |
| **Attachments:** | image001.png<br>Jake Li Final Recusal Statement.pdf |

---

Good morning all,

Please find attached my signed recusal statement. Big thanks to Shannon for taking the lead in drafting the document and to Jonah for screening my recusals in the future.

Shannon is also reviewing a draft internal document that'll provide OCSPP with more specific guidance on exactly when my recusals apply. When we finalize that document, I will share it with the OCSPP IO team.

Jake

Ya-Wei (Jake) Li
Deputy Assistant Administrator for Pesticide Programs
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Li.Jake@epa.gov | 202.819.6914

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF CHEMICAL SAFETY
AND POLLUTION PREVENTION

August 19, 2021

**MEMORANDUM**

SUBJECT: Recusal Statement

FROM: Ya-Wei (Jake) Li
Deputy Assistant Administrator for Pesticide Programs,
Office of Chemical Safety and Pollution Prevention

YA-WEI LI Digitally signed by YA-WEI LI Date: 2021.08.19 08:46:45 -04'00'

TO: Michal Ilana Freedhoff
Assistant Administrator,
Office of Chemical Safety and Pollution Prevention

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed, as well as my own attorney bar obligations.

*FINANCIAL CONFLICTS OF INTEREST*

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have consulted with OGC/Ethics and been advised that I do not currently have any financial conflicts of interest. I will remain vigilant and notify OGC/Ethics immediately should my financial situation change.

*OBLIGATIONS UNDER EXECUTIVE ORDER 13989*

Pursuant to Section 1, Paragraph 2 of Executive Order 13989, I understand that I am prohibited from participating in any particular matter involving specific parties in which my former employer, or any former client to whom I provided services during the past two years prior to my joining federal service, is a party or represents a party. Under the terms of the Ethics Pledge, these recusals last for two years from the date that I joined federal service, or until June 28, 2023.

The Executive Order provides more restrictions than the federal ethics rules, but I am advised by OGC/Ethics that the additional restrictions contained in the Executive Order regarding former employers do not apply to me for my former clients, the University of Illinois and Texas A&M University. The definition of "former employer" excludes an entity of a state government, including a state university.[1] Therefore, OGC/Ethics has confirmed that I am not subject to the additional Executive Order restrictions regarding former clients for the University of Illinois or Texas A&M University.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term "particular matters involving specific parties" is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term "open to all interested parties" means that the meeting should include a multiplicity of parties. If, for example, there is "a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client."[2] Should a question arise as to whether a specific forum qualifies as "open to all interested parties," I will consult with OGC/Ethics.

| RECUSAL LIST PURSUANT TO EXECUTIVE ORDER 13989<br>In effect until June 28, 2023 | |
|---|---|
| FORMER EMPLOYER: Environmental Policy Innovation Center (EPIC)<br>Sand County Foundation | |
| FORMER CLIENTS:<br><br>CropLife America<br>Corteva Agriscience<br>LPC Conservation, LLC | <br><br>Electric Power Research Institute (EPRI)<br>Perkins Coie, LLP |

[1] *See* Exec. Order 13989, Section 2(k) and Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

[2] *See* Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

*OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS*

Pursuant to the federal impartiality standards, I understand that I have a "covered relationship" with any former client that is a state university. Therefore, I may not participate in a particular matter involving specific parties in which the **University of Illinois** or **Texas A&M University** is a party or represents a party, unless I am authorized to participate by OGC/Ethics pursuant to 5 C.F.R. § 2635.502(d). My recusal lasts for one year from the day I last provided services, which is March 1, 2022 for the University of Illinois and June 17, 2022 for Texas A&M University.

*ATTORNEY BAR OBLIGATIONS*

In addition to the pledge restrictions involving my former employer and clients, I understand that I am bound by my bar rules and am obliged to protect the confidences of my former clients. I also understand that I cannot participate in any matter that is the same as or substantially related to the same specific party matter that I previously participated in personally and substantially, unless my bar provides for and I first obtain informed consent and coordinate with OGC/Ethics.

*DIRECTIVE AND CONCLUSION*

To avoid participating in matters from which I am recused, please direct those matters to the attention of Jonah Richmond, Special Assistant, without my knowledge or involvement. In the event that my circumstances change, including changes in my financial interests, my personal or business relationships, or my EPA duties, then I will consult with OGC/Ethics and update my recusal statement accordingly.

cc: Rick Keigwin, Deputy Assistant Administrator for Management
Tom Tyler, Chief of Staff
Hayley Hughes, Acting Director for Office of Program Support
Catie Diaz, Special Assistant
Justina Fugh, Director, Ethics Office

| | |
|---|---|
| **From:** | Li, Jake |
| **To:** | Richmond, Jonah; Freedhoff, Michal; Keigwin, Richard; Messina, Edward; Goodis, Michael; Tyler, Tom; Hughes, Hayley; Diaz, Catherine; Odusote, Gloria; Hanley, Mary; Knorr, Michele; Koch, Erin; Cole, Joseph E.; Kaczmarek, Chris |
| **Cc:** | Griffo, Shannon |
| **Subject:** | OCSPP/OGC internal guidance on my recusals |
| **Date:** | Thursday, August 19, 2021 5:51:13 PM |
| **Attachments:** | image001.png<br>Jake Li_recusal guidance_8-19-21.pdf |

---

Good afternoon,

As I've previously mentioned to some of you, attached is internal guidance that Shannon Griffo (my OGC ethics officer) and I developed on the scope of my ethics recusal. Unlike my recusal statement that was finalized yesterday, this guidance is intended for internal use only to help inform our day-to-day decisions about which conversations I'm allowed to participate in.

I hope this document is useful to you, including when developing the OGC/OCSPP meeting agendas. For those who don't know, Jonah Richmond is my recusal screener within OCSPP.

Jake

Ya-Wei (Jake) Li
Deputy Assistant Administrator for Pesticide Programs
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Li.Jake@epa.gov | 202.819.6914

This document provides OCSPP with internal guidance on implementing Jake Li's recusals related to pesticides.[1] The recusals described below **expire on June 28, 2023**, two years from his start date with EPA. This document was updated on August 19, 2021.

| | **Recusal applies – DO NOT DISCUSS** | **Recusal does not apply – CAN DISCUSS** |
|---|---|---|
| **Organizations – Former Clients under the Biden Ethics Pledge:** | | |
| **Corteva** | Do not discuss the following:<br><br>1. Litigation in which Corteva is a party;<br><br>2. Any specific registration for a Corteva product; or<br><br>3. A product in which Corteva is the sole registrant (see more on this below). | If the case has been closed or resolved, Jake can be involved in EPA actions stemming from the case (e.g., allowed to work on any subsequent rulemaking that resolves litigation in which Corteva was a party).<br><br>If the case is still active, and the decision on how to resolve the case has been made, Jake can be involved in EPA actions to implement that decision (e.g., ESA biological evaluation) but cannot discuss the litigation from which he is recused.<br><br>Jake can participate in external meetings where Corteva is present if the subject matter is a "particular matter of general applicability" (rulemaking or policy) and is "open to all interested parties" for purposes of the Ethics Pledge[2] (e.g., public workshop about ESA-FIFRA process improvements). |
| **CropLife America** | Do not discuss litigation in which CLA is a party. | If the case has been closed or resolved, Jake can be involved in EPA actions stemming from the case (e.g., allowed to work on any subsequent rulemaking that resolves litigation in which CLA was a party).<br><br>If the case is still active, and the decision on how to resolve the case has been made, Jake can be involved in EPA actions to implement that decision (e.g., ESA biological evaluation) but cannot discuss the litigation from which he is recused.<br><br>Jake can participate in external meetings where CLA is present if the subject matter is a "particular matter of general applicability" (rulemaking or |

[1] *See also* Jake's signed recusal statement dated August 19, 2021.

[2] "Open to all interested parties" means a multiplicity of parties - at least 4 other parties present in addition to Jake's former client. Should a question arise as to whether a specific forum qualifies as "open to all interested parties," please consult with OGC/Ethics.

| | | |
|---|---|---|
| | | policy) and is "open to all interested parties" for purposes of the Ethics Pledge. |
| **Chemicals** | | |
| **Chlorpyrifos** | Do not discuss Corteva's registration decision, including any related litigation. | Jake may participate in *general* discussions about chlorpyrifos not tied to Corteva's registration decision or related litigation.<br><br>Rationale: Chlorpyrifos has multiple registrants, and Corteva is exiting the market for this chemical. |
| **Dicamba** | No recusals – okay to discuss.<br><br>Rationale: Corteva no longer has an interest in the registration of Dicamba. | No recusals – okay to discuss. |
| **Enlist Duo** | Do not discuss this herbicide.<br><br>Rationale: Corteva is the sole registrant. | N/A |
| **Methomyl** | Do not discuss this insecticide.<br><br>Rationale: Corteva is the primary registrant. | N/A |
| **Other Corteva products** | If Corteva still has an interest in the registration of a product, please consult with OGC/Ethics. | N/A |

For OGC/Ethics questions, the Ethics Office contact for Jake's recusals is:

Shannon Griffo 202-564-7061

If you are unsure if Corteva or CropLife America are parties to a litigation, contact OGC-PTSLO:

Erin Koch (contact her first) 202-564-1718
Chris Kaczmarek 202-564-3909
Joe Cole 202-564-5583

| | |
|---|---|
| **From:** | Griffo, Shannon |
| **To:** | Li, Jake |
| **Subject:** | RE: Another ethics question |
| **Date:** | Wednesday, July 21, 2021 2:41:00 PM |
| **Attachments:** | image001.png |

No worries. I completely understand!

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Wednesday, July 21, 2021 10:35 AM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Another ethics question

Hi Shannon. Just wanted to thank you for the reply and acknowledge that I've received your email. There are several urgent matters that I need to attend to at the moment but I will respond again when I come up for air. The guidance you provided is very helpful.

Jake

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Sent:** Tuesday, July 20, 2021 2:31 PM
**To:** Li, Jake <Li.Jake@epa.gov>
**Subject:** RE: Another ethics question

Hi Jake,

Please keep the questions coming!! For this one, I'll start with the big picture, then respond to your specific questions below. So when it comes to writing, we first need to know the subject matter. We ask whether it deals in significant part with your assigned duties, any duties to which you've been assigned in the past year, or any ongoing agency program, policy or operations. This goes to whether you need prior approval (per EPA's supplemental regulations at 5 C.F.R. § 6401.103). Then we also want to know if you will be compensated, and whether you will be referencing your EPA position or title in your bio or not. Note that employees are prohibited from receiving compensation for teaching, speaking or writing that is related to the employee's official duties, duties to which the employee has been assigned in the previous year, or to any ongoing Agency program, policy or operation. *See* 5 C.F.R. § 2635.807(a). And there are other rules related to compensation for certain non-career employees. Now when it comes to disclaimers, I've attached a helpful chart. But more on this below.

Now turning to your specific questions -

1. First, I had submitted (with other coauthors) two manuscripts for peer review publication as part of my prior job at EPIC. One was to the *Environmental Law Institute's Environmental Law Reporter*. And the other was to *Conservation Letters*, a peer-reviewed species conservation journal. I haven't heard back from Conservation Letters yet, but the ELI informed my coauthors today that they'd like to publish the manuscript, which discusses ideas for improving the Endangered Species Act, in the next issue of the Reporter. I wanted to ask how I should handle situations like this? Note that none of the publications would result in any payment to me.

SHANNON: First we need to determine if this deals with your official duties, and "ideas for improving the ESA" sounds fairly broad. But if the writing relates to your duties or EPA policies, programs, or operations, then you'll need to seek prior outside activity approval. Even if it's close to the line, I'd recommend that you seek approval. From an ethics standpoint, we generally check to make sure the outside employment/activity does not conflict with your official duties (which doesn't seem to be the case here; and since it's a peer review publication with no contractual relationship or arrangement, there wouldn't be any impartiality concerns/no "covered relationship" with ELI). Also, there's no compensation to complicate the analysis here.

The process to request approval is fairly straightforward. For purposes of outside activity approvals for political appointees, we've been told that Dan Utech is considered to be the supervisor. So pursuant to EPA's supplemental ethics regulation found at 5 C.F.R. § 6401.103, you'd send an email to Justina Fugh (the Deputy Ethics Official), and she will provide the actual determination after consulting with Dan. You should also give a heads up to Michal that you are submitting any such request. Your note should address the following:

- name, title and grade;
- the nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected;
- the name and business of the person or organization for which the work will be done;
- the estimated time to be devoted to the activity;
- whether the service will be performed entirely outside of normal duty hours (if not, estimate the number of hours of absence from work required);
- a statement that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment;
- the basis for compensation (e.g., fee, per diem, per annum, etc.)
- a statement that you have read, are familiar with, and will abide by the restrictions described in 5 CFR Part 2635 (Subpart H on "Outside Activities) and 5 C.F.R. § 6401.103 (EPA's Supplemental Regulations); and

- an identification of any EPA assistance agreements or contracts held by a person to or for whom services would be provided.

  Now for disclaimers – if you are okay not using your EPA title and affiliation, then that would probably be preferable. But if you do want to reference EPA, then we have to look at 5 C.F.R. § 2635.807(b)(2). Since this manuscript is to be published in a scientific or professional publication, then you can refer to your EPA position so long as there is a prominent disclaimer that meets OGC requirements. See attached.

2. Second, before coming to EPA, (b) (6) [redacted]. Can you provide me with guidance on how to handle this situation? (b) (6) [redacted]

   SHANNON: Before I answer this one, I'd first want to know if you would be compensated and what is the subject matter. Remember you can't be compensated for writing that relates to your official duties – and that includes any matter to which you are presently assigned or any ongoing or announced Agency policy, program or operation. So if it doesn't relate to your official duties and you're going to be compensated, I can provide further guidance related to any compensation and determine whether any other ethics rules will limit your activities related to this writing. But if there's no compensation, and it relates somehow to your duties or any Agency program/operation etc., then you'd follow the process outlined above for prior approval. (b) (6) [redacted]

   Oh and remember that anything done in your personal capacity must be done on your own time and not using any government resources. And you cannot share any nonpublic information.

Again, that's a lot of info for now! Just let me know more about the second scenario, and if you have any other questions.

Thanks,
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Thursday, July 15, 2021 4:58 PM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** Another ethics question

Hi Shannon,

I think I'm on track for sending you no fewer than 3 ethics questions per week! Thanks in advance for helping me navigate these issues.

My current question pertains to manuscripts that I've submitted for peer review or had agreed to write before joining EPA. Let me explain both categories.

1. First, I had submitted (with other coauthors) two manuscripts for peer review publication as part of my prior job at EPIC. One was to the Environmental Law Institute's Environmental Law Reporter. And the other was to Conservation Letters, a peer-reviewed species conservation journal. I haven't heard back from Conservation Letters yet, but the ELI informed my coauthors today that they'd like to publish the manuscript, which discusses ideas for improving the Endangered Species Act, in the next issue of the Reporter. I wanted to ask how I should handle situations like this? Note that none of the publications would result in any payment to me.
2. Second, before coming to EPA, (b) (6) [redacted] Can you provide me with guidance on how to handle this situation? (b) (6) [redacted]

I do remember that my ethics training during orientation briefly covered non-work publications, including getting supervisor approval, the use of a disclaimer statement,

and addressing any conflicts of interest with my EPA role. But we didn't have time to explore those issues in any detail during the orientation.

I'm sure you (or someone else at EPA) will have a number of question before I can be properly advised, so I look forward to your guidance on how best to proceed.

Thanks again
Jake

Ya-Wei (Jake) Li
Deputy Assistant Administrator for Pesticide Programs
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Li.Jake@epa.gov | 202.819.6914

# Ethics Disclaimers

*This document, which has been reviewed by EPA Ethics, explains when to use an ethics disclaimer and includes examples of standard disclaimers.*

## ***Using an Ethics Disclaimer When Writing in Official Duty***

*(with approval of supervisor as part of assigned duties)*

| IF … | THEN… | AND |
|---|---|---|
| For a *scientific or professional journal* | • Can use official time and resources.<br>• Can use subordinates and EPA email address.<br>• Can refer solely to EPA position and title.<br>• Product must go through office clearance process | • Cannot receive compensation for the work in addition to EPA salary.<br>• Does not need a disclaimer for ethics purposes. |
| For a *non-scientific* or professional journal (e.g., *Life* or *Time* or *Ranger Rick*) | • Can use official time and resources.<br>• Can use subordinates and EPA email address.<br>• Can refer solely to EPA position and title.<br>• Product must go through office clearance process | • Cannot be compensated for the work.<br>• Does not need a disclaimer for ethics purposes. |

## ***Using an Ethics Disclaimer When Writing in Personal Capacity***

| IF … | THEN… | AND |
|---|---|---|
| For a ***scientific or professional*** publication or book ***related*** to assigned EPA duties, recently assigned duties or ongoing Agency policy, program or operation (whether the employee works on it or not) | • Must seek prior approval of the outside activity.<br>• Should not use EPA time or resources in connection with the activity.<br>• Cannot use subordinates.<br>• Cannot be compensated | • May refer solely to EPA title or position but must include the following prominent disclaimer that meets requirements of OGC/Ethics:<br><br>*This work is not a product of the United States Government or the United States Environmental Protection Agency. The author/editor is not doing this* |

| | | |
|---|---|---|
| | • Cannot use non-public information.<br>• Product does not go through office clearance process | *work in any governmental capacity. The views expressed are his/her own and do not necessarily represent those of the United States or the US EPA.* |
| **IF …** | **THEN…** | **AND** |
| For a ***scientific or professional*** publication or book on a matter ***unrelated*** to assigned EPA duties, recently assigned duties or ongoing Agency policy, program or operation (whether the employee works on it or not) | • Does not need prior approval.<br>• Should not use EPA time or resources in connection with the activity.<br>• Cannot use subordinates.<br>• Cannot use non-public information.<br>• Product does not go through office clearance process | • May refer solely to EPA title or position but must include the prominent disclaimer referenced above. |
| For a ***non-scientific or non-professional*** publication on a matter ***related*** to assigned EPA duties, recently assigned duties or ongoing Agency policy, program or operation (whether the employee works on it or not) | • Must seek prior approval of the outside activity.<br>• Should not use EPA time or resources in connection with the activity.<br>• Cannot use subordinates.<br>• Cannot be compensated<br>• Cannot use non-public information<br>• Product does not go through office clearance process | • May refer solely to EPA title or position but must include the prominent disclaimer referenced above. |
| For a ***non-scientific or non-professional*** publication on a matter ***unrelated*** to assigned EPA duties, recently assigned duties or ongoing Agency policy, program or operation (whether the employee works on it or not) | • Does not need prior approval.<br>• Cannot use EPA time or resources or subordinates.<br>• Cannot refer solely to EPA title or position.<br>• Product does not go through office clearance process | • May be able to be compensated<br>• If refer to EPA, then must include several other bio details, with EPA not having any undue prominence.<br>• May refer solely to EPA title or position but must include the prominent disclaimer referenced above. |

## Standard Disclaimers

*This is a list of standard disclaimers used by EPA. Some are to be used on documents while they are routing through the Agency and others are used on scientific products that have been cleared. In cases where the information is highly relevant to specific policy or regulatory deliberations, the disclaimer should appear on each page of the work product.*

*If you have questions about which ethics disclaimer to use, refer to the tables above. You can also contact the relevant party in your program office/region or in the Office of General Counsel or Office of Regional Counsel.*

Internal use only

DO NOT RELEASE – This document is intended for internal Agency use only.

Drafts
This information is distributed solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. It has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency determination or policy.

Draft ISI and HISAs presented at scientific meetings or shared confidentially
The findings and conclusions in this report [presentation, etc] have not been formally disseminated by the Agency [office, region, etc.] and should not be construed to represent any Agency determination or policy.

Independent work published by an employee
The views expressed in this [article/presentation/poster] are those of the author(s) and do not necessarily represent the views or the policies of the U.S. Environmental Protection Agency.

Final products and documents
This document has been reviewed in accordance with U.S. Environmental Protection Agency policy and approved for publication.

Use of trade names (if otherwise unavoidable)
Any mention of trade names, manufacturers or products does not imply an endorsement by the US Government of the United States Environmental Protection Agency. EPA and its employees do not endorse any commercial products, services, or enterprises.

Internet communications
Links to Websites outside of the EPA Website are provided for the convenience of the user. Inclusion of information about a Website, an organization, a product, or a service does not represent endorsement or approval by EPA, nor does it represent EPA opinion, policy or guidance unless specifically indicated. EPA does not exercise any editorial control over the information that may be found at any non-EPA website.

Distributing non-EPA information

EPA is distributing this information solely as a public service. [Insert name of information source] is responsible for the quality of this information. EPA's distribution of this information does not represent or imply endorsement by EPA.

Copyright
This is a work of the U.S. Government and is not subject to copyright protection in the U.S.

Work prepared under contract, interagency agreement, or cooperative agreement
The research described in this article has been funded wholly or in part by the United States Environmental Protection Agency [contract, interagency agreement, cooperative agreement] [number] to [Name of Contractor if applicable].

*Add one of the following to the above:*

- It has not been subject to the Agency's review and therefore does not necessarily reflect the views of the Agency, and no official endorsement should be inferred.
- It has been subjected to review by the Office of ____ and approved for publication. Approval does not signify that the contents reflect the views of the Agency, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.
- It has been subject to the Agency's review, and it has been approved for publication as an EPA document. Mention of trade names or commercial products does not constitute endorsement or recommendation for use.

**From:** Griffo, Shannon
**To:** Li, Jake
**Cc:** Fugh, Justina
**Subject:** RE: Another set of ethics question
**Date:** Wednesday, July 7, 2021 3:32:00 PM
**Attachments:** Jake Li Draft Recusal Statement 7_7_21.docx

---

Hi Jake,

Your recusal statement won't get into much detail besides identifying those entities with which you have recusals (based on that chart we've been discussing). So feel free to keep sending me specific questions! However, I've attached a rough working draft of your recusal statement so you can get a better idea of what it will look like. I've left some placeholders in there, and will be able to fill in anything else once I see your financial disclosure report. It's a work in progress!

Now for your questions:

- Chlorpyrifos – Corteva is still a registrant of the product but had publicly announced in February 2020 that it will stop producing the product by the end of 2020 as part of its strategy to exit the market for the product. Other companies also hold registrations for the product. (b) (6) [redacted] Am I recused from participating in internal discussions on chlorpyrifos? SHANNON: You may participate in general discussions about chlorpyrifos. For this product, you'd be recused from any discussions about the actual registration involving Corteva (specific party matter involving your former client), or litigation where Corteva is a party. But because there are multiple manufacturers and it appears Corteva is exiting the market, you'd be able to participate in those internal general discussions about this product.

- CropLife America – CLA is an intervenor in many, if not most, of the cases on today's agenda (and likely most future meetings discussing pesticide litigation). (b) (6) [redacted] Am I recused from participating in internal meetings discussing cases in which CLA is an intervenor? And does this answer change if the case is no longer active? SHANNON: Pursuant to section 1, Paragraph 2 of E.O. 13989, you cannot participate in any specific party matters where your former client is a party or represents a party. So you are recused from any cases in which CropLife America is a party. This includes all cases and related internal meetings discussing those cases in which CLA is an intervenor. For Pledge purposes, it doesn't matter if you didn't work on any of those cases during the prior 2 years. Your ethics pledge obligations extends to all specific party matters in which your former employer or former client is involved.

  Now if the case is no longer active, you mean it's been closed or resolved right? So if you were recused from certain litigation because of your pledge restriction (e.g., CLA is an

intervenor), and let's say the Agency (or court) decides to resolve that litigation by some rulemaking, would you be able to work on the resulting rulemaking going forward? The answer to that is yes. You could be involved in whatever next steps the Agency is taking. You just can't have a role in the litigation itself or in the Agency's determination or discussions about how to resolve it. I'm not sure if that answers that part of your question. Just let me know if you means something else when you say the case is no longer active.

And remember that you also have attorney bar obligations. Generally speaking, lawyers owe a duty of confidentiality to their former clients and can't "switch sides" on the same specific party matter. Using the ABA Model Rules as a guide (you should check your own bar rules), you'll want to consider rule 1.6 (confidentiality of information), rule 1.9 (duty to former client), and rule 1.11 (special conflicts of interest for former and current government officers and employees). And if you are a member of the DC Bar, please note that DC's rule 1.11 is more restrictive than the ABA's. This is why I asked earlier about whether there are any cases you were involved with that might still be active and pending before EPA.

Now all that being said, I'd also point out that section 1 of E.O. 13989 requires all appointees to abide by the Ethics Pledge commitments, unless they are granted a waiver under section 3. Pledge waivers are issued by the Agency's Designated Agency Ethics Official (DAEO), but only after consultation with the White House. So if you'd like to explore the possibility of a waiver, let me know and I'll set up a call to discuss this further.

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Wednesday, July 07, 2021 11:03 AM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** Another set of ethics question

Good morning Shannon,

Every other week, OCSPP has a meeting with OGC to discuss litigation and other legal updates. At the start of today's meeting, we briefly discussed whether I'm recused from some or all of the meeting because of my prior work for Corteva and for CropLife America. Out of an abundance of caution, I left the call before any substantive discussions. We all agreed that I should reach out to the Ethics Office to get advice on how my recusals apply to certain matters that will arise in future OGC-OCSPP meetings. One reason these meetings are important to my role is that they will cover systemic issues related to ESA-FIFRA, and addressing those issues is one of my main

responsibilities.

Here are the questions flagged for today's meeting (agenda attached). I realize you're drafting my recusal statement, so perhaps these questions will already be answered when I see the statement. But for now, I wanted to send you these questions because the answers may affect my ability to participate in certain internal meetings that are held before we're able to finalize the recusal statement.

- Chlorpyrifos – Corteva is still a registrant of the product but had publicly announced in February 2020 that it will stop producing the product by the end of 2020 as part of its strategy to exit the market for the product. Other companies also hold registrations for the product. (b) (6) [redacted] Am I recused from participating in internal discussions on chlorpyrifos?

- CropLife America – CLA is an intervenor in many, if not most, of the cases on today's agenda (and likely most future meetings discussing pesticide litigation). (b) (6) [redacted] Am I recused from participating in internal meetings discussing cases in which CLA is an intervenor? And does this answer change if the case is no longer active?

Thanks again for all of your help
Jake

**From:** Li, Jake
**To:** Griffo, Shannon
**Cc:** Fugh, Justina
**Subject:** RE: Another set of ethics question
**Date:** Thursday, July 8, 2021 10:26:54 AM
**Attachments:** Jake Li Draft Recusal Statement 7_7_21_yli.docx

---

Good morning Shannon,

Thanks for the draft statement and the responses to my questions. In the attached document, I've responded to your two questions. I've been chipping away at the financial disclosure document, but almost all of that work is happening on weekends now because my weekdays have become 110% packed even through the evenings.

On the two questions I asked. First, thanks for the distinction between the different types of internal meetings on chlorpyrifos. That's quite helpful to understand.

Second, your responses to the CLA questions were exactly what I was seeking. When I referred to inactive cases, I did mean closed, settled, or otherwise resolved. And I appreciate the reminder about the attorney bar obligation, including the stricter standards for D.C. bar members (which applies to me). In case it's helpful context, (b) (6) [redacted] And in no situation was I involved in litigation. With that said, it's on my list of things to do to review my bar obligations.

Finally, (b) (5) [redacted]

Thanks
Jake

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Sent:** Wednesday, July 7, 2021 3:33 PM

**To:** Li, Jake <Li.Jake@epa.gov>
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: Another set of ethics question

Hi Jake,

Your recusal statement won't get into much detail besides identifying those entities with which you have recusals (based on that chart we've been discussing). So feel free to keep sending me specific questions! However, I've attached a rough working draft of your recusal statement so you can get a better idea of what it will look like. I've left some placeholders in there, and will be able to fill in anything else once I see your financial disclosure report. It's a work in progress!

Now for your questions:

- Chlorpyrifos – Corteva is still a registrant of the product but had publicly announced in February 2020 that it will stop producing the product by the end of 2020 as part of its strategy to exit the market for the product. Other companies also hold registrations for the product. (b) (6) [redacted]. Am I recused from participating in internal discussions on chlorpyrifos? SHANNON: You may participate in general discussions about chlorpyrifos. For this product, you'd be recused from any discussions about the actual registration involving Corteva (specific party matter involving your former client), or litigation where Corteva is a party. But because there are multiple manufacturers and it appears Corteva is exiting the market, you'd be able to participate in those internal general discussions about this product.

- CropLife America – CLA is an intervenor in many, if not most, of the cases on today's agenda (and likely most future meetings discussing pesticide litigation). (b) (6) [redacted]. Am I recused from participating in internal meetings discussing cases in which CLA is an intervenor? And does this answer change if the case is no longer active? SHANNON: Pursuant to section 1, Paragraph 2 of E.O. 13989, you cannot participate in any specific party matters where your former client is a party or represents a party. So you are recused from any cases in which CropLife America is a party. This includes all cases and related internal meetings discussing those cases in which CLA is an intervenor. For Pledge purposes, it doesn't matter if you didn't work on any of those cases during the prior 2 years. Your ethics pledge obligations extends to all specific party matters in which your former employer or former client is involved.

  Now if the case is no longer active, you mean it's been closed or resolved right? So if you were recused from certain litigation because of your pledge restriction (e.g., CLA is an intervenor), and let's say the Agency (or court) decides to resolve that litigation by some rulemaking, would you be able to work on the resulting rulemaking going forward? The

answer to that is yes. You could be involved in whatever next steps the Agency is taking. You just can't have a role in the litigation itself or in the Agency's determination or discussions about how to resolve it. I'm not sure if that answers that part of your question. Just let me know if you means something else when you say the case is no longer active.

And remember that you also have attorney bar obligations. Generally speaking, lawyers owe a duty of confidentiality to their former clients and can't "switch sides" on the same specific party matter. Using the ABA Model Rules as a guide (you should check your own bar rules), you'll want to consider rule 1.6 (confidentiality of information), rule 1.9 (duty to former client), and rule 1.11 (special conflicts of interest for former and current government officers and employees). And if you are a member of the DC Bar, please note that DC's rule 1.11 is more restrictive than the ABA's. This is why I asked earlier about whether there are any cases you were involved with that might still be active and pending before EPA.

Now all that being said, I'd also point out that section 1 of E.O. 13989 requires all appointees to abide by the Ethics Pledge commitments, unless they are granted a waiver under section 3. Pledge waivers are issued by the Agency's Designated Agency Ethics Official (DAEO), but only after consultation with the White House. So if you'd like to explore the possibility of a waiver, let me know and I'll set up a call to discuss this further.

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Wednesday, July 07, 2021 11:03 AM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** Another set of ethics question

Good morning Shannon,

Every other week, OCSPP has a meeting with OGC to discuss litigation and other legal updates. At the start of today's meeting, we briefly discussed whether I'm recused from some or all of the meeting because of my prior work for Corteva and for CropLife America. Out of an abundance of caution, I left the call before any substantive discussions. We all agreed that I should reach out to the Ethics Office to get advice on how my recusals apply to certain matters that will arise in future OGC-OCSPP meetings. One reason these meetings are important to my role is that they will cover systemic issues related to ESA-FIFRA, and addressing those issues is one of my main responsibilities.

Here are the questions flagged for today's meeting (agenda attached). I realize you're drafting my recusal statement, so perhaps these questions will already be answered when I see the statement. But for now, I wanted to send you these questions because the answers may affect my ability to participate in certain internal meetings that are held before we're able to finalize the recusal statement.

- Chlorpyrifos – Corteva is still a registrant of the product but had publicly announced in February 2020 that it will stop producing the product by the end of 2020 as part of its strategy to exit the market for the product. Other companies also hold registrations for the product. (b) (6) [redacted] Am I recused from participating in internal discussions on chlorpyrifos?

- CropLife America – CLA is an intervenor in many, if not most, of the cases on today's agenda (and likely most future meetings discussing pesticide litigation). (b) (6) [redacted] Am I recused from participating in internal meetings discussing cases in which CLA is an intervenor? And does this answer change if the case is no longer active?

Thanks again for all of your help
Jake

**From:** Li, Jake
**To:** Griffo, Shannon
**Subject:** RE: Checking in on recusal statement
**Date:** Thursday, August 19, 2021 5:38:46 PM
**Attachments:** Jake Li_recusal guidance_8-19-21.pdf
image001.png

---

Thanks Shannon. I adopted all of your redlines. As for methomyl, you're correct that we never discussed it. I added it to my recusal list because I Corteva is the primary registrant —there are other registrants for minor uses of the pesticide, but for the uses that affect our risk assessment, Corteva has the sole registration. So I am assuming there are almost no discussions on the product that I'm not recused from.

I've attached a final PDF of the document with a date stamp to track any future updates.

Thanks again for all of your help!
Jake

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Sent:** Thursday, August 19, 2021 3:43 PM
**To:** Li, Jake <Li.Jake@epa.gov>
**Subject:** RE: Checking in on recusal statement

Hi Jake,

Attached are my comments and edits for your consideration.

Thanks!
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Monday, August 16, 2021 11:16 AM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** Checking in on recusal statement

Hi Shannon. I wanted to check in on my recusal statement. Assuming I've provided you with all of the financial information you need, can you give me an estimate of when the

statement will be finalized?

I also wanted to ask if you could review the attached document, which would provide OCSPP with concise guidance on how to implement my pesticide-related recusals. This document tries to synthesize and summarize our various email communications about exactly when my recusal applies. If you have any edits to the document, please feel free to make them directly in the document.

I've highlighted in yellow one type of situation that we've never discussed by email, and seek your advice on whether I've correctly categorized the situation.

Thanks!
Jake

Ya-Wei (Jake) Li
Deputy Assistant Administrator for Pesticide Programs
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Li.Jake@epa.gov | 202.819.6914

| | |
|---|---|
| **From:** | Griffo, Shannon |
| **To:** | Li, Jake |
| **Subject:** | RE: Checking in on recusal statement |
| **Date:** | Friday, August 20, 2021 7:51:00 AM |
| **Attachments:** | image001.png |

Got it. Thanks for that additional clarification!

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Thursday, August 19, 2021 5:39 PM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Checking in on recusal statement

Thanks Shannon. I adopted all of your redlines. As for methomyl, you're correct that we never discussed it. I added it to my recusal list because I Corteva is the primary registrant —there are other registrants for minor uses of the pesticide, but for the uses that affect our risk assessment, Corteva has the sole registration. So I am assuming there are almost no discussions on the product that I'm not recused from.

I've attached a final PDF of the document with a date stamp to track any future updates.

Thanks again for all of your help!
Jake

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Sent:** Thursday, August 19, 2021 3:43 PM
**To:** Li, Jake <Li.Jake@epa.gov>
**Subject:** RE: Checking in on recusal statement

Hi Jake,

Attached are my comments and edits for your consideration.

Thanks!
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office

U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Monday, August 16, 2021 11:16 AM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** Checking in on recusal statement

Hi Shannon. I wanted to check in on my recusal statement. Assuming I've provided you with all of the financial information you need, can you give me an estimate of when the statement will be finalized?

I also wanted to ask if you could review the attached document, which would provide OCSPP with concise guidance on how to implement my pesticide-related recusals. This document tries to synthesize and summarize our various email communications about exactly when my recusal applies. If you have any edits to the document, please feel free to make them directly in the document.

I've highlighted in yellow one type of situation that we've never discussed by email, and seek your advice on whether I've correctly categorized the situation.

Thanks!
Jake

Ya-Wei (Jake) Li
Deputy Assistant Administrator for Pesticide Programs
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Li.Jake@epa.gov | 202.819.6914

| | |
|---|---|
| **From:** | Li, Jake |
| **To:** | Griffo, Shannon |
| **Subject:** | RE: Checking in on recusal statement |
| **Date:** | Monday, August 16, 2021 12:42:15 PM |
| **Attachments:** | image001.png |

Great thanks Shannon and hope you enjoyed your vacation. I'll be on the lookout for more emails from you shortly.

Jake

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Sent:** Monday, August 16, 2021 12:36 PM
**To:** Li, Jake <Li.Jake@epa.gov>
**Subject:** RE: Checking in on recusal statement

Hi Jake,

Again, apologies for the delay with all this! Now that I'm back from vacation, I see you sent your responses to my 278 questions so I should be able to get that certified today. Then I'll get your draft recusal statement to you no later than tomorrow.

I'll also take a look at the attached document and provide you with any feedback.

Thanks,
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Monday, August 16, 2021 11:16 AM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** Checking in on recusal statement

Hi Shannon. I wanted to check in on my recusal statement. Assuming I've provided you with all of the financial information you need, can you give me an estimate of when the statement will be finalized?

I also wanted to ask if you could review the attached document, which would provide

OCSPP with concise guidance on how to implement my pesticide-related recusals. This document tries to synthesize and summarize our various email communications about exactly when my recusal applies. If you have any edits to the document, please feel free to make them directly in the document.

I've highlighted in yellow one type of situation that we've never discussed by email, and seek your advice on whether I've correctly categorized the situation.

Thanks!
Jake

Ya-Wei (Jake) Li
Deputy Assistant Administrator for Pesticide Programs
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Li.Jake@epa.gov | 202.819.6914

**From:** Li, Jake
**To:** Griffo, Shannon
**Cc:** Knorr, Michele; Koch, Erin
**Subject:** RE: Consultation/BE workplan proposal
**Date:** Wednesday, August 25, 2021 4:54:11 PM

---

Hi all. Great thanks for this. Very helpful. I will work with OPP to respond accordingly to the CBD letter.

Jake

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Sent:** Wednesday, August 25, 2021 11:35 AM
**To:** Li, Jake <Li.Jake@epa.gov>
**Cc:** Knorr, Michele <knorr.michele@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>
**Subject:** RE: Consultation/BE workplan proposal

Hi all,

Michele provided me with some additional information, and also confirmed that the workplan is indeed separate from the litigation. So here are my responses to Jake's questions:

1. Can I participate in discussions about the topics of this letter, provided those discussions do not include (1) the litigation itself or (2) pesticide active ingredients for which I'm recused?

SHANNON: Yes, Jake may work on the topics of this letter – the proposed workplan - so long as it's not tied to the litigation or the pesticide active ingredients from which he's recused. The letter itself is not from a former client/employer (CBD), although his former client (CLA) is an intervenor on the case mentioned briefly in the letter (but nothing substantive). When discussing the policy workplan, just remember that Jake can't be involved in any discussions or decisions related to the case – which includes anything about the contents of the letter that was sent to DOJ regarding that litigation. But he can be involved in the broader agency action of working on any such policy workplan, including engaging with CBD.

2. Do we need to ask CBD to exclude me from their future communications on this topic, or is it sufficient for OCSPP to internally screen my recusals afterward? From a relationship building perspective, I'd much prefer the latter (it strikes me as heavy handed for an agency to ask a stakeholder how they should communicate with us in situations like this). And there's no reason that anyone at EPA needs to discuss with me letters like this one, if the scope of my recusal is very broad as applied to this issue. I welcome your thoughts on this.

SHANNON: The purpose of the screener identified in Jake's recusal statement is to act as the gatekeeper who will screen correspondence, meeting invites, other communications etc. to determine if they are matter(s) from which Jake is recused. And for his disqualification obligation, yes, it is sufficient for this screening to happen internally by the process and the OCSPP contact(s) you all have in place so that he doesn't participate in the case at all. If Jake receives something from which he is recused, he can forward the correspondence to his screener so that the screener can refer it for action or assignment to someone else. And when Jake does that, he shouldn't direct who should respond or what action should be taken (because that would be a form of participation).

Just let me know if you have any other questions.

Thanks!
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Tuesday, August 24, 2021 5:48 PM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>
**Subject:** RE: Consultation/BE workplan proposal

Thanks all—appreciate your working on this. (b) (5) [redacted]

Thanks
Jake

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Sent:** Tuesday, August 24, 2021 4:02 PM
**To:** Li, Jake <Li.Jake@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>
**Subject:** RE: Consultation/BE workplan proposal

Hi Jake,

I reached out to Michele and Erin with some follow-up questions, and I'll circle back with more

specific guidance once we get those squared away.

Thanks!
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Monday, August 23, 2021 10:58 AM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>; Koch, Erin <Koch.Erin@epa.gov>
**Subject:** FW: Consultation/BE workplan proposal

Good morning all. I wanted to check with you about the scope of my ethics recusals, as applied to this letter, which just came in from CBD.

Shannon, from our prior conversations, I know that I can't discuss litigation in which CropLife or Corteva is a party (and I assume that CBD v. Wheeler is one of those cases). But per the language below from my internal recusal guidance, I can discuss our actions to implement decisions on the resolution of litigation. Also, I've been in general discussions about (b) (5) [redacted]

> If the case is still active, and the decision on how to resolve the case has been made, Jake can be involved in EPA actions to implement that decision (e.g., ESA biological evaluation) but cannot discuss the litigation from which he is recused.

So I have two questions for which I seek your guidance:

1. Can I participate in discussions about the topics of this letter, provided those discussions do not include (1) the litigation itself or (2) pesticide active ingredients for which I'm recused?
2. Do we need to ask CBD to exclude me from their future communications on this topic, or is it sufficient for OCSPP to internally screen my recusals afterward? From a relationship building perspective, I'd much prefer the latter (it strikes me as heavy handed for an agency to ask a stakeholder how they should communicate

with us in situations like this). And there's no reason that anyone at EPA needs to discuss with me letters like this one, if the scope of my recusal is very broad as applied to this issue. I welcome your thoughts on this.

Thanks as always!
Jake

---

**From:** Brett Hartl <BHartl@biologicaldiversity.org>
**Sent:** Monday, August 23, 2021 10:07 AM
**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>; Messina, Edward <Messina.Edward@epa.gov>; Li, Jake <Li.Jake@epa.gov>
**Subject:** Consultation/BE workplan proposal

Hi Michal, Jake, Ed,

Please find the attached letter that contains a proposed workplan for EPA to address its backlog on ESA consultations for pesticides. We hope that this can be a starting point of a conversation in order to get out of the cycle of litigation on EPA's failure to consult.

Our counsel notified DOJ and your general counsel that we would be sending this to you, and I will make sure that the additional relevant parties receive a copy. Please feel free to share as you like, and I hope we can discuss this in the near future.

Thanks much,

Brett Hartl
Government Affairs Director
Center *for* Biological Diversity
202-817-8121

August 21, 2021

Michal Freedhoff
Assistant Administrator
Office of Chemical Safety & Pollution Prevention
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460–0001

Edward Messina
Director
Office of Pesticide Programs
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460–0001

Jake Li
Deputy Assistant Administrator for Pesticide Programs
Office of Chemical Safety & Pollution Prevention
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460–0001

**Re: Proposed Workplan for Endangered Species Consultations on Pesticide Impacts**

Dear Asst. Administrator Freedhoff,

On August 19th the Center for Biological Diversity sent a letter to the Department of Justice and the Environmental Protection Agency ("EPA") regarding outstanding issues in the litigation contained in *Center for Biological Diversity, et al. v. Wheeler, et al.*, Case No. CV-11-0293-JCS (N.D. Cal.). That letter proposed a timeline for completing consultations on the remaining 25 active ingredients from our Fourth Amended Complaint in addition to a proposed path forward for interim conservation measures.

Our letter noted that we would also provide EPA with a larger, more-efficient proposed workplan to address the EPA's systemic failure to consult on the impacts to endangered species. We are providing you this proposal in the hopes of starting a conversation on an overall approach to consultations that can avoid litigation, provide certainty to pesticide registrants, and that can move EPA to an even more efficient assessment of pesticides over time that will result in deployment of better on-the-ground conservation measures. While we expect that the EPA may modify this type of proposal somewhat, we hope that the core approaches are maintained so that EPA's consultation backlog is meaningfully reduced over time.

First, our proposed workplan recognizes that the EPA's capacity will improve with time as more efficiencies are built into the consultation process. Thus, while we recognize that the EPA may only be able to complete a small number of additional biological evaluations in fiscal year 2022 beyond those chemicals it has agreed to in litigation, EPA should be able to complete more biological evaluations each subsequent year. This will also give time for the Services to build their capacity and to improve the deployment of conservation measures on the ground as biological opinions are implemented.

Second, our proposed workplan follows the approach that we first suggested for the triazine class of herbicides (atrazine, simazine, propazine) in that consultations on a class of very similar pesticides will be far more efficient — and consistent in the required conservation measures needed — then a consultation on a single active ingredient or product. Thus, the workplan below aligns those pesticides subject to litigation to the larger the class of pesticides that each chemical is from, such that EPA can improve its own efficiency is addressing its consultation backlog.

Third, we believe it is critical for the EPA to normalize consultations on new active ingredients moving forward. This approach requires EPA to consult on a small number of new active ingredients at the time of registration, and then slowly builds towards the goal of 100 percent compliance for new active ingredients. Our proposal would also slowly address the backlog of new active ingredients that have been registered since 2010 in violation of the Endangered Species Act.

Finally, this workplan attempts to prioritize consultations on the classes of pesticides that are the most toxic and harmful to listed species. This is our best effort to elevate what we think are potentially the groups of chemicals where the most harm is occurring, but we certainly acknowledge that this attempt may be incomplete. We welcome EPA's assessment — or for that matter the views of the U.S. Fish and Wildlife Service or National Marine Fisheries Service — in elevating the groups of chemicals that are of greatest conservation concern to you.

**PROPOSED WORKPLAN**

FY 2022

1) All systemic insecticides including clothianidin,[1] thiamethoxam, imidacloprid, all other neonicotinoids, sulfoxaflor[2] and fipronil.
2) All Pyrethroid insecticides
3) Inpyrfluxam[3] plus one additional active ingredient approved since 2010.
4) At the time of registration, one new active ingredient or 20% of all new active ingredients proposed for registration based on EPA's multi-year workplan for conventional pesticide registration,[4] whichever is greater.

FY 2023

1) All remaining organophosphate pesticides.
2) All synthetic auxin herbicides.
3) All rodenticides including Brodifacoum, Bromadiolone, Warfarin, Zinc Phosphide, sodium fluoroacetate and strychnine.
4) One active ingredient from existing litigation on new active ingredients[5] and one additional active ingredient approved since 2010.
5) At the time of registration, two new active ingredients or 25% of all new active ingredients proposed for registration based on EPA's workplan[4], whichever is greater.

---

[1] Pesticides highlighted in RED represent existing settlement dates in other active litigation.
[2] Sulfoxaflor is at issue in *Ctr. for Food Safety, et al.v. Nishida*, Cases Nos. 19-72109, 19-72280 (9th Cir.).
[3] Inpyrfluxam is at issue in *Ctr. for Biological Diversity, et al. v. U.S. EPA*, No. 20-73146 (9th Cir.).
[4] https://www.epa.gov/pesticide-registration/multi-year-workplan-conventional-pesticide-registration-new-chemical
[5] EPA may choose from cyantraniliprole, bicyclopyrone, benzovindiflupyr, flupyradifurone or halauzifen-methyl.

FY 2024

1) All chloroacetanilide herbicides.
2) All remaining carbamate pesticides.
3) All remaining fumigant pesticides including methyl bromide.
4) All pyrazole insecticides.
5) Avitrol and all other avicides/starlicides.
6) Two active ingredient from existing litigation on new active ingredients[5] and two additional active ingredient approved since 2010.
7) At the time of registration, two new active ingredients or 50% of all new active ingredients proposed for registration based on EPA's workplan[4], whichever is greater.

FY 2025

1) All quaternary ammonium herbicides.
2) All conazole fungicides.
3) All dinitroaniline herbicides.
4) All strobilurin fungicides.
5) All thiocarbamate fungicides and herbicides.
6) Two active ingredient from existing litigation on new active ingredients[5] and two additional active ingredient approved since 2010:
7) At the time of registration, three new active ingredients or 50% of all new active ingredients proposed for registration based on EPA's workplan[4], whichever is greater.

FY 2026

1) All diphenyl ether herbicides.
2) Sulfur
3) Chlorothalonil
4) All pyridine herbicides.
5) All copper fungicides
6) All oxazole herbicide.
7) All dicarboximide fungicides.
8) Five active ingredients approved since 2010.
9) At the time of registration, four new active ingredients or 75% of all new Active Ingredients proposed for registration based on EPA's workplan[4], whichever is greater

FY 2027

1) All other anilide herbicides.
2) All phenylurea herbicides.
3) Propargite.
4) All plant incorporated protectants (PIPs) including *Bacillus thuringiensis* (Bt) toxins
5) All insect growth regulators.
6) All triazinone herbicides.
7) All pyridine herbicides.
8) 100% of all new Active Ingredients proposed for registration based on EPA's workplan.[4]
9) All remaining new Active Ingredients registered between FY 2022 and 2027 that EPA deferred consultation upon.

The Center looks forward to EPA's consideration of our proposal.

Sincerely,

Brett Hartl
Government Affairs Director
Center *for* Biological Diversity

| | |
|---|---|
| **From:** | Li, Jake |
| **To:** | Fugh, Justina |
| **Subject:** | RE: Ethics advice concerning your invitation to the ELI annual awards dinner and fundraiser |
| **Date:** | Tuesday, September 14, 2021 3:06:31 PM |

---

Ok, got it Justina. And thanks for flagging the outside activity request. I don't think it's an urgent issue on my end at the moment.

Jake

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Tuesday, September 14, 2021 2:04 PM
**To:** Li, Jake <Li.Jake@epa.gov>
**Subject:** RE: Ethics advice concerning your invitation to the ELI annual awards dinner and fundraiser

Hi Jake,

Oh, you don't need to tell me whether you're attending or not. Just be sure to RSVP to ELI, though! In other news, I haven't forgotten about your outside activity request. It's on my list! Sadly, it's a long list.

Justina

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Tuesday, September 14, 2021 1:21 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: Ethics advice concerning your invitation to the ELI annual awards dinner and fundraiser

Hi Justina,

Thanks for the advance ethics review. I wasn't aware of this forthcoming invitation until I saw your email. I'll look for the invitation and, for your records, let you know if I decide to attend (most likely will attend). I also appreciate the guidance on fundraising limitations.

Thanks

Jake

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Tuesday, September 14, 2021 1:15 PM
**To:** Li, Jake <Li.Jake@epa.gov>
**Subject:** Ethics advice concerning your invitation to the ELI annual awards dinner and fundraiser

Hi there,

OGC/Ethics understands that you have received or will soon receive an invitation from the Environmental Law Institute (ELI) to be its guest at its annual awards dinner to be held in person at and streamed virtually this year on October 19, 2021 from the Omni Shoreham Hotel in Washington, DC. I am writing to confirm that, if you decide to attend this event in person or virtually, you may do so consistent with the Standards of Ethical Conduct for Employees of the Executive Branch.

This event qualifies for the Widely-Attended-Gathering gift exception and the donor is not a federally registered lobbyist. Even though you are a political appointee, you may still accept this invitation if you wish. OGC/Ethics determines that your attendance at the event is in the Agency's interest because it will further agency programs and operations. Should you attend this event, you will NOT be required to report this as a gift on your financial disclosure report form because the gift is valued at $210, which is BELOW the reporting threshold.

*T*his approval applies only to invitations from ELI itself. Any invitations from other sources will require separate determinations by either OGC/Ethics. This determination covers you only -- the invitation is not transferable and is not intended for more than just one attendee.

<u>Acceptance of Free Attendance to a Dinner and Fundraiser (WAG rule)</u>

The gift offered is an evening reception and dinner sponsored by ELI. Because the organization is offering you a complimentary ticket, we must analyze it according the gift rules. Generally, federal employees are prohibited from accepting gifts given because of their official position or given by a prohibited source (typically, a person either regulated by or seeking to do business with the EPA). In this instance, the gift of free attendance is offered to you because of your official position. In analyzing the situation, we determined that the WAG exception is available because the reception will be widely attended, there will be a diversity of views represented, and there is an opportunity for the exchange of ideas. In order to utilize

this gift exception, OGC/Ethics must also make a written determination that we believe your attendance is in the Agency's interest. We do, in fact, conclude that there is an Agency interest in your attendance if you wish to attend.

Limitations Due to the Fundraiser Event

Please note that this event is a fundraiser. Therefore, ELI cannot use or reference your official position or title or any authority associated with your public office in furtherance of the fundraising effort. You may not actively or visibly participate in the promotion, production, or presentation of the event, which means that you cannot stand in a receiving line. We have confirmed with ELI that you will be placed by ELI and not seated at the request of any sponsoring entity that has bought a table.

Please let me know if you have any questions.

Regards,

Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Li, Jake
**To:** Griffo, Shannon
**Subject:** RE: Ethics question
**Date:** Monday, August 16, 2021 4:59:53 PM

---

Ok got it, thanks Shannon. Very good to know. I'll relay this to our office so they can decide whether someone else wants to participate.

Jake

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Sent:** Monday, August 16, 2021 4:41 PM
**To:** Li, Jake <Li.Jake@epa.gov>
**Subject:** RE: Ethics question

Hi Jake,

So you actually wouldn't be able to speak at this event - CropLife's annual meeting - because we view the invitation itself to be a specific party matter. For this one we don't look at the content of the speech or who else will be there (or that it is initially addressed to the Administrator). Instead, we have to focus on the fact that CropLife is your former client under the Ethics Pledge and since it's a request from CropLife to speak at their event, *that's* the specific party matter and the relevant parties here are CropLife and EPA.

Please let me know if you have any other questions.

And as always, thanks for checking in!
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Monday, August 16, 2021 1:41 PM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** Ethics question

Hi Shannon. I wanted to run something by you—hopefully this is very easy. Our office is thinking of delegating to me the attached request for the Administrator to speak at CropLife's annual meeting. Because this meeting is open to a variety of stakeholders and because it doesn't involve any specific party matters, can you confirm that it's okay for

me to speak at the event if I wanted to do so? Thanks

Jake

**Christopher A. Novak**
**President & CEO**
**CropLife America**

**Megan J. Provost**
**President**
**RISE**

May 25, 2021

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
12th & Pennsylvania Avenue, NW
MC 1101A
Washington, DC 20460

Dear Administrator Regan:

CropLife America (CLA) and RISE (Responsible Industry for a Sound Environment) will hold our joint Annual Meeting this year at the JW Marriott Turnberry in Aventura, Florida. **We are excited to invite you to deliver the keynote address.** Our members would welcome your insights as the leader of the U.S. Environmental Protection Agency (EPA). Your commitment to work cooperatively with stakeholders to address climate change, ensure environmental justice, and promote excellence in scientific integrity would all be of interest to our members. We would be happy to welcome you on Monday, September 13 or Tuesday, September 14 for 45 minutes, beginning at 3:15 pm Eastern, but our general sessions will run from 1:30 to 4:30 pm each day, so we would be happy to work with your team to accommodate your schedule. We would love to host you in-person, but we can also host you virtually, if necessary.

CropLife America is the national trade association that represents the manufacturers and distributors of agricultural pesticides. RISE represents manufacturers, formulators, and distributors of specialty pesticides and fertilizers. Our joint annual meeting traditionally attracts more than 500 industry leaders from more than 250 companies who are a part of our respective memberships. Our member companies work daily with EPA on pesticide registrations, endangered species consultations, water quality, public health, and conservation.

If you have any questions, please don't hesitate to contact us at 202-296-1585 or via email at novak@croplifeamerica.org or mprovost@pestfacts.org. Mary Jo Tomalewski, CLA's Executive Assistant, is also available to assist (email at mjtomalewski@croplifeamerica.org, call or text 703-943-9705).

We hope you will be able to join us!

Sincerely,

Christopher A. Novak

Megan J. Provost

| | |
|---|---|
| **From:** | Li, Jake |
| **To:** | Griffo, Shannon |
| **Cc:** | Knorr, Michele; Richmond, Jonah |
| **Subject:** | RE: Ethics recusal question |
| **Date:** | Thursday, December 30, 2021 1:14:43 PM |
| **Attachments:** | image001.png |

---

Hi Shannon,

Great thanks for the quick response confirming the petition is treated as a new matter! And noted about the possibility of CLA becoming a party to the petition and my duties to former clients.

Happy Holidays and see you next Tuesday.
Jake

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Sent:** Thursday, December 30, 2021 1:03 PM
**To:** Li, Jake <Li.Jake@epa.gov>
**Cc:** Knorr, Michele <knorr.michele@epa.gov>; Richmond, Jonah <Richmond.Jonah@epa.gov>
**Subject:** RE: Ethics recusal question

Hi Jake,

Very good question! Short answer is that we'd consider the petition for writ of mandamus to be a new specific party matter, separate and apart from the 2017 case where your former client, CLA, was a party. And at this time, CLA is not a party to this new specific party matter. The petition for writ of mandamus lists the parties to this case (no CLA), and then calls the 2017 case a previous, separate proceeding (where CLA was a party). See page 44. Thus, you would be able to work on the Agency's response to the petition, as well as the Agency's actions to implement the 2017 order. But if CLA somehow becomes a party to the petition, we'd need to revisit this determination because then you wouldn't be able to work on the petition.

Also, since you mentioned working on the 2017 case previously, I'd just remind you to be mindful of your attorney bar obligations – including Rule 1.9 (regarding duties to former clients).

I think that covers everything. Please let me know if you all have any other questions.

Happy New Year!
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency

(202) 564-7061

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Tuesday, December 28, 2021 5:02 PM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Cc:** Knorr, Michele <knorr.michele@epa.gov>; Richmond, Jonah <Richmond.Jonah@epa.gov>
**Subject:** Ethics recusal question

Hi Shannon,

I hope you're enjoying the holidays. I wanted to check with you about an ethics recusal situation. I'm also copying Michelle in case she can help with this response, which isn't urgent but would be useful to resolve in the next week or two.

Last week, several eNGOs petitioned for a writ of mandamus, asking the DC Circuit to direct us to comply with the court's 2017 remand without vacatur order arising from our failure to comply with the ESA when we registered the pesticide cyantraniliprole. https://www.biologicaldiversity.org/campaigns/pesticides_reduction/pdfs/2021-12-21_CTP-Petition-for-Mandamus.pdf

CropLife America was one of the intervenors in that 2017 case, and I have a 2 year ethics recusal on CLA matters (attached is the recusal guidance we developed). My question is to what extent, if any, I can be involved in internal discussions and other work related to this matter?

Per the attached ethics guidance, I can work on CLA matters in the following two situations arising from litigation:

- If the case has been closed or resolved, Jake can be involved in EPA actions stemming from the case (e.g., allowed to work on any subsequent rulemaking that resolves litigation in which CLA was a party).
- If the case is still active, and the decision on how to resolve the case has been made, Jake can be involved in EPA actions to implement that decision (e.g., ESA biological evaluation) but cannot discuss the litigation from which he is recused.

I see two potential situations that might allow me to be fully or partially involved here, but wanted to run this by you all. One is whether CLA is still an intervenor for purposes of this petition for writ of mandamus. In other words, even though CLA intervened in the 2017 litigation, is this petition an action in which CLA still counts as an intervenor from

an ethics standpoint?

Two is whether our internal discussions fall under either of the two bullet points above, considering that the court has already determined we needed to comply with the ESA when registered CTP. For example, if I'm only involved in discussions about how to comply with the 2017 order, do those discussions fall under "EPA actions to implement that decision" or "EPA actions stemming from the case"? Presumably, if this petition had never been filed, I could work on EPA actions to implement the 2017 order. But now that the petition has been filed, does that ability somehow change because CLA was an intervenor in the 2017 case?

If possible, (b) (5) [redacted].

Also, this should no longer count toward my ethics recusal, but (b) (6) [redacted].

Thanks
Jake

Ya-Wei (Jake) Li
Deputy Assistant Administrator for Pesticide Programs
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Li.Jake@epa.gov | 202.819.6914

Progress for a Stronger Future

**From:** Griffo, Shannon
**To:** Li, Jake
**Subject:** RE: Financial disclosure form submitted
**Date:** Monday, July 19, 2021 4:34:00 PM
**Attachments:** image001.png

---

Hi Jake,

Thanks for the heads up. I checked and your report is sitting in my queue. I'll review it this week and circle back with any comments/questions.

I was out on Friday so I also owe you a response to your manuscript questions which I'll be sure to do tomorrow!

Thanks again,
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Monday, July 19, 2021 1:12 PM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** Financial disclosure form submitted

Hi Shannon. Just wanted to inform you that I submitted my public financial disclosure form today. I wasn't able to provide information about the (b) (6) [redacted] in about a week, at which point I will provide the holdings information.

Thanks
Jake

Ya-Wei (Jake) Li
Deputy Assistant Administrator for Pesticide Programs
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Li.Jake@epa.gov | 202.819.6914

EPA at 50

Progress for a Stronger Future

**From:** Griffo, Shannon
**To:** Li, Jake
**Subject:** Follow-up on your Public Financial Disclosure Report
**Date:** Friday, August 6, 2021 1:12:00 PM

---

Hi Jake,

Your report is close to being done! Just a few more questions which I thought I could ask in an email instead of sending the report back to you. I can then make any changes on my end – although if you'd rather do it yourself, just let me know and I'll send it back.

1. Part 3: Employment agreements and arrangements. (b) (6), (b) (3) (A) [redacted] Are you good if I make that change?

2. Part 4: Sources of Compensation. (b) (6), (b) (3) (A) [redacted] Okay if I delete those two?

3. Part 5: (b) (6), (b) (3) (A) [redacted]

4. Part 6: (b) (6), (b) (3) (A) [redacted]

Thanks!
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

**From:** Li, Jake
**To:** Griffo, Shannon
**Subject:** RE: Former client question
**Date:** Thursday, July 15, 2021 9:39:59 AM

---

Ok sounds good Shannon. Hoping to submit the disclosure report this weekend—have gathered almost all of the data; now it's a matter of inputting it. Thanks

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Sent:** Thursday, July 15, 2021 9:34 AM
**To:** Li, Jake <Li.Jake@epa.gov>
**Subject:** RE: Former client question

I'll add those dates to your recusal statement and will wait for your financial disclosure report to finalize the draft. Thanks Jake!

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Thursday, July 15, 2021 8:54 AM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Former client question

Good morning Shannon,

That all sounds good. I don't remember the date I last provided services to the University of Illinois ([redacted]), so if we can say the end of February 2021 (and if my recusal ends on March 1, 2022) I think we'll definitely be on the safe side.

As for TAMU, [redacted] final week at EPIC (my last day of work was June 17th).

Thanks
Jake

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>

**Sent:** Thursday, July 15, 2021 8:31 AM
**To:** Li, Jake <Li.Jake@epa.gov>
**Subject:** RE: Former client question

Hi Jake,

(b) (6) [redacted]. One of the factors we look at is the presence or absence of an ongoing contractual relationship or agreement, including (b) (6) [redacted].

So we will still list the University of Illinois and Texas A&M in the impartiality section of your recusal statement. The recusal period is only one year for these (instead of two for pledge recusals), and will end one year from the date you last provided services to them. For the University of Illinois, I think you indicated February 2021. Would you happen to know approximately what day? Or beginning/end of month? So that recusal period would end in February 2022. And then when was the last time you provided TAMU with services?

Thanks,
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Monday, July 12, 2021 11:23 AM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Former client question

Hi Shannon,

Thanks for flagging this issue about my past work with universities. (b) (6) [redacted]

Given these facts, please let me know if you think my one-year recusal period for the

university might start in 2020 (because I don't have the exact date of services, I don't know if using 12/31/2020 might be possible). If starting the clock in 2020 isn't feasible, then it's not a big deal to me to start the clock on my first date of employment at EPA, because I don't anticipate a strong need to communicate with the university during my first year here.

Thanks!
Jake

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Sent:** Friday, July 9, 2021 11:02 AM
**To:** Li, Jake <Li.Jake@epa.gov>
**Subject:** Former client question

Hi Jake,

Thanks for answering my questions in your draft recusal statement. And I know completing the 278 can be very time consuming! Just do your best. After you submit it, I'll be the one reviewing it and we'll likely have some back and forth to get it finalized and in good shape.

I just had one follow-up question regarding your comment about the universities. You mentioned (b) (6) [redacted] I raise this because the definition of former client excludes "instances where the service provided was limited to a speech or similar appearance." E.O. 13989, Section 2(l). And the Office of Government Ethics expanded on that to say "In addition to excluding all activities that consist merely of speaking engagements, this provision is intended to exclude other kinds of *discrete, short-term engagements, including certain de minimus consulting activities."* OGE even gives this example: The recusal obligation "would not apply to an appointee who had provided consulting services on a technical or scientific issue, for three hours on a single day, pursuant to an informal oral agreement, with no representational or fiduciary relationship." *See* DO-09-011, page 3.

So if any of your activities related to a university (or other former client) involved a brief, one-time service with little or no ongoing attachment or obligation, let me know and we can take a closer look to determine whether your services would be considered de minimus for purposes of the Pledge.

Thanks!
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency

(202) 564-7061
Griffo.Shannon@epa.gov

**From:** Li, Jake
**To:** Griffo, Shannon; Richmond, Jonah
**Cc:** Fugh, Justina; Keigwin, Richard; Li, Jake
**Subject:** RE: Inquiry on joining a national conservation coalition
**Date:** Friday, July 9, 2021 10:09:01 AM
**Attachments:** image001.png

---

Hi Shannon,

Thanks again for your guidance. I'm probably the person taking up more of your time this week than anyone else!

I wanted to offer my responses and some background:

- On the first question, my supervisor (Michal Freedhoff) agrees that joining the coalition would further OCSPP's goal of expanding our species mitigation work as part of our ESA-FIFRA compliance strategy. Participation carries no expectation of becoming involved in any fiduciary or fundraising activity (the coalition has an executive director and other leadership staff who are responsible for securing funding for the coalition's work).
- EPIC is no longer involved. I was the sole representative for EPIC in the coalition. As far as I can tell EPIC, is not being asked to identify another person to replace my former role in the coalition.
- TAMU is indeed still in the coalition, but you are correct that the coalition's work is very general and broad, and its membership is very diverse. Thus far, there has been no work involving any specific issue (e.g., rulemaking, permit, lawsuit, regulatory decision). Indeed, one purpose of the coalition is to separate itself from the day-to-day decisions of federal agencies and engage at a broader level about regional or nationwide opportunities to advance voluntary species conservation (which is where EPA's interest comes in). I don't anticipate situations where the coalition's work would create recusal issues with TAMU or where I'd end up in a smaller dialogue with them. But in case I suspect that might happen, your email is a good reminder for me to steer clear of it (before I joined EPA, I had told TAMU, EPIC, and others about my recusal, so they know not to contact me during the recusal period). I expect that all meetings and communications will involve dozens of members. If EPA does join the coalition and I see gray areas from an ethics standpoint, I'll definitely run them by you first.

Thanks
Jake

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Sent:** Thursday, July 8, 2021 4:35 PM
**To:** Richmond, Jonah <Richmond.Jonah@epa.gov>
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>; Li, Jake <Li.Jake@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>
**Subject:** RE: Inquiry on joining a national conservation coalition

Hi Jonah,

Thanks for checking in with us! So there are basically two parts to my response – one dealing with ethics and the other does not. The first about whether an employee can serve in an official capacity on such a coalition is not determined by OGC/Ethics or by the employee himself. Rather that's a determination made by a supervisor who must consider whether serving on the coalition is consistent with the mission of the Agency, the office, and the employee's job description and workload. Employees may serve in official capacities on outside committees such as this coalition, but only in a non-fiduciary role. When serving in an official capacity, the employee may refer to EPA positions and title, use EPA contact information, and use official time and resources. However, the employee cannot engage in any fundraising for the outside entity. And at all times, the employee is representing EPA, and not the coalition (or any personal interest).

Now turning to the ethics part – we need to check to see if Jake has any conflicts of interest. It appears that Jake's former employer and/or former client may also be involved in the coalition. I can't tell if EPIC is still involved, but I did notice Texas A&M on the guest list (which I need to follow-up with him on separately). Pursuant to the Biden Ethics Pledge Jake signed, he cannot interact with his former employer or former client on any specific party matter in which it is a party or represents a party. And that is expanded to include any meeting or other communication - unless that communication applies to a particular matter of general applicability (e.g. rulemaking, policy matters) and participation in the meeting or other event is open to all interested parties. When OGC/Ethics is determining whether a meeting or communication is "open to all interested parties" for purposes of the Ethics Pledge, we have to ensure that there is a multiplicity of parties present. Based on guidance from the Office of Government Ethics, this means at least four other parties are present (in addition to a former employer or former client).

But based on the purpose statement and coalition summit guest list, it appears that the subject matter of the coalition will often be particular matters of general applicability (or even broader matters) and there are numerous parties (over 60 current members) involved in the coalition serving a diversity of interests. Jake would just have to be careful if he was attending a coalition meeting where his former employer or former client was present, and the subject matter turned to a specific party matter (e.g., litigation, contract, permit, specific pesticide registration); or if there were only limited participants and his former employer or former client was one of the few present. We need to ensure that there are at least four other parties present in addition to Jake's former employer at such a meeting (or on an email chain).

So if Jake's supervisor determines that he may serve in his official capacity on this coalition, I don't see any ethics issues that would prevent him from serving. He just needs to be careful of his Ethics

Pledge restrictions and monitor those things I discussed above. And of course, OGC/Ethics is happy to review any meeting agendas and/or attendee lists to determine whether a meeting or communication meets the pledge exception.

Please let me know if you have any other questions.

Thanks!
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Richmond, Jonah <Richmond.Jonah@epa.gov>
**Sent:** Thursday, July 08, 2021 9:52 AM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>; Li, Jake <Li.Jake@epa.gov>; Keigwin, Richard <Keigwin.Richard@epa.gov>
**Subject:** FW: Inquiry on joining a national conservation coalition

Shannon/Justina,

We are interested in the Ethics Office's review of Jake Li's potential involvement with a group called "Conservation Without Conflict." Attached are two of their statements, as well as a guest list for an upcoming meeting. Is there additional information (e.g., how it is funded, how it operates, how it engages with government) you need us to obtain from the Coalition for your analysis?

Thank you,
Jonah

**Jonah Richmond**
Special Assistant
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Mobile: (202) 748-6012

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Wednesday, July 7, 2021 5:26 PM
**To:** Keigwin, Richard <Keigwin.Richard@epa.gov>; Richmond, Jonah <Richmond.Jonah@epa.gov>
**Subject:** Inquiry on joining a national conservation coalition

Hi Rick and Jonah,

I figure that I'd start with you to help me navigate requests like the following.

I've been asked whether I can represent EPA in a coalition called "Conservation Without Conflict." This coalition—led by current and former USFWS leaders, Dept of Defense, and private landowners—focuses on promoting collaborative species conservation on agricultural, ranching, and other "working" lands. The coalition currently has over 60 members, including many of the largest players in U.S. species conservation such as the U.S. Forest Service and the Western Governors Association (see attached list of invited guests for the coalition's upcoming D.C. meeting). I previously represented EPIC in the coalition.

I think (b) (5) [redacted]. But we also wanted to run this invitation by the rest of OPP, OGC, and possibly the Ethics Office (please advise if Ethics approval is needed).

I think (b) (5) [redacted]

- [redacted]
- [redacted]
- [redacted]
- [redacted]

(b) (5) [redacted] There are no fees, nor are members even required to endorse the purpose statement (attached). There's a coalition workshop this September in D.C. that'll allow members to network, trade notes about their conservation initiatives, and discuss future actions.

(b) (5) [redacted], but I welcome any thoughts on doing so and the process for checking with others here on invitations like this.

Thanks
Jake

Ya-Wei (Jake) Li
Deputy Assistant Administrator for Pesticide Programs
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Li.Jake@epa.gov | 202.819.6914

# Conservation without Conflict - Purpose Statement

We value land for the recreational experiences it affords, the well being it provides our families, the support for our ways of life, the ecological benefits it delivers to our communities, and for the wildlife it sustains. Land and wildlife unites us and enhances our quality of life. Our collective desire is to pass these tremendous benefits and our outdoor experiences on to successive generations. Conservation without Conflict is both an approach and a coalition. Members have diverse goals and values, including economic profit and sustainability, hunting, fishing and other outdoor recreation, conservation, national security, and public service, but we all come together around common conservation interests and a sense of good land stewardship. Our goal is to demonstrate to policy makers, funders, conservation groups, and the public and private sectors that investments in collaborative conservation protect land and the values we ascribe to it.

Wildlife belongs to all Americans. In meeting the responsibility to ensure the future of wildlife, Federal and State governments often use regulations to protect and manage species. Regulations have an important role in our history of conserving the abundance and diversity of our nation's fish and wildlife resources and ensuring access and opportunity to enjoy them, thus safeguarding our rich natural heritage for current and future generations. But, regulatory action often does not promote collaboration, which is necessary to achieve the level of conservation required to ensure the future of wildlife. Indeed, regulatory inflexibility can create a counterproductive and adversarial tension as landowners try to balance their individual priority needs with public expectations for conserving fish and wildlife. Across our country, and especially in the eastern United States, the future of fish and wildlife depends heavily on private landowners. Each of these landowners value different essentials from their lands, whether it's farming, timber, energy, economic profit, hunting and fishing, national defense preparedness or any of thousands of other uses. Working collaboratively towards conservation goals can conserve wildlife species and help support all of our shared values and ownership objectives on private lands.

A collaborative approach, along with appropriate and effective incentives that recognize the benefits landowners provide to America's fish and wildlife, can help landowners keep working lands working. This approach realizes the economic and cultural benefits of working landscapes, allows recreational opportunities, and contributes to the enhancement of important habitats. Collaboration that promotes this essential balance of mutual gain among partners is more successful in providing conservation at the scales needed, and will be more sustainable than a relationship relying on regulatory approaches alone or at all. This is the essence of Conservation without Conflict.

This coalition will initially focus on sharing successes and best practices, encouraging the use of existing incentives, suggesting new approaches and incentives, and providing capacity and support to implement actions designed to preclude the need to list at-risk species and recovering endangered and threatened species. Outreach and communication about successes by the coalition is of paramount importance. We will work to keep forests, farms, ranches and defense installations working for people and wildlife. Our goal is to use sound science and proactive, collaborative conservation to recover federally listed species and conserve as many species of fish, wildlife and plants as possible, negating the need for the ESA's protections. If federal protection is required, we will creatively use the ESA's flexibilities to use existing and develop new collaborative incentives, and provide regulatory predictability and assurances for private landowner or corporate conservation efforts. With demonstrated success creating regulatory flexibility and incentives around at-risk and listed species, we foresee broadening our scope in the future and translating the success of this approach to other areas.

Conservation without Conflict is the future of conservation in America. We will learn where collaborative conservation is working well and provide a framework to make collaborative conservation the way that government, landowners, industry, and society develop and work towards common goals.

**Conservation Without Conflict**
**Statement on "Conserving and Restoring American the Beautiful" Report**

We applaud the Biden-Harris administration for naming Conservation Without Conflict as one of its recommendations for early focus in implementing their newly unveiled report, "Conserving and Restoring America the Beautiful." This plan outlines how the administration will pursue its ambitious goal to conserve 30 percent of the nation's lands and waters by the year 2030, yielding benefits for wildlife habitat, recreational opportunities, and addressing climate change by employing voluntary, collaborative, and science-based approaches to conservation.

"We are pleased to see this expression of support for the Conservation Without Conflict approach," said Lauren Ward, Executive Director for Conservation Without Conflict. "We know that investing in voluntary and collaborative conservation for working lands will help sustain these important landscapes and the many values that Americans ascribe to them. By working together to promote a balance of mutual gain among partners, we can keep our working lands working while advancing conservation on the ground. We and our coalition members look forward to working with the administration as it implements its plan to conserve and restore America's beautiful working landscapes."

Conservation Without Conflict is both a proven approach to conservation and a newly emerging coalition of public and private partners with highly diverse goals who support voluntary and collaborative approaches to conserving wildlife on working lands. As a growing coalition of over 50 partners, we work to foster a culture of voluntary collaboration and enduring trust across diverse sectors and groups to support a sustainable national landscape that conserves wildlife and improves quality of life for landowners and communities. Our vision is for voluntary collaboration to be the primary model for wildlife conservation on working lands across the United States.

For more information, please contact Lauren Ward, (b) (6) [redacted].

| | |
|---|---|
| **From:** | Richmond, Jonah |
| **To:** | Griffo, Shannon |
| **Cc:** | Li, Jake |
| **Subject:** | RE: Jake"s Ecosystem remarks for 10/14 event |
| **Date:** | Wednesday, October 13, 2021 11:18:35 AM |

Great. Thanks so much Shannon.

**Jonah Richmond** (He/Him/His)
Special Assistant
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Mobile: (202) 748-6012

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Sent:** Wednesday, October 13, 2021 11:17 AM
**To:** Richmond, Jonah <Richmond.Jonah@epa.gov>
**Cc:** Li, Jake <Li.Jake@epa.gov>
**Subject:** RE: Jake's Ecosystem remarks for 10/14 event

Hi Jonah,

I took a look at the remarks and conference website. Based on what I see, I have no ethics concerns with Jake's participation at this conference.

Thanks for checking!
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061

---

**From:** Richmond, Jonah <Richmond.Jonah@epa.gov>
**Sent:** Tuesday, October 12, 2021 4:51 PM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Cc:** Li, Jake <Li.Jake@epa.gov>
**Subject:** FW: Jake's Ecosystem remarks for 10/14 event

Shannon,

Jake is speaking at an Ecological Restoration conference on Thursday. The draft outline of his remarks is attached. OGC-PTSLO raised this question:

> One additional thing we wanted to point out is that because the audience for this speech is

companies that offer services in conservation offsets and the topic is about how EPA may be looking to regulate pesticides using more offsets, there could be an ethics concern. But we are not ethics experts, so we recommend conferring with your ethics official or an ethics attorney on that.

Can OGC-Ethics let us know if there are any concerns or advice on this?

Thanks,
Jonah

---

**Jonah Richmond** (He/Him/His)
Special Assistant
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Mobile: (202) 748-6012

**From:** Li, Jake
**To:** Griffo, Shannon
**Subject:** RE: My list of former clients and employers
**Date:** Tuesday, July 6, 2021 8:19:51 PM
**Attachments:** image001.png

---

Hi Shannon. Please see below my responses in blue text. Thanks.

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Sent:** Tuesday, July 6, 2021 12:29 PM
**To:** Li, Jake <Li.Jake@epa.gov>
**Subject:** RE: My list of former clients and employers

Hi Jake,

Thanks again for your chart. I made some notes in red and included some follow-up questions for you.

| Entity | Prior relationship and background information | Shannon's notes/questions |
|---|---|---|
| Environmental Policy Innovation Center (EPIC) | My direct employer from May 2018 to my departure in June 2021. The organization is based in Washington, D.C. | Former employer under pledge – 2 year recusal<br><br>Since you are an attorney, were you involved in any litigation for EPIC? Specifically, are there any cases you were personally and substantially involved in that are still pending at EPA and could arise before you in OCSPP (e.g., from your time at Defenders of Wildlife)? If so, we'd identify them in your recusal statement under an Attorney Bar Obligations section.<br><br>EPIC does not engage in any litigation of any form, nor does the Sand County Foundation. (b) (6) [redacted] |
| Sand County Foundation | The Foundation is the 501(c)(3) fiscal sponsor for EPIC, handling its tax, human resource, and other administrative matters for a fee. The Foundation is itself a 501(c)(3) organization focused on private landowner conservation and is headquartered in Madison, WI. Thus, the Foundation should also be considered a former employer of mine. | Former employer under pledge – 2 years |
| CropLife America | Client on (b) (6) [redacted] | Former client under pledge – 2 years (but not the members of the trade association, unless one of those members comes before EPA representing CropLife) |
| Corteva Agriscience, Inc. | Client on (b) (6) [redacted] | Former client under pledge – 2 years |
| LPC Conservation, LLC | Client on (b) (6) [redacted] | Former client under pledge – 2 years |
| Energy Power Research | Client on (b) (6) [redacted]. | Former client under pledge – 2 years |

| | | |
|---|---|---|
| Institute (EPRI) | | Is this Energy or Electric Power Research Institute? Thanks for catching this error—it's the latter (www.epri.com). |
| University of Illinois, Energy Resource Center | Client on (b) (6) [redacted]. | Impartiality regulations – 1 year recusal (pledge excludes state government, including state university) |
| Texas A&M University, Natural Resources Institute | (b) (6) [redacted] | Impartiality – 1 year (pledge excludes state university) |
| Perkins Coie, LLP | (b) (6) [redacted] | (b) (6) [redacted] |
| (b) (6) [redacted] | | Federal government (no pledge implications) |

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Thursday, July 01, 2021 1:17 PM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** My list of former clients and employers

Hi Shannon. Please find attached my list of clients and employers within the last two years. Please let me know if you need more information.

Thanks
Jake

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Thursday, July 1, 2021 11:50 AM
**To:** Li, Jake <Li.Jake@epa.gov>
**Cc:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Two ethics questions

Hi Jake,
Shannon Griffo, copied here, will reach out to you to follow up. She's the person who's going to review your new entrant report (hint, hint) and draft your recusal statement. Please send her your list of clients, including *pro bono,* over the last 2 years.
Cheers,
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Wednesday, June 30, 2021 6:56 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Two ethics questions

Hi Justina, Victoria, and Shannon –

Justina, thanks for the prompt response—much appreciated! And Victoria, thanks for the great training. Before I forget, I've attached my signed ethics pledge. I've also posted in blue text below my responses and a few follow-up questions. Please feel free to call me if it's easier than responding by email.

Thanks
Jake

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Wednesday, June 30, 2021 4:27 PM
**To:** Li, Jake <Li.Jake@epa.gov>

**Cc:** Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Two ethics questions

Hi Jake,
See my comments below:

I'm now on board at EPA and have the ethics and financial disclosures on my list of things to do.
JUSTINA: Welcome aboard! I hear you had great questions during your initial ethics training with Victoria, so I'm not surprised that you've got great questions now. In terms of your homework, though, don't forget to send us your signed pledge if you haven't already and also please work on your financial disclosure report. We also need a list of your former clients over the past two years so that we can help you navigate your recusal issues. We won't be able to actually draft your recusal statement until we have your clients and disclosure report. Shannon Griffo, copied here, will be reviewing your disclosure report and drafting your recusal statement.
It's quite lovely, really, that you're so keen on understanding the ethics rules, but we really are here to help you. After all, if you guess wrong, then we can't help you after the fact.

I did want to ask you two ethics questions about potential meetings.

1. Before joining EPA, I was in communications with Alex Dunn, the former AA OCSPP, about setting up a time to discuss her experience working at EPA. We never found the time to meet before I joined EPA. Are there ethics prohibitions on my meeting with Alex? We wouldn't cover any of her client matters (she's now a lawyer at Baker Botts) or any of my prior client matters. I don't recall learning of any ethics prohibitions that apply to this situation, but I also haven't had time to study all of those prohibitions in detail yet, which is why I wanted to reach out to you.

   A related scenario is that the former DAA for OCSPP (Nancy Beck) also offered to speak with me about her experience at EPA. That outreach didn't occur until my position was publicly announced (but before I started the job on Monday). I've talked with Nancy over the years on work matters, but never one-on-one. Would speaking with Nancy also be prohibited?

JUSTINA: There are ethics rules that apply to you as an EPA employee, and there are different rules that apply to both Nancy and Alex. Although we don't have your recusal situation buttoned up, I don't anticipate that you have any issues with Baker Botts so you may engage in a conversation with Alex. But for her part, Alex is precluded from representing back to EPA on anything at all, so if she pursues this, then she may do so only in her personal capacity. She should not bill the firm or any client for the time spent talking to you. We would encourage her to seek post-employment advice from EPA Ethics before talking to you since you are now a federal employee. Unlike Alex, Nancy Beck was not a PAS appointee and, in fact, was never a political appointee. Instead, she was appointed to an administratively determined position that did not require her to sign the Trump Ethics Pledge. Though still our employee of record, she did not work directly for EPA in her last year, so she is not bound by the one-year cooling off period with EPA at 18 USC 207(c) like Alex. You may talk to Nancy directly so long as she does not represent her current employer back to you on something that she worked on personally and substantially previously. Nancy has always been an attentive ethics client, so I would expect her to contact me if she had any questions.

Thanks for the explanation. I can confirm that Alex (and Nancy) contacted me only in their personal capacity and not even using their current work email. I don't anticipate any discussions raising the post-employment issues you identified, including any client or law firm specific representations. The anticipated conversations (assuming I proceed with them) would center on each of their experiences working at OSCPP and ESA-FIFRA issues in general. And thanks for explaining Nancy's role—I had forgotten that she wasn't a political appointee.

2. OCSPP received a request by a coalition of agricultural stakeholders to discuss a variety of pesticide-related issues, including improving the ESA-FIFRA process (which is my main responsibility in the coming years). Although the coalition would like to discuss general process improvements (i.e., matter of general applicability), their agenda also includes EPA's conditional registration of the pesticide Enlist Duo. The registrant for Enlist is Corteva, which is a former client of mine and thus covered by the 2 year recusal. Although I've never worked on Enlist issues for Corteva, and although they won't be at this agricultural stakeholders meeting, I nonetheless wanted to run this situation by you. If I recall correctly from our prior discussions, the ethics recusal focuses on specific parties rather than issues. The agenda doesn't indicate what specifically about the Enlist conditional registration the meeting requestors seek to discuss. But I think it's noteworthy that the Enlist registration affects a very wide group of agricultural stakeholders rather than only specific parties. When I review the example below from 5 CFR 2641.201, I can come up with a reasonable argument that the effects of the Enlist registration are similar in breadth to the example of the MSHA regulations affecting mine workers. Although Enlist doesn't affect *all* of agriculture, it does affect a significant portion of the sector because of its very broad use.

   > A former employee of the Mine Safety and Health Administration (MSHA) participated personally and substantially in the development of a regulation establishing certain new occupational health and safety standards for mine workers. Because the regulation applies to the entire mining industry, it is a particular matter of general applicability, not a matter involving specific parties, and the former employee would not be prohibited from making post-employment representations to the Government in connection with this regulation

Given that I'm only beginning to understand exactly how the Biden ethics pledge applies to me, I will lean in the direction of consulting with you or others at your office, at least in the beginning of my employment until I have a better understanding of how the ethics pledge applies. Meeting with a variety of stakeholders will be important to the success of my position, especially to ensuring that stakeholders feel that both

Michal and I are listening to their concerns. Thus, if consistent with my ethics pledge and other related obligations, I would like to find ways for me to attend meetings like the one at issue (and if I'm recused from participating only in specific portions of the meeting, then figuring out how to structure the meeting so that I don't participate in those portions).

JUSTINA: The ethics regulation you've cited appears in the *post-employment* regulation, which is not the genesis of your client restriction at all. Instead, focus on Executive Order 13989, Section 1, paragraph 2, and then also the definition in Section 2, paragraph (j). You are prohibited from working on any specific party matter in which your former client is a party or represents a party, which means that you cannot be involved in the conditional registration of the pesticide Enlist Duo at all since it's as specific party matter and the registrant is a former client. While you may attend the meeting at which other issues, such as matters of general applicability, are discussed, you will have to recuse yourself – *leave the meeting* – when the Enlist Duo issue arises on the agenda. If the item is omitted from the agenda yet someone brings it up anyway, then you must step out because you are prohibited from working on that specific party matter at all, including hearing what others – internal or external – to EPA have to say about it. The pledge is quite expansive when it comes to your former clients: no matter whether you worked on the specific party matter for them or not, you can't be involved simply because they are. What I explained to you previously (and Victoria did more recently in your initial ethics briefing) is that the only exception to allowing you to interact in any way with your former client is if: (a) it's a meeting or communication, (b) the subject of which is a matter of general applicability (so not the Enlist Duo registration), (c) there are at least five parties present, only one of which is your former client, and (d) those in attendance represent a diversity of viewpoints. To learn more about how to apply the pledge restrictions, look at DO-09-011 from the Office of Government Ethics.

Thanks for the explanation. A few responses and questions:

- I had looked at the post-employment regulation in section 2641.201(h) because Section 2, paragraph (j) refers to that regulation's definition of "particular matters involving specific parties" and I found the examples in 2641.201(h) useful to illustrate how to interpret this phrase. I recognize, however, that Section 2, paragraph (j) expands the definition in 2641.201(h) to cover "communications related to the performance of one's official duties." As a result, my assumption is that the examples in section 2641.201(h) provide useful context but don't define the outer limits of my ethics obligations—is that correct?

- As I understand it, there appears to be (1) matter-specific and (2) party-specific ethics restrictions, and they can operate independently? So as I understand it, my inability to participate in any meeting involving Enlist—even if Corteva is not a participant to those meetings, as is the case for the agricultural stakeholder meeting at issue—arises from the matter-specific restrictions. That is, because Corteva is a former client of mine, any specific party matter involving a Corteva product is covered by the recusal (*regardless of whether they appear in a meeting* and regardless of whether I worked on that specific party matter), absent the exception you specified.

  Separate from the matter-specific restrictions are the party-specific restrictions, which would prevent me from participating in any non-public meeting in which Corteva is present involving any specific matter, absent the exception you specified. It doesn't matter if the topic of that meeting is one that I had worked on. This second set of restrictions makes complete sense to me, especially given the language in the DO-0-11 document explaining that "[t]he purpose of this expansion of the traditional definition is to address concerns that former employers and clients may appear to have privileged access, which they may exploit to influence an appointee out of the public view." What I'm still not completely grasping is the first set of matter-specific restrictions, which appear to apply in a situation in which a former client would have no ability to influence me (because that client isn't present in the meeting). In those situations, the concern presumably isn't with privileged access to me but something else, such as the appearance of bias judgment because of my prior work with the client?

  I realize that these questions are probably getting ahead of the recusal statement, which will presumably cover all of the issues. But since we're already discussing these questions, I figured I can close the loop on my understanding of how the ethics restrictions operate. Understanding these questions will help me more effectively apply my ethics obligations in real-time, such as in situations where I don't have the luxury of emailing you in advance for guidance (e.g., at a conference).

  Thanks again!

Thanks for reaching out, and happy to talk anytime!
justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Wednesday, June 30, 2021 2:26 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Two ethics questions

Hi Justina,

I'm now on board at EPA and have the ethics and financial disclosures on my list of things to do. I did want to ask you two ethics questions about potential meetings.

1. Before joining EPA, I was in communications with Alex Dunn, the former AA OCSPP, about setting up a time to discuss her experience working at EPA. We never found the time to meet before I joined EPA. Are there ethics prohibitions on my meeting with Alex? We wouldn't cover any of her client matters (she's now a lawyer at Baker Botts) or any of my prior client matters. I don't recall learning of any ethics prohibitions that apply to this situation, but I also haven't had time to study all of those prohibitions in detail yet, which is why I wanted to reach out to you.

   A related scenario is that the former DAA for OCSPP (Nancy Beck) also offered to speak with me about her experience at EPA. That outreach didn't occur until my position was publicly announced (but before I started the job on Monday). I've talked with Nancy over the years on work matters, but never one-on-one. Would speaking with Nancy also be prohibited?

2. OCSPP received a request by a coalition of agricultural stakeholders to discuss a variety of pesticide-related issues, including improving the ESA-FIFRA process (which is my main responsibility in the coming years). Although the coalition would like to discuss general process improvements (i.e., matter of general applicability), their agenda also includes EPA's conditional registration of the pesticide Enlist Duo. The registrant for Enlist is Corteva, which is a former client of mine and thus covered by the 2 year recusal. Although I've never worked on Enlist issues for Corteva, and although they won't be at this agricultural stakeholders meeting, I nonetheless wanted to run this situation by you. If I recall correctly from our prior discussions, the ethics recusal focuses on specific parties rather than issues. The agenda doesn't indicate what specifically about the Enlist conditional registration the meeting requestors seek to discuss. But I think it's noteworthy that the Enlist registration affects a very wide group of agricultural stakeholders rather than only specific parties. When I review the example below from 5 CFR 2641.201, I can come up with a reasonable argument that the effects of the Enlist registration are similar in breadth to the example of the MSHA regulations affecting mine workers. Although Enlist doesn't affect *all* of agriculture, it does affect a significant portion of the sector because of its very broad use.

   > A former employee of the Mine Safety and Health Administration (MSHA) participated personally and substantially in the development of a regulation establishing certain new occupational health and safety standards for mine workers. Because the regulation applies to the entire mining industry, it is a particular matter of general applicability, not a matter involving specific parties, and the former employee would not be prohibited from making post-employment representations to the Government in connection with this regulation

Given that I'm only beginning to understand exactly how the Biden ethics pledge applies to me, I will lean in the direction of consulting with you or others at your office, at least in the beginning of my employment until I have a better understanding of how the ethics pledge applies. Meeting with a variety of stakeholders will be important to the success of my position, especially to ensuring that stakeholders feel that both Michal and I are listening to their concerns. Thus, if consistent with my ethics pledge and other related obligations, I would like to find ways for me to attend meetings like the one at issue (and if I'm recused from participating only in specific portions of the meeting, then figuring out how to structure the meeting so that I don't participate in those portions).

Thanks in advance for you help. If it's easier to discuss over the phone, please feel free to call me.
Jake

Ya-Wei (Jake) Li
Deputy Assistant Administrator for Pesticide Programs
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Li.Jake@epa.gov | 202.819.6914

Progress for a Stronger Future

| | |
|---|---|
| **From:** | Li, Jake |
| **To:** | Griffo, Shannon |
| **Subject:** | RE: My list of former clients and employers |
| **Date:** | Thursday, July 1, 2021 2:26:01 PM |
| **Attachments:** | image001.png |

---

Sounds good Shannon—thanks! And I'll look out for your response to my other email when you get a chance.

Jake

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Sent:** Thursday, July 1, 2021 2:21 PM
**To:** Li, Jake <Li.Jake@epa.gov>
**Subject:** RE: My list of former clients and employers

Thanks Jake! This is great. I'll take a closer look and start drafting your recusal statement. Then we'll be able to fill in anything else from your financial disclosure report.

I also owe you a response to your other email. That'll be coming shortly and then we can have a follow-up conversation if needed.

Looking forward to working with you!

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Thursday, July 01, 2021 1:17 PM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** My list of former clients and employers

Hi Shannon. Please find attached my list of clients and employers within the last two years. Please let me know if you need more information.

Thanks
Jake

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Thursday, July 1, 2021 11:50 AM
**To:** Li, Jake <Li.Jake@epa.gov>

**Cc:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Two ethics questions

Hi Jake,
Shannon Griffo, copied here, will reach out to you to follow up. She's the person who's going to review your new entrant report (hint, hint) and draft your recusal statement. Please send her your list of clients, including *pro bono,* over the last 2 years.
Cheers,
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Wednesday, June 30, 2021 6:56 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Two ethics questions

Hi Justina, Victoria, and Shannon –

Justina, thanks for the prompt response—much appreciated! And Victoria, thanks for the great training. Before I forget, I've attached my signed ethics pledge. I've also posted in blue text below my responses and a few follow-up questions. Please feel free to call me if it's easier than responding by email.

Thanks
Jake

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Wednesday, June 30, 2021 4:27 PM
**To:** Li, Jake <Li.Jake@epa.gov>
**Cc:** Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Two ethics questions

Hi Jake,
See my comments below:

I'm now on board at EPA and have the ethics and financial disclosures on my list of things to do.

JUSTINA: Welcome aboard! I hear you had great questions during your initial ethics training with Victoria, so I'm not surprised that you've got great questions now. In terms of your homework, though, don't forget to send us your signed pledge if you haven't already and also please work on your financial disclosure report. We also need a list of your former clients over the past two years so that we can help you navigate your recusal issues. We won't be able to actually draft your recusal statement until we have your clients and disclosure report. Shannon Griffo, copied here, will be reviewing your disclosure report and drafting your recusal statement.
It's quite lovely, really, that you're so keen on understanding the ethics rules, but we really are here to help you. After all, if you guess wrong, then we can't help you after the fact.

I did want to ask you two ethics questions about potential meetings.

1. Before joining EPA, I was in communications with Alex Dunn, the former AA OCSPP, about setting up a time to discuss her experience working at EPA. We never found the time to meet before I joined EPA. Are there ethics prohibitions on my meeting with Alex? We wouldn't cover any of her client matters (she's now a lawyer at Baker Botts) or any of my prior client matters. I don't recall learning of any ethics prohibitions that apply to this situation, but I also haven't had time to study all of those prohibitions in detail yet, which is why I wanted to reach out to you.

   A related scenario is that the former DAA for OCSPP (Nancy Beck) also offered to speak with me about her experience at EPA. That outreach didn't occur until my position was publicly announced (but before I started the job on Monday). I've talked with Nancy over the years on work matters, but never one-on-one. Would speaking with Nancy also be prohibited?

JUSTINA: There are ethics rules that apply to you as an EPA employee, and there are different rules that apply to both Nancy and Alex. Although we don't have your recusal situation buttoned up, I don't anticipate that you have any issues with Baker Botts so you may engage in a conversation with Alex. But for her part, Alex is precluded from representing back to EPA on anything at all, so if she pursues this, then she may do so only in her personal capacity. She should not bill the firm or any client for the time spent talking to you. We would encourage her to seek post-employment advice from EPA Ethics before talking to you since you are now a federal employee. Unlike Alex, Nancy Beck was not a PAS appointee and, in fact, was never a political appointee. Instead, she was appointed to an administratively determined position that did not require her to sign the Trump Ethics Pledge. Though still our employee of record, she did not work directly for EPA in her last year, so she is not bound by the one-year cooling off period with EPA at 18 USC 207(c) like Alex. You may talk to Nancy directly so long as she does not represent her current employer back to you on something that she worked on personally and substantially previously. Nancy has always been an attentive ethics client, so I would expect her to contact me if she had any questions.

Thanks for the explanation. I can confirm that Alex (and Nancy) contacted me only in their personal capacity and not even using their current work email. I don't anticipate any discussions raising the post-employment issues you identified, including any client or law firm specific representations. The anticipated conversations (assuming I proceed with them) would center on each of their experiences working at OSCPP and ESA-FIFRA issues in general. And thanks for explaining Nancy's role—I had forgotten that she wasn't a political appointee.

2. OCSPP received a request by a coalition of agricultural stakeholders to discuss a variety of pesticide-related issues, including improving the ESA-FIFRA process (which is my main responsibility in the coming years). Although the coalition would like to discuss general process improvements (i.e., matter of general applicability), their agenda also includes EPA's conditional registration of the pesticide Enlist Duo. The registrant for Enlist is Corteva, which is a former client of mine and thus covered by the 2 year recusal. Although I've never worked on Enlist issues for Corteva, and although they won't be at this agricultural stakeholders meeting, I nonetheless wanted to run this situation by you. If I recall correctly from our prior discussions, the ethics recusal focuses on specific parties rather than issues. The agenda doesn't indicate what specifically about the Enlist conditional registration the meeting requestors seek to discuss. But I think it's noteworthy that the Enlist registration affects a very wide group of agricultural stakeholders rather than only specific parties. When I review the example below from 5 CFR 2641.201, I can come up with a reasonable argument that the effects of the Enlist registration are similar in breadth to the example of the MSHA regulations affecting mine workers. Although Enlist doesn't affect *all* of agriculture, it does affect a significant portion of the sector because of its very broad use.

> A former employee of the Mine Safety and Health Administration (MSHA) participated personally and substantially in the development of a regulation establishing certain new occupational health and safety standards for mine workers. Because the regulation applies to the entire mining industry, it is a particular matter of general applicability, not a matter involving specific parties, and the former employee would not be prohibited from making post-employment representations to the Government in connection with this regulation

Given that I'm only beginning to understand exactly how the Biden ethics pledge applies to me, I will lean in the direction of consulting with you or others at your office, at least in the beginning of my employment until I have a better understanding of how the ethics pledge applies. Meeting with a variety of stakeholders will be important to the success of my position, especially to ensuring that stakeholders feel that both Michal and I are listening to their concerns. Thus, if consistent with my ethics pledge and other related obligations, I would like to find ways for me to attend meetings like the one at issue (and if I'm recused from participating only in specific portions of the meeting, then figuring out how to structure the meeting so that I don't participate in those portions).

JUSTINA: The ethics regulation you've cited appears in the *post-employment* regulation, which is not the genesis of your client restriction at all. Instead, focus on Executive Order 13989, Section 1, paragraph 2, and then also the definition in Section 2, paragraph (j). You are prohibited from working on any specific party matter in which your former client is a party or represents a party, which means that you cannot be involved in the conditional registration of the pesticide Enlist Duo at all since it's as specific party matter and the registrant is a former client. While you may attend the meeting at which other issues, such as matters of general applicability, are discussed, you will have to recuse yourself – *leave the meeting* – when the Enlist Duo issue arises on the agenda. If the item is omitted from the agenda yet someone brings it up anyway, then you must step out because you are prohibited from working on that specific party matter at all, including hearing what others – internal or external – to EPA have to say about it. The pledge is quite expansive when it comes to

your former clients: no matter whether you worked on the specific party matter for them or not, you can't be involved simply because they are. What I explained to you previously (and Victoria did more recently in your initial ethics briefing) is that the only exception to allowing you to interact in any way with your former client is if: (a) it's a meeting or communication, (b) the subject of which is a matter of general applicability (so not the Enlist Duo registration), (c) there are at least five parties present, only one of which is your former client, and (d) those in attendance represent a diversity of viewpoints. To learn more about how to apply the pledge restrictions, look at DO-09-011 from the Office of Government Ethics.

Thanks for the explanation. A few responses and questions:

- I had looked at the post-employment regulation in section 2641.201(h) because Section 2, paragraph (j) refers to that regulation's definition of "particular matters involving specific parties" and I found the examples in 2641.201(h) useful to illustrate how to interpret this phrase. I recognize, however, that Section 2, paragraph (j) expands the definition in 2641.201(h) to cover "communications related to the performance of one's official duties." As a result, my assumption is that the examples in section 2641.201(h) provide useful context but don't define the outer limits of my ethics obligations—is that correct?

- As I understand it, there appears to be (1) matter-specific and (2) party-specific ethics restrictions, and they can operate independently? So as I understand it, my inability to participate in any meeting involving Enlist—even if Corteva is not a participant to those meetings, as is the case for the agricultural stakeholder meeting at issue—arises from the matter-specific restrictions. That is, because Corteva is a former client of mine, any specific party matter involving a Corteva product is covered by the recusal (*regardless of whether they appear in a meeting* and regardless of whether I worked on that specific party matter), absent the exception you specified.

  Separate from the matter-specific restrictions are the party-specific restrictions, which would prevent me from participating in any non-public meeting in which Corteva is present involving any specific matter, absent the exception you specified. It doesn't matter if the topic of that meeting is one that I had worked on. This second set of restrictions makes complete sense to me, especially given the language in the DO-0-11 document explaining that "[t]he purpose of this expansion of the traditional definition is to address concerns that former employers and clients may appear to have privileged access, which they may exploit to influence an appointee out of the public view." What I'm still not completely grasping is the first set of matter-specific restrictions, which appear to apply in a situation in which a former client would have no ability to influence me (because that client isn't present in the meeting). In those situations, the concern presumably isn't with privileged access to me but something else, such as the appearance of bias judgment because of my prior work with the client?

  I realize that these questions are probably getting ahead of the recusal statement, which will presumably cover all of the issues. But since we're already discussing these questions, I figured I can close the loop on my understanding of how the ethics restrictions operate. Understanding these questions will help me more effectively apply my ethics obligations in real-time, such as in situations where I don't have the luxury of emailing you in advance for

guidance (e.g., at a conference).

Thanks again!

Thanks for reaching out, and happy to talk anytime!
justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Wednesday, June 30, 2021 2:26 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Two ethics questions

Hi Justina,

I'm now on board at EPA and have the ethics and financial disclosures on my list of things to do. I did want to ask you two ethics questions about potential meetings.

1. Before joining EPA, I was in communications with Alex Dunn, the former AA OCSPP, about setting up a time to discuss her experience working at EPA. We never found the time to meet before I joined EPA. Are there ethics prohibitions on my meeting with Alex? We wouldn't cover any of her client matters (she's now a lawyer at Baker Botts) or any of my prior client matters. I don't recall learning of any ethics prohibitions that apply to this situation, but I also haven't had time to study all of those prohibitions in detail yet, which is why I wanted to reach out to you.

   A related scenario is that the former DAA for OCSPP (Nancy Beck) also offered to speak with me about her experience at EPA. That outreach didn't occur until my position was publicly announced (but before I started the job on Monday). I've talked with Nancy over the years on work matters, but never one-on-one. Would speaking with Nancy also be prohibited?

2. OCSPP received a request by a coalition of agricultural stakeholders to discuss a variety of pesticide-related issues, including improving the ESA-FIFRA process (which is my main responsibility in the coming years). Although the coalition would like to discuss general process improvements (i.e., matter of general applicability), their agenda also includes EPA's conditional registration of the pesticide Enlist Duo. The registrant for Enlist is Corteva, which is a former client of mine and thus covered by the 2 year recusal. Although I've never worked on Enlist issues for Corteva, and although they won't be at this agricultural stakeholders meeting, I nonetheless wanted to run this situation by you. If I recall correctly from our prior

discussions, the ethics recusal focuses on specific parties rather than issues. The agenda doesn't indicate what specifically about the Enlist conditional registration the meeting requestors seek to discuss. But I think it's noteworthy that the Enlist registration affects a very wide group of agricultural stakeholders rather than only specific parties. When I review the example below from 5 CFR 2641.201, I can come up with a reasonable argument that the effects of the Enlist registration are similar in breadth to the example of the MSHA regulations affecting mine workers. Although Enlist doesn't affect *all* of agriculture, it does affect a significant portion of the sector because of its very broad use.

> A former employee of the Mine Safety and Health Administration (MSHA) participated personally and substantially in the development of a regulation establishing certain new occupational health and safety standards for mine workers. Because the regulation applies to the entire mining industry, it is a particular matter of general applicability, not a matter involving specific parties, and the former employee would not be prohibited from making post-employment representations to the Government in connection with this regulation

Given that I'm only beginning to understand exactly how the Biden ethics pledge applies to me, I will lean in the direction of consulting with you or others at your office, at least in the beginning of my employment until I have a better understanding of how the ethics pledge applies. Meeting with a variety of stakeholders will be important to the success of my position, especially to ensuring that stakeholders feel that both Michal and I are listening to their concerns. Thus, if consistent with my ethics pledge and other related obligations, I would like to find ways for me to attend meetings like the one at issue (and if I'm recused from participating only in specific portions of the meeting, then figuring out how to structure the meeting so that I don't participate in those portions).

Thanks in advance for you help. If it's easier to discuss over the phone, please feel free to call me.
Jake

Ya-Wei (Jake) Li
Deputy Assistant Administrator for Pesticide Programs
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Li.Jake@epa.gov | 202.819.6914

**To:** Shannon Griffo, EPA Ethics Office
**From:** Ya-Wei (Jake) Li, EPA OCSPP
**Subject:** List of my former clients and employers to inform recusal statement

Please find below my list of employers and clients for the entire two-year period prior to my start date at EPA (June 28, 2021). Throughout this document, "ESA" stands for Endangered Species Act.

| Entity | Prior relationship and background information |
|---|---|
| Environmental Policy Innovation Center (EPIC) | My direct employer from May 2018 to my departure in June 2021. The organization is based in Washington, D.C. |
| Sand County Foundation | The Foundation is the 501(c)(3) fiscal sponsor for EPIC, handling its tax, human resource, and other administrative matters for a fee. The Foundation is itself a 501(c)(3) organization focused on private landowner conservation and is headquartered in Madison, WI. Thus, the Foundation should also be considered a former employer of mine. |
| CropLife America | Client on (b) (6) [redacted]. |
| Corteva Agriscience, Inc. | Client on (b) (6) [redacted]. |
| LPC Conservation, LLC | Client on (b) (6) [redacted]. |
| Energy Power Research Institute (EPRI) | Client on (b) (6) [redacted]. |
| University of Illinois, Energy Resource Center | Client on (b) (6) [redacted]. |
| Texas A&M University, Natural Resources Institute | (b) (6) [redacted] |
| Perkins Coie, LLP | (b) (6) [redacted] |
| (b) (6) [redacted] | [redacted] |

**From:** Li, Jake
**To:** Griffo, Shannon; Richmond, Jonah
**Cc:** Diaz, Catherine; Tyler, Tom; Fugh, Justina
**Subject:** RE: Recusal question about Jake attending external meeting
**Date:** Tuesday, December 14, 2021 9:58:54 AM

---

Morning Shannon – Thanks for the great response! This all makes sense to me and we'll proceed per your email.

Best
Jake

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Sent:** Tuesday, December 14, 2021 9:24 AM
**To:** Richmond, Jonah <Richmond.Jonah@epa.gov>
**Cc:** Li, Jake <Li.Jake@epa.gov>; Diaz, Catherine <Diaz.Catherine@epa.gov>; Tyler, Tom <Tyler.Tom@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: Recusal question about Jake attending external meeting

Hi Jonah,

These are very good questions! As you know, Jake's Pledge obligations prevent him from participating in any particular matter involving specific parties in which his former employers/former clients are a party or represents a party, which also includes meetings. However, there is an exception to this restriction – and that is if the meeting is about a particular matter of general applicability (e.g., rulemaking or a policy decision) and the event is "open to all interested parties." When determining whether a meeting or communication is "open to all interested parties," we have to ensure that there is a *multiplicity of parties* present – meaning at least four other parties are present (in addition to a former employer/client). For example, if there is a meeting with five or more stakeholders regarding an Agency rulemaking, then Jake could attend the meeting even if one of the stakeholders was a former employer or client.

So for purposes of this meeting, let's look first at the subject matter which appears to be about a particular matter of general applicability – these are rulemakings or policy matters that distinctively affect a particular industry or identifiable class of persons; or even broader "matters" – which affect a multitude of sectors. Thus, PRIA 5 would be fine to discuss, but if the meeting turns to specific party matters – such as permits, lawsuits, grants, licenses, specific enforcement actions – then the meeting is no longer about a matter of general applicability or matters, and Jake couldn't participate in that part.

Now the second part of our analysis for this meeting is whether it's open to all interested parties. For this proposed meeting, there are more than five stakeholders (including CropLife) who wish to discuss a particular matter of general applicability or matter. And although these organizations/trade associations who make up the PRIA Coalition may be interested in discussing PRIA 5 and the same issues, they all have their own distinct missions and diverse perspectives on the

topics on which they are aligned. So the question then becomes how many representatives from CropLife will be present compared to the overall participants? Based on guidance from the Office of Government Ethics, we want to ensure that there are at least four other parties present in addition to Jake's former client. There should be +4 for each individual representing CropLife. We want a "multiplicity of parties" and we do that by checking the number of attendees per organization to confirm the ratio of overall attendees to CropLife participants is at least 4:1. For this meeting, there are 8 organizations listed. If each group sends 1 representative (as listed in the email below), then 1 out of the 8 participants would be from CropLife. So based on that, this meeting would meet the exception found within the Ethics Pledge and Jake could attend. But you need to be mindful that if the participant list changes, or if there are more representatives from CropLife present, this analysis could change. Perhaps the exact participant list will vary depending on when the meeting is scheduled and this is just who is expected to attend. Or CropLife may decide to send an additional 3 people, and others don't show. Then that ratio changes. So it helps to see the full list of attendees and re-evaluate it once the participant list is finalized to ensure there is a sufficient number of stakeholders.

Thanks for checking in and please let me know if you all have any other questions!
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061

---

**From:** Richmond, Jonah <Richmond.Jonah@epa.gov>
**Sent:** Friday, December 10, 2021 12:19 PM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Cc:** Li, Jake <Li.Jake@epa.gov>; Diaz, Catherine <Diaz.Catherine@epa.gov>; Tyler, Tom <Tyler.Tom@epa.gov>
**Subject:** Recusal question about Jake attending external meeting

Shannon,

We would like your advice on whether Jake may attend a stakeholder meeting in January. The original invitation is below. CropLife is one of a number of attendees representing diverse interests, but this doesn't appear to be open to all interested parties. We believe that they intend to discuss their priorities for PRIA 5, how they can help EPA with resources to complete PRIA and non-PRIA work in a timely and predictable fashion, and their desired schedule for the effort.

They requested to meet with Michal but Michal would like Jake to participate if possible. The main questions we have are around where the subject matter and attendee list fall relative to Jake's recusal obligations, but please flag any other issues you spot.

Please let us know if there are any questions you have.

Thanks,
Jonah

---

**Jonah Richmond** (He/Him/His)
Special Assistant
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Mobile: (202) 748-6012

**From:** Laurie Flanagan <lflanagan@dclrs.com>
**Sent:** Tuesday, December 7, 2021 2:51 PM
**To:** Tyler, Tom <Tyler.Tom@epa.gov>; Diaz, Catherine <Diaz.Catherine@epa.gov>; Brown, KendraR <Brown.KendraR@epa.gov>; Odusote, Gloria <odusote.gloria@epa.gov>
**Cc:** Messina, Edward <Messina.Edward@epa.gov>; Goodis, Michael <Goodis.Michael@epa.gov>; Schaible, Stephen <Schaible.Stephen@epa.gov>
**Subject:** PRIA Coalition January meeting request with Dr. Freedhoff

Tom, Catie, Gloria and Kendra,

I am writing to request a meeting with Dr. Freedhoff at the leaders of the PRIA Coalition during January. The meeting would be attended by the presidents or senior executives from the organizations below. We would like to share our priorities related to the reauthorization of PRIA and discuss the timing for reauthorization.

- American Chemistry Council's Center for Biocide Chemistries, Komal Jain, Executive Director
- Animal Health Institute, Alexander Matthews, President and CEO
- Biological Products Industry Alliance, Keith Jones, Executive Director
- CropLife America, Chris Novak, President and CEO
- Council of Producers & Distributors of Agrotechnology, Gary Halvorson, President
- Household & Commercial Products Association, Stephen J. Caldeira, President and CEO
- ISSA, The Worldwide Cleaning Industry Association, John Barrett, Executive Director
- RISE (Responsible Industry for a Sound Environment), Megan Provost, President

-
Thank you very much for your consideration of this request.

--
Regards,

Laurie-Ann Flanagan
Executive Vice President
D.C. Legislative and Regulatory Services, Inc.
Office: (202) 872-4850
Mobile: (b) (6) [redacted]

| | |
|---|---|
| **From:** | Li, Jake |
| **To:** | Griffo, Shannon |
| **Subject:** | RE: Recusal Statement for your Review |
| **Date:** | Wednesday, August 18, 2021 9:25:04 AM |

Thanks, both are changed and I hope to get back to you later today with the final document.

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Sent:** Wednesday, August 18, 2021 9:24 AM
**To:** Li, Jake <Li.Jake@epa.gov>
**Subject:** RE: Recusal Statement for your Review

Sounds good. Just make sure you change the date in two places – at the end of that paragraph and the chart itself. And thanks for catching that about Carol Ann!

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Tuesday, August 17, 2021 9:08 PM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Recusal Statement for your Review

Just quick follow up that the draft looks good to me. I just changed the recusal expiration date from 6/20/23 to 6/28/23, as I started with EPA on 6/28/21. And Carol Ann Sicilano has retired, so I've replaced her name with the acting director for our office of program support. We should be able to get the statement finalized tomorrow and I'll send you a copy then. Thanks

Jake

---

**From:** Li, Jake
**Sent:** Tuesday, August 17, 2021 8:39 PM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Recusal Statement for your Review

Hi Shannon. Great thanks for this. I'll review it shortly and, unless I have questions, will fill out the information you indicated and digitally sign it and circulate it. I'll provide you

with a final PDF of the statement for your records too.

And agreed on my spouse's firm having zero connections with anything EPA does.

Much appreciate your help
Jake

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Sent:** Tuesday, August 17, 2021 3:45 PM
**To:** Li, Jake <Li.Jake@epa.gov>
**Subject:** Recusal Statement for your Review

Hi Jake,

Now that I was able to certify your New Entrant Report, here is a draft recusal statement for your consideration. OGC/Ethics previously advised you – and you have assiduously been following that advice – regarding your ethics obligations, but this document will formally notify folks about your obligations.

One thing to note – I did not include your spouse's law firm in your recusal statement. Please remember that you do have a covered relationship with your spouse's employer, and you are prohibited from participating in specific party matters where your spouse or your spouse's employer is a party or represents a party. But given the firm's practice, it is unlikely that the firm (or the firm's clients) will have business before the Agency so I didn't include it.

Please review and let me know if you have any comments or concerns. You will also need to identify a screener within OCSPP and insert name/title. Then once the recusal is ready for signature, you'll want to put it on OCSPP letterhead, then digitally sign it by your name. If you need assistance inserting a digital signature, just let me know. And once it's signed, please be sure to distribute it to the identified individuals.

I'll get you my comments on your other memo shortly.

Thanks!
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

**From:** Li, Jake
**To:** Griffo, Shannon; Knorr, Michele
**Subject:** RE: Request about my recusal
**Date:** Monday, August 16, 2021 12:31:04 PM
**Attachments:** image001.png

---

Hi Shannon. Ok great thanks for the response. We didn't hear back from anyone else in Ethics.

On a related note, I just sent you a draft document in which I tried to synthesize and summarize our determinations about my recusals. I've added this issue to the document.

Thanks
Jake

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Sent:** Monday, August 16, 2021 12:28 PM
**To:** Knorr, Michele <knorr.michele@epa.gov>; Li, Jake <Li.Jake@epa.gov>
**Subject:** RE: Request about my recusal

Hi Jake and Michele,

I'm slowly getting caught up after being out of the office all last week. Did someone else from OGC/Ethics respond to your question? My apologies if no one closed the loop. You can always feel free to nudge us again or elevate it to a specific individual on the team in my absence (like Justina Fugh).

That being said – here's my response. Jake may work on these draft biological evaluations so long as you all aren't discussing the litigation from which he is recused. CropLife isn't a party to the ESA biological evaluations, and this would be similar to the rulemaking example I gave below.

Thanks,
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Knorr, Michele <knorr.michele@epa.gov>
**Sent:** Monday, August 09, 2021 2:17 PM
**To:** Li, Jake <Li.Jake@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
**Cc:** ethics <ethics@epa.gov>

**Subject:** RE: Request about my recusal

This is correct. Feel free to call me if you have specific questions that you can't ask Jake in light of the broader recusal.

Michele L. Knorr, Attorney (she/her)
Pesticides and Toxic Substances Law Office
Office of General Counsel Environmental Justice Coordinator
202-564-5631

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Monday, August 09, 2021 2:09 PM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Cc:** ethics <ethics@epa.gov>; Knorr, Michele <knorr.michele@epa.gov>
**Subject:** Request about my recusal
**Importance:** High

Hi Shannon,

In preparation for a 3:30 PM meeting today, I have a question about how my recusal applies. In our earlier conversation (copied and pasted below), you explained that my CropLife America recusal doesn't apply to internal meetings discussing how EPA will implement a resolution to closed or resolved litigation in which CropLife was a party. We didn't discuss whether this rule applies in situations involving ongoing litigation. Specifically, at today's 3:30 meeting, we plan to discuss the contents of draft Endangered Species Act biological evaluations for neonic pesticides stemming from litigation that's still active (in which CropLife is a party). We have no plans to discuss the litigation itself, and my understanding is that the decision on how to resolve the litigation (i.e., issue biological evaluations) has already been made (Michele can correct me if that's wrong).

In this situation, can I still participate in discussions on the evaluation?

Sorry for the last minute question, which Michele thankfully flagged for me.

Thanks!
Jake

Ya-Wei (Jake) Li

Deputy Assistant Administrator for Pesticide Programs
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Li.Jake@epa.gov | 202.819.6914

- CropLife America – CLA is an intervenor in many, if not most, of the cases on today's agenda (and likely most future meetings discussing pesticide litigation). [redacted] Am I recused from participating in internal meetings discussing cases in which CLA is an intervenor? And does this answer change if the case is no longer active? SHANNON: Pursuant to section 1, Paragraph 2 of E.O. 13989, you cannot participate in any specific party matters where your former client is a party or represents a party. So you are recused from any cases in which CropLife America is a party. This includes all cases and related internal meetings discussing those cases in which CLA is an intervenor. For Pledge purposes, it doesn't matter if you didn't work on any of those cases during the prior 2 years. Your ethics pledge obligations extends to all specific party matters in which your former employer or former client is involved.

  Now if the case is no longer active, you mean it's been closed or resolved right? So if you were recused from certain litigation because of your pledge restriction (e.g., CLA is an intervenor), and let's say the Agency (or court) decides to resolve that litigation by some rulemaking, would you be able to work on the resulting rulemaking going forward? The answer to that is yes. You could be involved in whatever next steps the Agency is taking. You just can't have a role in the litigation itself or in the Agency's determination or discussions about how to

resolve it.  I'm not sure if that answers that part of your question.  Just let me know if you means something else when you say the case is no longer active.

| | |
|---|---|
| **From:** | Li, Jake |
| **To:** | Fugh, Justina |
| **Cc:** | Griffo, Shannon |
| **Subject:** | RE: Seeking clearance for personal publication |
| **Date:** | Thursday, September 2, 2021 4:53:17 PM |
| **Attachments:** | image001.png |

Great thanks Justina!
Jake

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Thursday, September 2, 2021 4:53 PM
**To:** Li, Jake <Li.Jake@epa.gov>
**Cc:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Seeking clearance for personal publication

Hi there,
I've sent a note to Dan Utech to secure his response. Will confirm with you and Shannon when I hear back.
Cheers,
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Tuesday, August 31, 2021 8:19 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** Seeking clearance for personal publication

Good morning Justina,

Shannon described to me the process for seeking EPA clearance of personal publications. In this email, I wanted to begin the process of obtaining clearance for the attached manuscript, which was tentatively accepted for publication by the Environmental Law Institute for its upcoming issue of the Environmental Law Reporter. The tentative acceptance occurred several weeks before I joined EPA, and I've done no work on the publication since then. The manuscript identifies recommendations for ESA improvements that came out of two workshops I ran with UC Irvine Law School.

My supervisor, Michal, already knows I'll be submitting this manuscript for internal clearance, and she has no objections. I won't use my EPA affiliation in the final publication. Instead I'll be identified only as "at the time of this writing, Ya-Wei Li was Director for Biodiversity at the Environmental Policy Innovation Center." Thus, I did not include a disclaimer in the publication.

Shannon explained that you would consult with Dan Utech, who's considered my supervisor for purposes of publication clearance, and that I should provide the information below.

- **Name, title and grade;**
  Ya-Wei Li, Deputy Assistant Administrator for Pesticide Programs, Schedule C
- **The nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected;**
  Manuscript for publication in the Environmental Law Institute's Environmental Law Reporter journal. My coauthors and I had submitted the manuscript months before I joined EPA, and the manuscript was tentatively accepted for publication several weeks before my start date. Thus, I performed no work on the manuscript while employed at EPA.
- **The name and business of the person or organization for which the work will be done;**
  Not applicable – no paid or other financial arrangement related to this publication.
- **The estimated time to be devoted to the activity;**
  Not applicable – completed before I joined EPA.
- **Whether the service will be performed entirely outside of normal duty hours (if not, estimate the number of hours of absence from work required);**
  Not applicable.
- **A statement that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment;**
  Yes, I am confirming that no government resources or official duty time was used for the manuscript.
- **The basis for compensation (e.g., fee, per diem, per annum, etc.)**
  Not applicable – unpaid.
- **A statement that you have read, are familiar with, and will abide by the restrictions described in 5 CFR Part 2635 (Subpart H on "Outside Activities) and 5 C.F.R. § 6401.103 (EPA's Supplemental Regulations);**

I am confirming that I have read, am familiar with, and will abide by the restrictions at Parts 2635 and 6401.

- **An identification of any EPA assistance agreements or contracts held by a person to or for whom services would be provided.**
  Not applicable.

Thanks and please let me know if you need any other information to complete my request.
Jake

Ya-Wei (Jake) Li
Deputy Assistant Administrator for Pesticide Programs
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Li.Jake@epa.gov | 202.819.6914

**From:** Fugh, Justina
**To:** Li, Jake
**Cc:** Griffo, Shannon
**Subject:** please update your request for approval of outside activity
**Date:** Monday, September 13, 2021 1:27:00 PM
**Attachments:** image001.png

---

Hi Jake,
I received confirmation today that Dan Utech concurs in your request for approval of the outside activity. As I started to write my response, however, I noticed that you did not directly answer some of the factors. To be clear, every single one of those factors does apply to you and your situation, so you can't say "inapplicable." Your answer that there is no payment or any continuing service is still an answer. Please provide the updates as indicated below:

- **Name, title and grade;**
  Ya-Wei Li, Deputy Assistant Administrator for Pesticide Programs, Schedule C
  (Justina: OK)
- **The nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected;**
  Manuscript for publication in the Environmental Law Institute's Environmental Law Reporter journal. My coauthors and I had submitted the manuscript months before I joined EPA, and the manuscript was tentatively accepted for publication several weeks before my start date. Thus, I performed no work on the manuscript while employed at EPA. no paid or other financial arrangement related to this publication (Justina: here is where you indicate that you were unpaid. Under the federal rules, "compensation" does not include reprints or copies of the publication that contains the article, so don't worry about that).
- **The name and business of the person or organization for which the work will be done;**
  ~~Not applicable – no paid or other financial arrangement related to this publication.~~ -Environmental Law Institute
- **The estimated time to be devoted to the activity;**
  ~~Not applicable –~~ completed before I joined EPA.
- **Whether the service will be performed entirely outside of normal duty hours (if not, estimate the number of hours of absence from work required);**
  ~~Not applicable~~. completed before I joined EPA.
- **A statement that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment;**
  Yes, I am confirming that no government resources or official duty time was used for the manuscript.

- **The basis for compensation (e.g., fee, per diem, per annum, etc.)**
  ~~Not applicable –~~ unpaid.
- **A statement that you have read, are familiar with, and will abide by the restrictions described in 5 CFR Part 2635 (Subpart H on "Outside Activities) and 5 C.F.R. § 6401.103 (EPA's Supplemental Regulations);**
  I am confirming that I have read, am familiar with, and will abide by the restrictions at Parts 2635 and 6401.
- **An identification of any EPA assistance agreements or contracts held by a person to or for whom services would be provided.**
  ~~Not applicable.~~ The Environmental Law Institute actively collaborates with EPA.

Since the manuscript was selected prior to your joining EPA, we should have known about it and considered whether to include ELI in your recusal statement. I'll confer with Shannon on that, but in the meantime, please update your request and send it back to me.
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Thursday, September 2, 2021 4:53 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Seeking clearance for personal publication

Great thanks Justina!
Jake

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Thursday, September 2, 2021 4:53 PM
**To:** Li, Jake <Li.Jake@epa.gov>
**Cc:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Seeking clearance for personal publication

Hi there,
I've sent a note to Dan Utech to secure his response. Will confirm with you and Shannon when I hear back.

Cheers,
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Tuesday, August 31, 2021 8:19 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** Seeking clearance for personal publication

Good morning Justina,

Shannon described to me the process for seeking EPA clearance of personal publications. In this email, I wanted to begin the process of obtaining clearance for the attached manuscript, which was tentatively accepted for publication by the Environmental Law Institute for its upcoming issue of the Environmental Law Reporter. The tentative acceptance occurred several weeks before I joined EPA, and I've done no work on the publication since then. The manuscript identifies recommendations for ESA improvements that came out of two workshops I ran with UC Irvine Law School.

My supervisor, Michal, already knows I'll be submitting this manuscript for internal clearance, and she has no objections. I won't use my EPA affiliation in the final publication. Instead I'll be identified only as "at the time of this writing, Ya-Wei Li was Director for Biodiversity at the Environmental Policy Innovation Center." Thus, I did not include a disclaimer in the publication.

Shannon explained that you would consult with Dan Utech, who's considered my supervisor for purposes of publication clearance, and that I should provide the information below.

- **Name, title and grade;**
  Ya-Wei Li, Deputy Assistant Administrator for Pesticide Programs, Schedule C
- **The nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected;**

Manuscript for publication in the Environmental Law Institute's Environmental Law Reporter journal. My coauthors and I had submitted the manuscript months before I joined EPA, and the manuscript was tentatively accepted for publication several weeks before my start date. Thus, I performed no work on the manuscript while employed at EPA.

- **The name and business of the person or organization for which the work will be done;**
  Not applicable – no paid or other financial arrangement related to this publication.
- **The estimated time to be devoted to the activity;**
  Not applicable – completed before I joined EPA.
- **Whether the service will be performed entirely outside of normal duty hours (if not, estimate the number of hours of absence from work required);**
  Not applicable.
- **A statement that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment;**
  Yes, I am confirming that no government resources or official duty time was used for the manuscript.
- **The basis for compensation (e.g., fee, per diem, per annum, etc.)**
  Not applicable – unpaid.
- **A statement that you have read, are familiar with, and will abide by the restrictions described in 5 CFR Part 2635 (Subpart H on "Outside Activities) and 5 C.F.R. § 6401.103 (EPA's Supplemental Regulations);**
  I am confirming that I have read, am familiar with, and will abide by the restrictions at Parts 2635 and 6401.
- **An identification of any EPA assistance agreements or contracts held by a person to or for whom services would be provided.**
  Not applicable.

Thanks and please let me know if you need any other information to complete my request.
Jake

Ya-Wei (Jake) Li
Deputy Assistant Administrator for Pesticide Programs
Office of Chemical Safety and Pollution Prevention

U.S. Environmental Protection Agency
Li.Jake@epa.gov | 202.819.6914

**From:** Li, Jake
**To:** Fugh, Justina
**Cc:** Griffo, Shannon
**Subject:** RE: please update your request for approval of outside activity
**Date:** Monday, September 13, 2021 2:07:17 PM
**Attachments:** image001.png

---

Good afternoon Justina,

Thanks for flagging the missing information. Below, I've typed in blue font the information. Please let me know if this suffices.

Also, apologies for not realizing that this information was part of the recusal statement. I must have missed the part about publications for which I receive no financial or in-kind benefits. Now that I know about this issue, I want to note that I have one more publication that was drafted and submitted for peer review (in Conservation Science and Practice) before I joined EPA. That manuscript, which describes a new method for evaluating the conservation status of ESA-listed species, is still under peer review, and I don't know if it will even be accepted. As a result, I haven't sought clearance related to that publication. Like the ELI publication, that manuscript will not lead to any financial or other payment arrangements (if it's someday accepted). Please let me know if there's any additional information I should provide or approval I should seek related to it.

Thanks
Jake

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Monday, September 13, 2021 1:28 PM
**To:** Li, Jake <Li.Jake@epa.gov>
**Cc:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** please update your request for approval of outside activity

Hi Jake,
I received confirmation today that Dan Utech concurs in your request for approval of the outside activity. As I started to write my response, however, I noticed that you did not directly answer some of the factors. To be clear, every single one of those factors does apply to you and your situation, so you can't say "inapplicable." Your answer that there is no payment or any continuing service is still an answer. Please provide the updates as indicated below:

- **Name, title and grade;**
  Ya-Wei Li, Deputy Assistant Administrator for Pesticide Programs, Schedule C
  (Justina: OK)

- **The nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected;**
  Manuscript for publication in the Environmental Law Institute's Environmental Law Reporter journal. My coauthors and I had submitted the manuscript months before I joined EPA, and the manuscript was tentatively accepted for publication several weeks before my start date. Thus, I performed no work on the manuscript while employed at EPA. Further, I have not received nor will I receive any payment or other financial arrangement related to this publication (Justina: here is where you indicate that you were unpaid. Under the federal rules, "compensation" does not include reprints or copies of the publication that contains the article, so don't worry about that).
- **The name and business of the person or organization for which the work will be done;**
  ~~Not applicable – no paid or other financial arrangement related to this publication.~~ -Environmental Law Institute
- **The estimated time to be devoted to the activity;**
  ~~Not applicable –~~ All work was completed before I joined EPA.
- **Whether the service will be performed entirely outside of normal duty hours (if not, estimate the number of hours of absence from work required);**
  ~~Not applicable~~. All work was completed before I joined EPA.
- **A statement that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment;**
  Yes, I am confirming that no government resources or official duty time was used for the manuscript.
- **The basis for compensation (e.g., fee, per diem, per annum, etc.)**
  ~~Not applicable –~~ Unpaid.
- **A statement that you have read, are familiar with, and will abide by the restrictions described in 5 CFR Part 2635 (Subpart H on "Outside Activities) and 5 C.F.R. § 6401.103 (EPA's Supplemental Regulations);**
  I am confirming that I have read, am familiar with, and will abide by the restrictions at Parts 2635 and 6401.
- **An identification of any EPA assistance agreements or contracts held by a person to or for whom services would be provided.**
  ~~Not applicable.~~ The Environmental Law Institute actively collaborates with EPA.

Since the manuscript was selected prior to your joining EPA, we should have known about it and considered whether to include ELI in your recusal statement. I'll confer with Shannon on that, but in

the meantime, please update your request and send it back to me.
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Thursday, September 2, 2021 4:53 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Seeking clearance for personal publication

Great thanks Justina!
Jake

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Thursday, September 2, 2021 4:53 PM
**To:** Li, Jake <Li.Jake@epa.gov>
**Cc:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Seeking clearance for personal publication

Hi there,
I've sent a note to Dan Utech to secure his response. Will confirm with you and Shannon when I hear back.
Cheers,
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Tuesday, August 31, 2021 8:19 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Griffo, Shannon <Griffo.Shannon@epa.gov>

**Subject:** Seeking clearance for personal publication

Good morning Justina,

Shannon described to me the process for seeking EPA clearance of personal publications. In this email, I wanted to begin the process of obtaining clearance for the attached manuscript, which was tentatively accepted for publication by the Environmental Law Institute for its upcoming issue of the Environmental Law Reporter. The tentative acceptance occurred several weeks before I joined EPA, and I've done no work on the publication since then. The manuscript identifies recommendations for ESA improvements that came out of two workshops I ran with UC Irvine Law School.

My supervisor, Michal, already knows I'll be submitting this manuscript for internal clearance, and she has no objections. I won't use my EPA affiliation in the final publication. Instead I'll be identified only as "at the time of this writing, Ya-Wei Li was Director for Biodiversity at the Environmental Policy Innovation Center." Thus, I did not include a disclaimer in the publication.

Shannon explained that you would consult with Dan Utech, who's considered my supervisor for purposes of publication clearance, and that I should provide the information below.

- **Name, title and grade;**
  Ya-Wei Li, Deputy Assistant Administrator for Pesticide Programs, Schedule C
- **The nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected;**
  Manuscript for publication in the Environmental Law Institute's Environmental Law Reporter journal. My coauthors and I had submitted the manuscript months before I joined EPA, and the manuscript was tentatively accepted for publication several weeks before my start date. Thus, I performed no work on the manuscript while employed at EPA.
- **The name and business of the person or organization for which the work will be done;**
  Not applicable – no paid or other financial arrangement related to this publication.
- **The estimated time to be devoted to the activity;**
  Not applicable – completed before I joined EPA.
- **Whether the service will be performed entirely outside of normal duty hours (if not, estimate the number of hours of absence from work required);**

Not applicable.

- **A statement that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment;**
  Yes, I am confirming that no government resources or official duty time was used for the manuscript.
- **The basis for compensation (e.g., fee, per diem, per annum, etc.)**
  Not applicable – unpaid.
- **A statement that you have read, are familiar with, and will abide by the restrictions described in 5 CFR Part 2635 (Subpart H on "Outside Activities) and 5 C.F.R. § 6401.103 (EPA's Supplemental Regulations);**
  I am confirming that I have read, am familiar with, and will abide by the restrictions at Parts 2635 and 6401.
- **An identification of any EPA assistance agreements or contracts held by a person to or for whom services would be provided.**
  Not applicable.

Thanks and please let me know if you need any other information to complete my request.
Jake

Ya-Wei (Jake) Li
Deputy Assistant Administrator for Pesticide Programs
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Li.Jake@epa.gov | 202.819.6914

**From:** Fugh, Justina
**To:** Li, Jake
**Cc:** Griffo, Shannon
**Subject:** UPDATE: please update your request for approval of outside activity
**Date:** Monday, September 13, 2021 2:04:00 PM
**Attachments:** image001.png

---

Shannon reminded me that we already talked about not needing to include ELI on your recusal statement.

---

**From:** Fugh, Justina
**Sent:** Monday, September 13, 2021 1:28 PM
**To:** Li, Jake <Li.Jake@epa.gov>
**Cc:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** please update your request for approval of outside activity

Hi Jake,
I received confirmation today that Dan Utech concurs in your request for approval of the outside activity. As I started to write my response, however, I noticed that you did not directly answer some of the factors. To be clear, every single one of those factors does apply to you and your situation, so you can't say "inapplicable." Your answer that there is no payment or any continuing service is still an answer. Please provide the updates as indicated below:

- **Name, title and grade;**
  Ya-Wei Li, Deputy Assistant Administrator for Pesticide Programs, Schedule C
  (Justina: OK)
- **The nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected;**
  Manuscript for publication in the Environmental Law Institute's Environmental Law Reporter journal. My coauthors and I had submitted the manuscript months before I joined EPA, and the manuscript was tentatively accepted for publication several weeks before my start date. Thus, I performed no work on the manuscript while employed at EPA. no paid or other financial arrangement related to this publication (Justina: here is where you indicate that you were unpaid. Under the federal rules, "compensation" does not include reprints or copies of the publication that contains the article, so don't worry about that).
- **The name and business of the person or organization for which the work will be done;**
  ~~Not applicable – no paid or other financial arrangement related to this publication.~~
  Environmental Law Institute
- **The estimated time to be devoted to the activity;**

~~Not applicable –~~ completed before I joined EPA.

- **Whether the service will be performed entirely outside of normal duty hours (if not, estimate the number of hours of absence from work required);**
  ~~Not applicable~~. completed before I joined EPA.
- **A statement that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment;**
  Yes, I am confirming that no government resources or official duty time was used for the manuscript.
- **The basis for compensation (e.g., fee, per diem, per annum, etc.)**
  ~~Not applicable –~~ unpaid.
- **A statement that you have read, are familiar with, and will abide by the restrictions described in 5 CFR Part 2635 (Subpart H on "Outside Activities) and 5 C.F.R. § 6401.103 (EPA's Supplemental Regulations);**
  I am confirming that I have read, am familiar with, and will abide by the restrictions at Parts 2635 and 6401.
- **An identification of any EPA assistance agreements or contracts held by a person to or for whom services would be provided.**
  ~~Not applicable.~~ The Environmental Law Institute actively collaborates with EPA.

Since the manuscript was selected prior to your joining EPA, we should have known about it and considered whether to include ELI in your recusal statement. I'll confer with Shannon on that, but in the meantime, please update your request and send it back to me.
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Thursday, September 2, 2021 4:53 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Seeking clearance for personal publication

Great thanks Justina!

Jake

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Thursday, September 2, 2021 4:53 PM
**To:** Li, Jake <Li.Jake@epa.gov>
**Cc:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Seeking clearance for personal publication

Hi there,
I've sent a note to Dan Utech to secure his response. Will confirm with you and Shannon when I hear back.
Cheers,
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Tuesday, August 31, 2021 8:19 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** Seeking clearance for personal publication

Good morning Justina,

Shannon described to me the process for seeking EPA clearance of personal publications. In this email, I wanted to begin the process of obtaining clearance for the attached manuscript, which was tentatively accepted for publication by the Environmental Law Institute for its upcoming issue of the Environmental Law Reporter. The tentative acceptance occurred several weeks before I joined EPA, and I've done no work on the publication since then. The manuscript identifies recommendations for ESA improvements that came out of two workshops I ran with UC Irvine Law School.

My supervisor, Michal, already knows I'll be submitting this manuscript for internal clearance, and she has no objections. I won't use my EPA affiliation in the final publication. Instead I'll be identified only as "at the time of this writing, Ya-Wei Li was Director for Biodiversity at the Environmental Policy Innovation Center." Thus, I did not include a disclaimer in the publication.

Shannon explained that you would consult with Dan Utech, who's considered my supervisor for purposes of publication clearance, and that I should provide the information below.

- **Name, title and grade;**
  Ya-Wei Li, Deputy Assistant Administrator for Pesticide Programs, Schedule C
- **The nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected;**
  Manuscript for publication in the Environmental Law Institute's Environmental Law Reporter journal. My coauthors and I had submitted the manuscript months before I joined EPA, and the manuscript was tentatively accepted for publication several weeks before my start date. Thus, I performed no work on the manuscript while employed at EPA.
- **The name and business of the person or organization for which the work will be done;**
  Not applicable – no paid or other financial arrangement related to this publication.
- **The estimated time to be devoted to the activity;**
  Not applicable – completed before I joined EPA.
- **Whether the service will be performed entirely outside of normal duty hours (if not, estimate the number of hours of absence from work required);**
  Not applicable.
- **A statement that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment;**
  Yes, I am confirming that no government resources or official duty time was used for the manuscript.
- **The basis for compensation (e.g., fee, per diem, per annum, etc.)**
  Not applicable – unpaid.
- **A statement that you have read, are familiar with, and will abide by the restrictions described in 5 CFR Part 2635 (Subpart H on "Outside Activities) and 5 C.F.R. § 6401.103 (EPA's Supplemental Regulations);**
  I am confirming that I have read, am familiar with, and will abide by the restrictions at Parts 2635 and 6401.
- **An identification of any EPA assistance agreements or contracts held by a person to or for whom services would be provided.**
  Not applicable.

Thanks and please let me know if you need any other information to complete my request.
Jake

Ya-Wei (Jake) Li
Deputy Assistant Administrator for Pesticide Programs
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Li.Jake@epa.gov | 202.819.6914

# SIX PRIORITY RECOMMENDATIONS FOR IMPROVING CONSERVATION UNDER THE ESA

by Alejandro E. Camacho, Melissa L. Kelly, and Ya-Wei Li

*Alejandro E. Camacho is a Chancellor's Professor of Law at the University of California, Irvine; Faculty Director of the Center for Land, Environment, and Natural Resources (CLEANR); and a Member Scholar at the Center for Progressive Reform. Melissa L. Kelly is Staff Director and Attorney at CLEANR. At the time of this writing, Ya-Wei Li was Director for Biodiversity at the Environmental Policy Innovation Center.*

## SUMMARY

**Because of persistent legislative attacks on the Endangered Species Act (ESA), some conservationists have made a strategic choice not to propose substantial adjustments to it. But conservation recommendations are long overdue, and improvements to the ESA and its implementing regulations and policies seem more pos-sible in the current political climate. The University of California, Irvine School of Law and the Environmental Policy Innovation Center convened a broad dialogue within the conservation community seeking perspec-tives on those improvements. This Article summarizes their findings, and recommends both legislative and administrative actions to update the Act and fulfill its conservation goals.**

In the 47 years since its enactment, the Endangered Species Act (ESA)[1] has achieved much success in conserving certain species and their ecosystems. The ESA currently protects more than 1,600 plant and animal species in the United States,[2] and has been effective at recovering approximately 65 species.[3] Further, at least 227 species were likely to have gone extinct if not for the ESA.[4] These successes, in part, have resulted in strong public support for the Act.[5]

Yet, despite the Act's success and public support, legislative and regulatory attempts to weaken its protections have been unceasing since 2011.[6] In recent years, for example, congressional Republicans have introduced bills to remove protections for specific species[7] and to weaken the Act's protections more broadly.[8] The regulatory revisions finalized by the U.S. Fish and Wildlife Service (FWS) and National Oceanic and Atmospheric Administration (NOAA) Fisheries (collectively the Services) in August 2019 allow publication of projected economic effects of listing decisions, restrict designation of unoccupied critical habitat, and eliminate default §9 protections for newly listed, threatened species.[9] Over the past decade, a consis-

*Authors' Note: This Article is adapted from a May 2021 report by CLEANR, available on its website at http://www.law.uci.edu/academics/centers/cleanr/publications.html.*

1. 16 U.S.C. §§1531-1544, ELR Stat. ESA §§2-18.
2. U.S. Fish and Wildlife Service (FWS), *Listed Species Summary (Boxscore)*, https://ecos.fws.gov/ecp/report/boxscore (last visited July 7, 2021).
3. FWS, *Delisted Species*, https://ecos.fws.gov/ecp/report/species-delisted (last visited July 7, 2021).
4. J. Michael Scott et al., *By the Numbers*, *in* 1 The Endangered Species Act at Thirty 16, 31 (Dale D. Goble et al. eds., Island Press 2006).
5. *See* Letter from Ben Tulchin et al., Tulchin Research, to Interested Parties, Re: Poll Finds Overwhelming, Broad-Based Support for the Endangered Species Act Among Voters Nationwide (July 6, 2015), https://www.biologicaldiversity.org/campaigns/esa/pdfs/2015_Poll_on_Endangered_Species_Act.pdf; Center for Biological Diversity, *The Endangered Species Act: A Wild Success*, https://www.biologicaldiversity.org/campaigns/esa_wild_success/index.html (last visited July 7, 2021).
6. Jamie Pang & Noah Greenwald, Center for Biological Diversity, Politics of Extinction 1 (2015), https://www.biologicaldiversity.org/campaigns/esa_attacks/pdfs/Politics_of_Extinction.pdf.
7. *E.g.*, Madilyn Jarman, *Riders Remain in 2019 National Defense Authorization Act*, Wildlife Soc'y, May 22, 2018, https://wildlife.org/riders-remain-in-2019-national-defense-authorization-act/ (discussing U.S. House of Representatives amendment to defense appropriations act that prohibits the listing of the greater sage-grouse and lesser prairie-chicken under the ESA for 10 years following passage of the legislation).
8. Michael Doyle, *Barrasso Introduces Legislation to Reform ESA*, E&E News, Sept. 16, 2020, https://www.eenews.net/eenewspm/stories/1063713905 (proposing legislation to "elevate the role of states, increase transparency in implementation of the law and provide regulatory certainty to promote recovery activities").
9. Regulations for Listing Species and Designating Critical Habitat, 84 Fed. Reg. 45020 (Aug. 27, 2019) (to be codified at 50 C.F.R. pt. 424).

tent theme of many of these legislative and regulatory provisions is providing greater opportunities for the regulated community and states to influence conservation decisions or reduce protections.

Because of these persistent legislative attacks on the ESA, some conservationists have made a strategic choice not to consider or propose any substantial adjustments to the ESA, taking the position that it is better left untouched. But as a result, the dominant narrative on changes to the ESA has focused on how to make the law friendlier to the regulated community. Recommendations for improving the ESA from a conservation perspective are long overdue, despite the political risks of amending the law. Conservationists should be prepared with these recommendations if the political opportunity arises to legitimately improve the ESA.

The election of President Joseph Biden, along with the current Democratic-controlled U.S. House of Representatives and U.S. Senate, has created a rare moment in which legislative rollbacks to the ESA are virtually impossible. In this favorable political climate, improvements to the ESA and its implementing regulations and policies seem more possible than at any other time during the past decade. During this same period, the case for more effective approaches to conserving biodiversity has only become stronger. Every year, scientists publish accounts of ongoing extinctions, extirpations of populations, and habitat loss.[10]

To begin a broad dialogue within the conservation community on legislative and administrative improvements to the ESA, the University of California, Irvine School of Law Center for Land, Environment, and Natural Resources (UCI Law CLEANR), in partnership with the Environmental Policy Innovation Center (EPIC), convened two workshops to seek perspectives on those improvements. We started with a scoping session in April 2019, titled Advocating for Improvements in Species Conservation.[11]

Based on the discussion at the scoping session, UCI Law CLEANR and EPIC identified key recommendations that offered the best trade off among these factors: (1) most likely to enhance conservation; (2) sufficiently pragmatic that they present a meaningful chance to be adopted in a favorable political climate; and (3) reflecting the most interest and enthusiasm from participants at the scoping session. CLEANR and EPIC then surveyed scoping session participants and other species conservation experts to rank the recommendations according to the priority of each for enhancing conservation.

In October 2020, UCI Law CLEANR and EPIC convened a two-day, virtual workshop roundtable titled A Conservation Vision for the Federal Endangered Species Act.[12] This roundtable continued the meaningful dialogue from the 2019 scoping session and focused on six of the highest priority recommendations identified through the survey described above.[13]

Based on the April 2019 and October 2020 dialogues, this report offers six priority recommendations for improving the ESA and its implementing regulations and policies, with an emphasis on enhancing species and habitat conservation[14]:

(1) tailoring protections for endangered, threatened, and recovered species and their habitats;

(2) revising incidental take authorization standards;

(3) improving recovery planning and implementation;

(4) providing incentives for species conservation on private, state, and federal lands;

(5) accounting and preparing for ecological change; and

(6) improving generation, quality, and public dissemination of ESA data.

These recommendations seek to advance the conservation objectives of the ESA in this century and to inform future public dialogue on imperiled species conservation. Although

10. *E.g.*, Center for Biological Diversity, *Halting the Extinction Crisis*, https://www.biologicaldiversity.org/programs/biodiversity/elements_of_biodiversity/extinction_crisis/index.html (last visited July 7, 2021).

11. The goal of that session was to bring together a small number of leading ESA scholars, advocates, and policymakers to begin scoping a vision for improving the ESA and its regulations. The scoping session did not try to seek consensus on specific challenges to, or recommendations for, improving conservation under the ESA, but rather tried to capture a diversity of perspectives within the conservation community. The discussion was not limited to ideas that could only be implemented through legislation; it included administrative changes that may prove easier to adopt.

Participants included Justin Berchiolli (UCI Law), Alejandro Camacho (UCI Law), Holly Doremus (University of California, Berkeley School of Law), Bob Dreher (Defenders of Wildlife), Rebecca Epanchin-Niell (Resources for the Future), Tomer Hasson (The Nature Conservancy), Melissa Kelly (UCI Law), Ya-Wei (Jake) Li (EPIC), Jacob Malcom (Defenders of Wildlife), Daniel Rohlf (Lewis & Clark Law School), Mark Rupp (Environmental Defense Fund), and Mark Schwartz (University of California, Davis).

12. Participants included Daniel Ashe (Association of Zoos and Aquariums), Zach Bodane (Western Landowners Alliance), Kristin Butler (U.S. Senate Committee on Environment and Public Works), Alejandro Camacho (UCI Law), Holly Doremus (University of California, Berkeley), Bob Dreher (Defenders of Wildlife), Rebecca Epanchin-Niell (Resources for the Future), Tomer Hasson (The Nature Conservancy), Melissa Kelly (UCI Law), Mike Leahy (National Wildlife Federation), Ya-Wei (Jake) Li (EPIC), Elizabeth Mabry (U.S. Senate Committee on Environment and Public Works), Jacob Malcom (Defenders of Wildlife), Tim Male (EPIC), Bart Melton (National Parks Conservation Association), Caroline Murphy (The Wildlife Society), Keith Norris (The Wildlife Society), Ryan Richards (Center for American Progress), Daniel Rohlf (Lewis & Clark Law School), Joseph Roman (University of Vermont), J.B. Ruhl (Vanderbilt University Law School), Michael Runge (U.S. Geological Survey), Mark Rupp (Environmental Defense Fund), Jason Rylander (Defenders of Wildlife), and Mark Schwartz (University of California, Davis).

13. Additional recommendations supported by a literature review, many of which were discussed at but not the focus of the scoping session and October 2020 roundtable, are more fully included at Alejandro E. Camacho et al., UCI Law CLEANR, The Six Priority Recommendations for Improving Conservation Under the Federal Endangered Species Act (2021), https://www.law.uci.edu/centers/cleanr/news-pdfs/cleanr-epic-esa-report.pdf.

14. Although this Article focuses on the ESA, the statute should not be viewed in isolation. To properly protect biodiversity, other federal conservation programs, state conservation laws, private-sector conservation efforts, and other initiatives are needed to complement the ESA's conservation measures. In fact, in many situations, those non-ESA tools may play a larger role than the ESA at conserving listed and at-risk species. Thus, readers should consider the recommendations in this Article as a starting point for developing a broader suite of tools to conserve biodiversity in the United States and abroad.

many of these recommendations can be accomplished administratively, some might be easier to adopt through a legislative amendment in a favorable political environment.

Part I of this Article describes cross-cutting challenges to implementation of the ESA. These challenges inform the six priority recommendations described in Part II. These are not the only recommendations identified at the two workshops, but are the ones regarded as the most important to include in this report. Part III concludes.

## I. Cross-Cutting Implementation Challenges

There are overarching challenges to implementation of the ESA that impact its ability to effectively conserve species and their habitats. This section discusses these cross-cutting issues to provide context for the specific recommendations that follow in Part II.

### A. *Need for Greater Clarity and Consistency at All Key Decision Points*

Since the beginning of the ESA, key decisions about species listing, permitting, recovery, and other protections have lacked clear, objective standards. Often the decisions appear ad hoc and subjective, and thus are vulnerable to political considerations. For example, the Services have never adopted a more objective definition of "threatened" or "endangered," despite recommendations in the scientific literature for how to do so. Core terms like "foreseeable future" and "likely" remain subject to wide interpretation within the agencies. Likewise, the definitions of "jeopardy" and "adverse modification" of critical habitat remain highly subjective. When confronted with criticism about the lack of transparency and clarity, the agencies have often explained that ESA decisions must be made on a case-by-case basis using the best available science (BAS).

This response, however, overlooks the potential for the Services to adopt clearer, more objective standards for key decision points that still provide the agencies with enough discretion to account for the unique circumstances of every decision. Importantly, the agencies have rarely clarified the *policy* thresholds associated with listing and permitting decisions (e.g., in interpreting the jeopardy standard, when is an impact to a species "appreciable"?). In the listing context, career scientists within the agencies have tested more objective standards for listing decisions, but the Services have never tried to adopt those standards in policy or regulation. This problem is not unique to a presidential administration—no Democratic or Republican administration has made it a priority to address the problem.

As a result, conservationists often distrust ESA decisions on controversial matters, like listing decisions for the polar bear, lesser prairie-chicken, and Northern Rockies wolverine. At the same time, the regulated community and states often express a similar criticism, sometimes framed as a "bring me a different rock" problem in which they claim that FWS staff will continue asking for a different set of conservation measures as part of an ESA permitting action until the staff appears satisfied. Creating clearer, more objective decision standards should resonate with conservationists and the regulated community.

### B. *Need for Transparency and Greater Access to Documents Used in Decisions*

Many documents related to ESA decisions are not readily available to the public, or sometimes even within the Services. For example, §7 biological assessments make up more than 90% of all §7(a)(2) consultations, but they are generally not posted online. Often, documents are not well organized even within FWS' internal information management system.

The overall result is the appearance of ad hoc permitting decisions, the inability of the public to fully understand and track implementation of those decisions, and the inability of the Services to adequately track and enforce ESA permit terms. Judicial review is also impeded without access to the documents. Further, without monitoring and other implementation documents, it becomes impossible to evaluate the effectiveness of ESA programs.

For example, the effectiveness of safe-harbor agreements depends primarily on the voluntary willingness of participating landowners to not return their enrolled property to "baseline" conditions, meaning reverting all the conservation gains made under the agreement. No one has ever evaluated how many safe-harbor participants have returned their properties to baseline conditions, because the documents needed to answer this question are not readily available.

### C. *Need for Stable and Increased Funding, and Better Allocation of Funding*

Inadequate and unstable funding for ESA implementation is a perennial problem that hampers every aspect of the Act. For example, only about 20% of recovery actions are funded,[15] and FWS is a minor contributor of funding to the endangered species program.[16] Absent considerably more funding, the vast majority of listed species will not recover. Inadequate funding also prevents the Services from developing internal systems and processes to improve the efficiency of their operations. For example, FWS' Information for Planning and Consultation system, which would improve and expedite the consultation process, has suffered from inadequate and unstable funding over the past decade, preventing the system from being fully deployed even today.

15. Julie K. Miller et al., *The Endangered Species Act: Dollars and Sense?*, 52 BioScience 163, 167 (2002).
16. *See*, *e.g.*, FWS, Federal and State Endangered and Threatened Species Expenditures 5, 6, 97 (2016), https://www.fws.gov/endangered/esa-library/pdf/2016_Expenditures_Report.pdf (reporting in Table 1 that in fiscal year 2016, FWS' total contribution to species conservation was only approximately 13.4% of total expenditure by federal agencies and states).

Recognizing that the Services will likely never receive all of the funding needed to implement the ESA, another important theme is how best to allocate the funding the Services do receive. This is a question of prioritizing resources to maximize conservation benefits across the listing, recovery, consultation, §10 permitting, and §6 state cooperative programs. For example, in recovery planning, approximately 80% of all congressional funding for the ESA is spent on 5% of species. This leads to many species being overlooked for recovery expenditures.

How best to make the difficult trade offs among species remains a very controversial topic within the environmental community. But without a more strategic approach, the Services will continue to make trade offs daily based on factors that are not apparent to the public and that are unlikely to lead to the best return on investment for conservation. For example, plants make up 56% of U.S. listed species but receive less than 5% of government funding.[17] Every ecosystem depends on plants, so the disproportionate underfunding of plants makes little sense from a biodiversity perspective.

### D. Role of the States

The role of states under the ESA has been a long-standing source of debate and a topic of recent ESA legislation. The ESA is clearly unable to achieve its goals without the help of states. Engaging states productively in conservation would bring great benefits to ESA implementation, but how best to do so varies substantially by state.[18] Some state laws have provisions that, on paper, exceed the ESA's conservation standard. Most state agencies, however, lack the legal authority under state law to take over key decisions that the Services currently make.[19]

A different way of thinking about state roles is not whether a state should take over ESA responsibility, but rather how it can augment the Services' responsibilities, especially ones the Services have never been able to adequately perform. For example, state agencies often have more credibility and trust with private landowners than does FWS. Regional coordination and collaboration among states may also create opportunities for more consistent approaches to state management of species that are delisted or precluded from listing.

### E. Incentives for Federal, State, and Private Landowners

Although the text of the ESA focuses on regulatory prohibitions, the conservation needs of many species depend on landowners voluntarily pursuing recovery actions. Positive incentives are crucial to supporting these actions, especially for private and state landowners that are under no ESA obligation to conserve species. And although §7(a)(1) requires federal agencies to help conserve species, this requirement is largely unenforceable as courts have generally found that the section does not require agencies to carry out any specific recovery action. Thus, incentives would also help advance recovery on federal lands.

Such incentives can come in many forms, including regulatory relief, financial support, technical support, and social recognition.[20] The optimal set of incentives for each landowner likely varies. Further, although the Services have used the ESA's flexibility to create various incentive programs like safe-harbor agreements, the process of enrolling in these programs can be expensive and complex for many landowners. Thus, incentive programs must not only exist, but be sufficiently attractive to participate in.

### F. Need for More Flexible, Creative Implementation of the ESA

More flexible, creative implementation can reveal opportunities to tailor ESA protections and incentives to benefit species. First, the ESA already offers many prospects for creative implementation, but the Services have not fully exhausted those opportunities or sometimes have pursued them in ways that appear to undercut conservation. For example, the agencies have tremendous flexibility in drafting §4(d) rules for threatened species, and can even adopt restrictions that are more protective than those for endangered species under §9. In practice, however, almost all §4(d) rules reduce the amount of §9 protections a species receives, with some §4(d) rules modifying ESA prohibitions for activities that are the primary threat to a species.

Second, some aspects of the ESA might benefit from increased flexibility given the real-world constraints on the Services' implementation of the Act. For example, some people have recommended that the agencies postpone critical habitat designation until after a recovery plan is drafted, because the scope of a designation is supposed to be based on the recovery needs of a species. Others have suggested that the Services be granted the authority to issue §4(d) rules for endangered species to incentivize conservation actions for those species. These ideas are controversial, and thus point to the need for robust discussion about how greater regulatory flexibility might be employed to enhance conservation goals (including by incentivizing landowners with reduced regulatory burdens for achieving those goals).

17. Vivian Negrón-Ortíz, *Pattern of Expenditures for Plant Conservation Under the Endangered Species Act*, 171 Conservation Biology 36 (2014).
18. Temple Stoellinger et al., *Improving Cooperative State and Federal Species Conservation Efforts*, 20 Wyo. L. Rev. 183 (2020).
19. Alejandro E. Camacho et al., *Assessing State Laws and Resources for Endangered Species Protection*, 47 ELR 10837 (Oct. 2017).
20. For a review of the variety of incentives that motivate electric power utilities to carry out voluntary species conservation, see Electric Power Research Institute, Understanding Barriers and Incentives to Voluntary Conservation Opportunities Under the U.S. Endangered Species Act (2020), https://www.epri.com/research/programs/107153/results/3002018979.

### G. Need for Systems to Learn From Mistakes and Successes

One challenge of ESA implementation is dealing with uncertainty. Many listed species lack adequate biological data; the "best available" science for these species is often still very poor data. Similarly, conservation techniques for many species are unproven. Mitigation measures incorporated into many habitat conservation plans (HCPs) and §7 consultations are experimental, even if they are not acknowledged as such.

These are two of the many examples of uncertainty in ESA decisionmaking, and they underscore the need for ESA decisions to reflect lessons learned from mistakes and successes. These learning systems, however, do not currently exist at any scale within the Services' ESA programs. The reasons are many, including inadequate staff to pursue this type of discretionary work that is not legally mandated but vital for understanding how to optimize future conservation decisions.

### H. Need for Climate Change Adaptation and Comprehensive Ecosystem Protection

To conserve species, the United States and other countries need to reduce greenhouse gas emissions. Workshop participants, however, recognized that the ESA is not the most appropriate tool to achieve that outcome. Instead, the ESA seems better suited to focusing on helping species adapt to the effects of climate change, including in listing, critical habitat designation, recovery planning, and habitat conservation planning and management.

Creative improvements in ESA implementation are needed in this respect. An example is the need for new policies to facilitate species translocations, such as assisted migration, and to create wildlife corridors. Further, ESA implementation must also be linked to other efforts to manage the ecological effects of climate change, including public lands and invasive species management, landscape-level planning, and comprehensive federal and state adaptation planning efforts.

## II. Key Recommendations

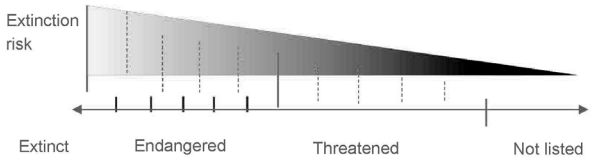
### A. Tailor Protections for Threatened, Endangered, and Recovered Species and Their Habitats

The ESA's protections are afforded only to species that have been determined, through a listing process, to be "threatened" or "endangered." The ESA provides some flexibility to tailor protections for threatened species, but participants agreed that additional opportunities to tailor protections based on level of imperilment could facilitate recovery and increase political support for the ESA. While conservationists have discussed the need to prioritize limited resources for listed species,[21] they have rarely discussed tiering protections for species and their habitats based on level of vulnerability, beyond the use of §4(d) rules for threatened species and the consideration of species status during §7 consultations.

**Administrative**. As an initial matter, scoping session participants agreed that the Services need to establish more objective, biologically based criteria to distinguish between threatened, endangered, and recovered species. Without clear distinctions, attempts to tailor protections based on species vulnerability will remain highly subjective and susceptible to political considerations.[22]

A complementary approach is to recognize that there is a gradation of extinction risk within the existing threatened and endangered categories (e.g., the endangered category runs the entire spectrum from near-extinct to approaching downlisting, thus encompassing species with very different extinction risks). Further, the Services should better recognize a species' degree of conservation reliance[23] and develop policy or other approaches to better address the need for ongoing management of those species, such as securing assurances for long-term management.[24]

**Figure 1. Extinction Risk Gradation**




The current categories of endangered, threatened, and not listed (recovered) are too coarse to capture the fact that species can vary considerably in extinction risk within each of those categories. If the Services were to recognize the gradation of extinction risk within each category (as shown by the dotted lines in Figure 1), they could manage species more flexibly and precisely based on a more refined assessment of extinction risk.

**Administrative**. Once a clearer differentiation between the threatened, endangered, and recovered categories is established, it can be used to develop a better system for identifying different tiers of vulnerability within each category and tailoring conservation measures to each category,

21. *See*, *e.g.*, John Charles Kunich, *Preserving the Womb of the Unknown Species With Hotspots Legislation*, 52 Hastings L.J. 1149, 1198 (2001).
22. April 2019 Scoping Session, Advocating for Improvements in Species Conservation [hereinafter April 2019 Scoping Session].
23. October 2020 Workshop Roundtable, A Conservation Vision for the Federal Endangered Species Act [hereinafter October 2020 Workshop Roundtable].
24. UCI Law CLEANR, *15 Key Recommendations to Better Enhance ESA Conservation*, https://www.law.uci.edu/centers/cleanr/events/esa-roundtable-priorities.html (last visited July 7, 2021).

including through incentives for conservation partners. This system can include:

- More explicit differences in the amount and type of §7(a)(2) conservation requirements based on species vulnerability;

- Better use of §4(d) rules that account for whether a threatened species is improving or declining, including the use of affirmative protections beyond those in §9(a), because those protections are "necessary and advisable" to conserve the threatened species[25]; and

- If there is currently no path to recovering a species, regulate individual populations differently based on each population's level of imperilment (e.g., populations that have met their recovery goals could receive reduced ESA protections, and this could create an incentive for landowners to meet those goals).[26]

The implications of how to manage species based on their tier could also include prioritizing recovery funding, varying the rigor of §§7 and 10 analyses, and managing expectations for whether a species can be downlisted or delisted.[27]

Scoping session participants identified several advantages of tiering protections based on species vulnerability. They noted that tiering enhances the ability of the Services to identify species with the greatest conservation needs and to prioritize funding for those species.[28] It could address the negative narrative that the ESA is a failure because so few species are delisted, by clearly identifying a category of conservation-reliant species for which preventing extinction or stabilizing populations would be considered a success. Further, as alluded to earlier, the varying requirements that come with the different tiers of protection would provide incentives to landowners to help reduce threats, in an effort to move a species into a lower tier with its less-stringent protection requirements.[29]

### B. *Revise Incidental Take Authorization Standards*

Although the ESA's goal is to recover species, projects covered by §7(a)(2) consultations or §10(a)(1)(B) HCPs are allowed to harm a species' recovery prospects. To fix this contradiction, there was broad consensus among participants that §7 and §10 authorizations need to go beyond minimizing harm to species and include a more recovery-oriented standard.

At a minimum, a permitted project should not leave a species' recovery prospects worse off. Scoping session participants discussed several potential recovery-based standards, including net benefit, no-net-loss, and full mitigation of impacts. A net benefit refers to a permitted project improving a species' conservation status, and would likely require mitigation offsets to achieve. A no-net-loss or full mitigation of impacts refers to situations where all adverse effects of a permitted project are offset, such that a species' conservation status is neither degraded nor improved.

While a net benefit standard would result in the greatest enhancement of species conservation, scoping session participants acknowledged the political difficulty of convincing the Services and the U.S. Congress to adopt that standard, the potential for a constitutional takings challenge, and the lack of monitoring data needed to evaluate whether a net benefit has occurred. Further, one scoping session participant suggested that a net benefit standard is not needed to enhance species conservation, because the current standard allows a species to decline well below the status quo. Even a no-net-loss or full mitigation standard would enhance species conservation considerably.

**Legislative**. A legislative change to the ESA is likely needed to create a mandatory no-net-loss or full mitigation standard. Under such a standard, the affected species would experience "no net loss" to its recovery status because all harmful effects of a project will have been fully mitigated with an adequate margin of safety to address scientific uncertainty about the effectiveness of the mitigation technique. This standard does not actually require a project proponent to advance the species' recovery, only to ensure that recovery is not impeded.

Another benefit of a no-net-loss standard is that there would be less pressure to track cumulative effects across a species' entire range, addressing criticisms that (1) the Services' cumulative effects analysis under §7 is inadequate; and (2) there is no tracking of cumulative adverse modification or jeopardy for most species.[30] For these reasons, participants largely agreed that a no-net-loss or a full mitigation standard is the most feasible starting point for ESA reform.

Critical to making this work is a practicable regulatory framework for implementation. Participants discussed formally linking §7(a)(1) (the conservation mandate for federal agencies) and §7(a)(2) (the jeopardy prohibition) as a mechanism to achieve a no net loss (or even net benefit) for federal projects.[31] For example, this could allow federal agencies to bank mitigation credits under §7(a)(1) to offset project impacts under §7(a)(2). Tracking the cumulative effects of projects across a species' range could also facilitate opportunities for banking by allowing beneficial activities in one part of the range to help offset harmful effects in other parts of the range (though there are limits to this approach).

Mitigation requires credit buyers, and one way to drive buyers is to force market-based mechanisms for mitiga-

25. April 2019 Scoping Session, *supra* note 22.
26. UCI Law CLEANR, *supra* note 24.
27. October 2020 Workshop Roundtable, *supra* note 23.
28. April 2019 Scoping Session, *supra* note 22.
29. *See, e.g.*, Rebecca Epanchin-Niell & James Boyd, *Private Sector Conservation Under the Endangered Species Act: A Return on Investment Perspective*, 18 Frontiers Ecology & Env't 409 (2020).
30. *Id.*; U.S. Government Accountability Office, GAO-09-550, Endangered Species Act: The U.S. Fish and Wildlife Service Has Incomplete Information About Effects on Listed Species From Section 7 Consultations 25 (2009).
31. April 2019 Scoping Session, *supra* note 22.

tion, similar to the no-net-loss wetlands policy.[32] As a condition of obtaining a §404 Clean Water Act (CWA)[33] permit, the no-net-loss wetlands policy requires restoration or creation of at least as much acreage of wetlands as a project would damage.[34] The policy's regulatory certainty and prioritization of off-site mitigation "opened the door to a market-based approach and sparked rapid growth in mitigation banks."[35]

Establishing a recovery-based standard for incidental take permitting under §10 of the ESA could be modeled after this no-net-loss wetlands policy, while recognizing that many populations of listed species are irreplaceable and thus are not amenable to a credit-debiting system. Roundtable participants also discussed the possibility of a streamlined system for mitigating minor impacts to listed species.

For example, one participant suggested that a structure similar to Virginia's stormwater management credit trading program could be used in the incidental take context.[36] Under Virginia's program, dischargers can purchase phosphorus credits to meet water quality requirements, and credit providers are required to provide long-term reductions in phosphorus load.[37] One roundtable participant noted that a streamlined system for mitigating minor impacts to species is crucial to adopting a no-net-loss standard. Without this mechanism, the standard would likely stop many proposed projects, creating political backlash against the ESA and prompting the Services to avoid listing a species until it is in a dire condition.[38]

**Administrative**. Regardless of the exact standard adopted, participants stressed that a recovery-based standard would place greater emphasis on requiring compensatory mitigation to offset the residual impacts that are not avoided and minimized.[39] As a result, participants agreed that the standard should express a preference for mitigation done in advance (as opposed to after the impacts occur). Further, there would need to be clear definitions in order to avoid uncertainty as to whether the standard has been met. This includes the need for clear requirements and guidelines for carrying out mitigation.

A participant suggested developing a multiagency mitigation requirement for all federal agencies that impact endangered species (e.g., Bureau of Land Management (BLM), U.S. Forest Service, U.S. Department of Defense), to avoid placing the entire responsibility for developing the requirement on FWS. Another raised the need for greater transparency regarding the compensatory mitigation process, and recommended legislation to create a standard mitigation policy across the federal government that includes transparency requirements. These recommendations are particularly important in light of then-Deputy Secretary of the Interior David Bernhardt's issuance of Secretarial Order 3360, rescinding the U.S. Department of the Interior's mitigation policy and BLM mitigation handbook.[40]

**Administrative**. More specifically, there needs to be guidance on how to balance how much avoidance and minimization is needed before turning to compensatory mitigation.[41] For some species, avoidance and minimization may be sufficient to achieve a recovery-based standard. For example, reducing human-caused mortality of golden eagles is key to improving their conservation status. On the other hand, offsets may more effectively achieve a net benefit for other species.

The overriding threat to migratory birds, for example, is habitat loss. Therefore, compensatory mitigation to fund habitat conservation may be more valuable than on-site minimization. There may also be highly imperiled species for which the risks associated with failed offsets is too high. In those instances, the Services should not allow offsets unless it has been proven to work beforehand.

A trade off of adopting a recovery-based standard is the public and political resistance to higher conservation standards. This is why participants agreed that a no-net-loss or full mitigation standard would be more feasible than a net benefit standard. Participants also raised the issue that a recovery standard could create undue hardship on small landowners. One way this can be addressed is by carving out exemptions for small landowners. However, such an exemption would require defining "small landowner," which could open up the need to determine whether small water rights holders would require an exemption as well.

An alternative to providing an exemption for small landowners is to create a federal program that provides them with resources to help achieve a no net loss standard. Another trade off of this recommendation is that its effectiveness relies heavily on clear definitions of the standard and the mitigation requirements in order to ensure species conservation is being enhanced. Finally, adequate monitoring to ensure the recovery-based standard is being achieved is critical and is not without challenges, as discussed in the next subsection.[42]

If the goal under the ESA is to enhance species conservation, this standard is essential. Other regulatory contexts

32. *Id.* (referencing "no-net-loss" goal in Memorandum of Agreement Between the Department of the Army and the Environmental Protection Agency Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines (Nov. 14, 1989)). However, a scoping session participant pointed out that the rate of protection under the no-net-loss wetlands scenario was a 60% loss of wetlands because landowners were not implementing mitigation.
33. 33 U.S.C. §§1251-1387, ELR Stat. FWPCA §§101-607.
34. *See* David J. Hayes & Nicole Gentile, Center for American Progress, No Net Loss: How Mitigation Policy Can Spur Private Investment in Land and Wildlife Conservation 4 (2016), https://www.americanprogress.org/issues/green/reports/2016/11/01/291509/no-net-loss/.
35. *Id.*
36. Virginia Cooperative Extension, Virginia Citizen's Guide to Environmental Credit Trading Programs: An Overview (2016), https://resources.ext.vt.edu/contentdetail?contentid=3050&contentname=Virginia%20Citizen%E2%80%99s%20Guide%20to%20Environmental%20Credit%20Trading%20Programs:%20An%20Overview.
37. *Id.* at 4.
38. October 2020 Workshop Roundtable, *supra* note 23.
39. April 2019 Scoping Session, *supra* note 22.
40. Secretarial Order No. 3360, Rescinding Authorities Inconsistent With Secretary's Order 3349, "American Energy Independence" (2017), https://www.eenews.net/assets/2018/01/05/document_gw_04.pdf.
41. April 2019 Scoping Session, *supra* note 22.
42. *See infra* Section II.C.1.

can provide guidance on establishing a clear definition of the standard and the mitigation requirements. Moreover, there are opportunities to lessen political resistance through other recommendations that provide incentives to landowners, as discussed in Section II.D below.

### C. *Improve Recovery Planning, Including Recovery Plan Implementation*

Even after a species is listed under the ESA, its road to recovery is often unclear and insecure.[43] The ESA mandates that federal agencies contribute to the recovery of listed species, but that requirement is largely unenforceable and does not apply to nonfederal entities.[44] Further, ambiguity over what constitutes recovery has led to inefficiencies and ineffectiveness in recovery planning for some listed species. Building stronger recovery planning and implementation requirements would advance recovery.

#### 1. Amend §4(f) to Explicitly Require Implementation of Recovery Plans, and Require Oversight

Requiring the development and finalization of recovery plans is insufficient to conserve species. The absence of an effective statutory mandate requiring recovery plan *implementation* (and congressional funding to do so) means that federal agencies are generally able to ignore or downplay this mandate.[45] Further, the fact that recovery plans are mere guidance documents without regulatory effect limits their effectiveness.[46]

**Legislative**. In order to enhance species conservation, §4(f) needs to be amended to create more specific and enforceable requirements for implementation of recovery plans and to make a recovery plan's downlisting and delisting criteria binding on the Services unless the criteria are formally revised. This should include deadlines for their development and implementation by the Services and all other jurisdictional federal agencies,[47] as well as deadlines for implementing plan milestones.

To ensure progress toward measurable recovery goals, oversight of the Services and other jurisdictional federal agencies should be required.[48] One way this could be done is through a new §7(a)(1) requirement that makes the recovery duty truly mandatory and allows federal agencies to be held accountable for failing to fulfill this duty. These requirements can help ensure that recovery actions described in recovery plans are taken.

There are trade offs to imposing these requirements, including placing yet another responsibility on the already under-resourced Services. Strict deadlines may also inadvertently prevent coordination with other agencies or stakeholders. Another difficulty with making recovery plans enforceable is determining the link to delisting, which is discussed in Section II.C.2 below. Most importantly, the Services cannot effectively implement these requirements without adequate funding. However, such challenges are not insurmountable. Citizen suits are an option for enforcing deadlines, and flexibility can be built into deadlines, such as by allowing an exception in cases where coordination would otherwise be prevented.

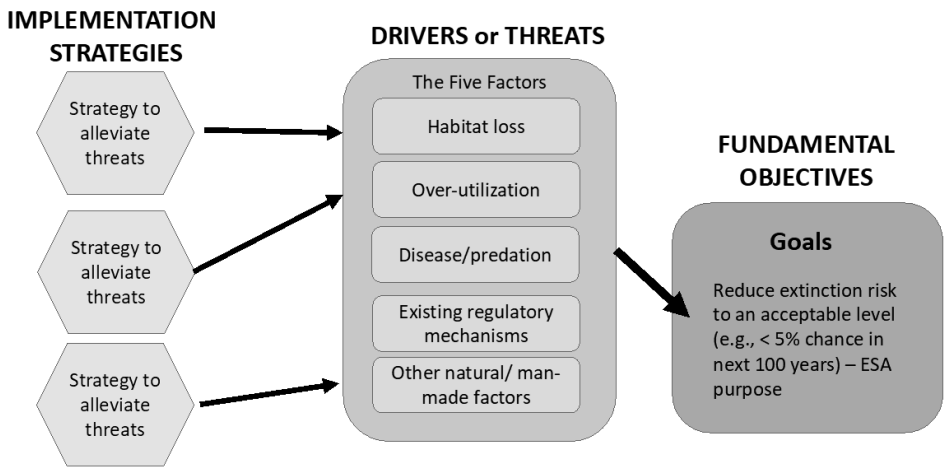
#### 2. Base Recovery Plans on Clear Standards, and Make Delistings Contingent on Achieving Recovery Criteria

Most roundtable participants agreed that the question of "how much is enough" to declare a species recovered remains elusive. The very concept of "recovery" is left undefined by the ESA, which instead offers a tautological statement that a species is recovered when it is no longer "likely to become [in danger of extinction] within the foreseeable future throughout all or a significant portion of its range."[49] Moreover, the ESA lacks clear criteria for how to develop recovery plans to adequately ensure progress toward the species' recovery.[50] Many criticize recovery planning criteria as not being based on the BAS.[51] Further, "plans remain unchanged for too many years despite new knowledge."[52] Static recovery plans risk becoming "increasingly irrelevant over time."[53]

---

43. Patrick A. Parenteau, *Rearranging the Deck Chairs: Endangered Species Act Reforms in an Era of Mass Extinction*, 22 Wm. & Mary Env'r L. & Pol'y Rev. 227, 264 (1998) (arguing that there is a lack of clear standards governing what recovery plans must contain and whether they can be enforced).
44. *Id.*; Eric Helmy, *Teeth for a Paper Tiger: Redressing the Deficiencies of the Recovery Provisions of the Endangered Species Act*, 30 Env'r L. 843, 853-54 (2000) (arguing that the lack of this duty has been criticized by various scholars as generally rendering recovery plans unenforceable under the terms of §4(f) and removing an important safety net of citizen suit litigation).
45. Helmy, *supra* note 44, at 846.
46. Friends of Blackwater v. Salazar, 691 F.3d 428, 42 ELR 20181 (D.C. Cir. 2012) (upholding FWS' long-standing position that recovery plans are not regulatory documents and do not bind delisting, downlisting, and uplisting decisions).
47. *See*, *e.g.*, Helmy, *supra* note 44, at 845; The Wildlife Society, Practical Solutions to Improve the Effectiveness of the Endangered Species Act for Wildlife Conservation 10 (2005).
48. Helmy, *supra* note 44, at 852; Threatened and Endangered Species Recovery Act of 2005, H.R. 3824, 109th Cong. (2005); *see also* The Wildlife Society, *supra* note 47, at 10 (suggesting that the Office of Management and Budget could hold agencies accountable, through the Government Performance and Results Act procedures, for contributing to meaningful progress in recovery of listed species); April 2019 Scoping Session, *supra* note 22.
49. 16 U.S.C. §1532(19), (6); Keystone Center, The Keystone Working Group on Endangered Species Act Habitat Issues 31 (2006).
50. *See* Parenteau, *supra* note 43, at 264.
51. *E.g.*, Maile C. Neel et al., *By the Numbers: How Is Recovery Defined by the U.S. Endangered Species Act?*, 62 BioScience 646, 647 (2012); Daniel M. Evans et al., *Species Recovery in the United States: Increasing the Effectiveness of the Endangered Species Act*, Issues Ecology, Winter 2016, at 20; Mark W. Schwartz, *The Performance of the Endangered Species Act*, 39 Ann. Rev. Ecology Evolution & Systematics 279, 283 (2008) ("Recovery plans tend to underemphasize monitoring threats to species and biotic interactions relative to monitoring population trends.").
52. Jacob W. Malcom & Ya-Wei Li, *Missing, Delayed, and Old: The Status of ESA Recovery Plans*, 11 Conservation Letters 1, 2 (2018).
53. J. Alan Clark et al., *Improving U.S. Endangered Species Act Recovery Plans: Key Findings and Recommendations of the SCB Recovery Plan Project*, 16 Conservation Biology 1510, 1515 (2002).

**Figure 2. Recovery Plan Structure**




Source: E-mail from Mark Schwartz, Professor, University of California, Davis, to Melissa Kelly, Staff Director and Attorney, UCI Law CLEANR et al. (Oct. 19, 2020, 09:41 PST) (on file with author).

**Administrative**. To address these problems, recovery plans must be based on clear science and policy standards. This could include developing default standards for what constitutes recovery, and requiring a showing of necessity for any deviation from the default when delisting a species.[54] To strengthen the scientific foundation of recovery, the Services should better integrate population ecology, conservation genetics, and habitat conservation data with external and climate risk consideration.[55] In addition, the agencies should explicitly consider survival, reproduction, and minimum habitat areas.[56] Some participants also suggested that the Services quantify the amount of extinction risk that corresponds to the definitions of "threatened" and "endangered" and develop criteria for achieving ecologically effective population sizes.

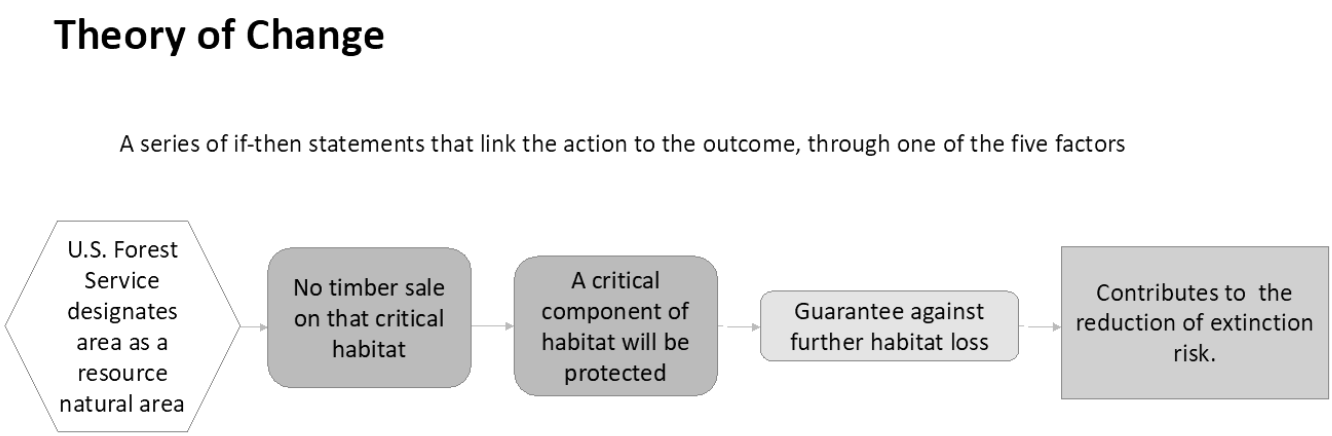
For example, one idea is to adopt an approach similar to that used in the polar bear recovery plan.[57] There, the Services identified three levels of recovery goals: (1) fundamental objectives, (2) demographic criteria, and (3) five-factor threat criteria.[58] Fundamental objectives should be stable over time because they represent a value judgment about how much extinction risk is acceptable.[59] Demographic criteria focus on how to achieve the fundamental objective and may change over time based on new information. The five-factor threat criteria are nested one layer down from the demographic criteria.[60] Those criteria are discussed in depth below in this section. Thus, to improve consistency and clarity, the Services could more consistently establish "fundamental objectives" for determining when a species is deemed recovered.

The polar bear recovery plan is one of the few examples where the Services established such objectives (e.g., the worldwide probability of persistence is at least 95% over 100 years).[61] Roundtable participants did not conclude whether a fixed percentage for all species is appropriate, or whether percentages should vary based on taxonomy or other factors. Some suggested establishing an overarching goal like "viability" to indicate when a species is deemed recovered, although this goal has been in place for more than a decade and still leads to inconsistent outcomes for what constitutes recovery. Others championed adoption of the International Union for Conservation of Nature (IUCN) Red List standard[62] for ESA determinations, and observed that the state of Florida has been using that standard for several years in listing and delisting species under state law.[63] The IUCN standard, however, does not include the five threat factors of the ESA, and adopts a maximum time frame of 100 years when assessing extinction risk.[64]

Once the fundamental objectives are defined, the recovery plan should be structured such that the five threat factors are linked to the objectives and a suite of implementation strategies that satisfy the threat factors (see Figure 2).[65] In other words, a results chain is established in which the implementation strategies are linked to the fundamental objectives through one of the five factors.[66]

54. April 2019 Scoping Session, *supra* note 22.
55. *Id.*
56. *Id.*
57. October 2020 Workshop Roundtable, *supra* note 23.
58. FWS, Polar Bear Conservation Management Plan (2016), https://ecos.fws.gov/docs/recovery_plan/PBRT%20Recovery%20Plan%20Book.FINAL.signed.pdf.
59. October 2020 Workshop Roundtable, *supra* note 23.
60. *Id.*
61. FWS, *supra* note 58, at 6.
62. IUCN, IUCN Red List Categories and Criteria v. 3.1 (2d ed. 2012), http://s3.amazonaws.com/iucnredlist-newcms/staging/public/attachments/3108/redlist_cats_crit_en.pdf.
63. Fla. Admin. Code §68A-27.0012 (2017).
64. IUCN, *supra* note 62, at 16.
65. E-mail from Mark Schwartz, Professor, University of California, Davis, to Melissa Kelly, Staff Director and Attorney, UCI Law CLEANR et al. (Oct. 19, 2020, 09:41 PST) (on file with author).
66. *Id.*

**Figure 3. Theory of Change**




Source: E-mail from Mark Schwartz, Professor, University of California, Davis, to Melissa Kelly, Staff Director and Attorney, UCI Law CLEANR et al. (Oct. 19, 2020, 09:41 PST) (on file with author).

The Services would need to prioritize among these implementation strategies based on how well they would achieve the fundamental objectives, taking into account means objectives such as costs.[67] Some roundtable participants suggested that any improved system for recovery planning should avoid locking in prescriptive pathways for how to recover a species—a recovery plan needs to provide the flexibility to take new information into account both in terms of the strategies for achieving recovery and the criteria that reflect fundamental objectives.

This approach would improve the consistency of recovery criteria, while still allowing flexibility to derive recovery criteria and recovery strategies on a species-by-species basis using the BAS.[68] It would also facilitate clear monitoring as to whether an implementation strategy contributed to achieving the fundamental objectives (see Figure 3).[69]

For recovery plans to be based on clear science and policy standards, the Services must also recognize that recovery not only has an abundance component, but also a spatial component that is best captured by the concept of "representation." Representation has been interpreted to mean

> the characteristics that make a species a contributor to biodiversity, whether intrinsic or extrinsic to individuals and populations. This includes representation of standing diversity in genetics and phenotypes to represent current diversity and to ensure sufficient genetic and phenotypic variation to allow for future diversification. It also means representation in the variety of ecosystems in which the species is found, and with the variety of interactions with other species, such that the species' role in those ecosystems is maintained.[70]

Some roundtable participants asserted that spatial distribution is the most challenging aspect of determining how much is enough to deem a species recovered.

**Legislative**. To enhance species conservation, Congress should require the Services to update recovery plans and to use science-based recovery standards as part of those updates.[71] Similarly, some scoping session participants suggested Congress require the Services to base delisting decisions on a review and update of the recovery plan, rather than primarily on the five-factor threat analysis, and on science-based recovery standards.

Requiring recovery plan updates can enhance species conservation because plans will contain updated information that better reflects how our understanding of the species, their habitat, and threats may have changed over time.[72] This periodic reevaluation of recovery plans provides additional opportunity to adapt management actions to new information and further enhance species conservation.[73]

Science-based recovery standards should serve as the basis of these updates. When recovery plan goals are well-linked to biological information on the species, the species has been found more likely to improve in status.[74]

One trade off of recovery plan updates is that they are expensive and work-intensive,[75] so there is likely to be some pushback from the under-resourced Services.[76] The pro-

67. *Id.*
68. October 2020 Workshop Roundtable, *supra* note 23.
69. E-mail from Mark Schwartz, *supra* note 65.
70. Jacob Malcom & Andrew Carter, Better Representation Is Needed in Endangered Species Act Implementation 10 (2020) (recommending this interpretation of representation from Mark L. Shaffer & Bruce A. Stein, Precious Heritage: The Status of Biodiversity in the United States (2000), over the Services' narrower interpretation).
71. April 2019 Scoping Session, *supra* note 22.
72. Malcom & Li, *supra* note 52, at 2.
73. *See* Theodore C. Foin et al., *Improving Recovery Planning for Threatened and Endangered Species*, 48 BioScience 177, 184 (1998); Clark et al., *supra* note 53, at 1516; P. Dee Boersma et al., *How Good Are Endangered Species Recovery Plans?*, 51 BioScience 643, 648 (2001).
74. Clark et al., *supra* note 53, at 1518.
75. Malcom & Li, *supra* note 52, at 2.
76. Noah Greenwald et al., Center for Biological Diversity, Short-changed: Funding Needed to Save America's Most Endangered Spe-

portion of listed species with recovery plans has declined since 2000,[77] and the Services already have to triage to implement the highest priority recovery actions because they lack the resources to implement all recovery plans.[78] Further, a scoping session participant pointed out that the more discretion that is added to the recovery planning process, the more stakeholders may push back.[79]

Achieving recovery criteria in the species' recovery plan is one factor, but not a prerequisite to delisting.[80] To delist a species under the ESA, the Services must determine that the species is no longer threatened or endangered based on the five factors considered in listing the species.[81] Some argue that focusing on threat factors "ignores species relationships to each other and ecosystems,"[82] and threat factors themselves are inherently difficult to define precisely and in a scientifically defensible manner.[83] Further, participants raised concerns about the disconnect between the five-factor threat analysis in court decisions and recovery criteria. In general, courts have held that recovery plan provisions, including downlisting and delisting criteria, are not enforceable.[84] As a result, the Services can delist a species even if the recovery plan criteria are not met.[85]

**Legislative**. To address these problems, scoping session participants suggested that if the Services use the five-factor threat analysis and find a species recovered even though it has not met all of the criteria in a recovery plan, the Services should be required to provide a higher showing as to why a species has been found to be recovered. The Services could be required to show why any deviation from the recovery criteria is necessary.

Some participants also agreed that a species should not automatically be delisted if all the recovery plan objectives have been met because conditions change over time in ways recovery plans may not be able to predict. However, a presumption of delisting may be appropriate. On the flip side, if the Services propose recovery criteria that are science-based and credible, the five-factor threat analysis does not necessarily add value.

Roundtable participants identified two competing approaches to address the problem of court decisions holding that recovery criteria are unenforceable. The first is to base recovery plans on the reverse of the five-factor analysis, and define in the plan when the species is no longer threatened or endangered. Delisting criteria would serve as nonmandatory guidelines for delisting (e.g., the recent downlisting of the red-cockaded woodpecker[86] or delisting of the Virginia flying squirrel,[87] where FWS determined that all delisting criteria did not need to be met). This is the current state of the law.[88] The problem is that it makes the criteria nonbinding, and allows the far more subjective five-factor analysis to override the criteria as part of a downlisting or delisting decision.

The other approach is to make delisting decisions contingent on satisfaction of delisting criteria, with the five threat factors subservient to those criteria (e.g., the polar bear recovery plan[89] and dissenting opinion in *Friends of Blackwater v. Salazar*[90]). A trade off of these approaches is that they may require a statutory amendment in order to address the disconnect between the five-factor threat analysis in court decisions and recovery criteria.[91]

Another consideration in delisting is the conservation reliance of the species.[92] This raises the normative question of how much human intervention is appropriate before a species can be deemed delisted. Some roundtable participants expressed concern about the Services potentially declaring a species recovered while the species still depends heavily on human intervention.

Pursuing this recommendation is critical to species recovery, and will require additional resources to restructure recovery plans to ensure they are based on clear science and policy standards, to regularly update these recovery plans, and to address the disconnect between court decisions and recovery criteria.

### 3. Create a Cooperative Federalism Permit Program to Implement Recovery Plans

Cooperative federalism programs, in which states manage public lands jointly with the federal government, have been in place for decades.[93] However, cooperative

cies 1 (2016); *see also* Holly Doremus, *The Purposes, Effects, and Future of the Endangered Species Act's Best Available Science Mandate*, 34 Env't L. 397, 446 (2004).

77. Malcom & Li, *supra* note 52, at 3.
78. Leah R. Gerber, *Conservation Triage or Injurious Neglect in Endangered Species Recovery*, 113 Proc. Nat'l Acad. Sci. 3563, 3563 (2016).
79. April 2019 Scoping Session, *supra* note 22.
80. Crystal D. Anderson, *Reconsidering a Weakened Regulation: A Critical Analysis of Delisting in the Endangered Species Act*, 9 Fla. A & M U. L. Rev. 207, 221 (2013).
81. These five factors are "(1) the present or threatened destruction, modification or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or man-made factors affecting continued existence." 16 U.S.C. §1533(a)(1).
82. Jacqueline Lesley Brown, *Preserving Species: The Endangered Species Act Versus Ecosystem Management Regime, Ecological and Political Considerations, and Recommendations for Reform*, 12 J. Env't L. & Litig. 151, 186 (1997).
83. Daniel F. Doak et al., *Recommendations for Improving Recovery Criteria Under the U.S. Endangered Species Act*, 65 BioScience 189, 195 (2015).
84. Federico Cheever, *Recovery Planning, the Courts, and the Endangered Species Act*, 16 Nat. Res. & Env't 106, 108-10 (2001).
85. April 2019 Scoping Session, *supra* note 22; *see* Friends of Blackwater v. Salazar, 691 F.3d 428, 428, 42 ELR 20181 (D.C. Cir. 2012).
86. Reclassification of the Red-Cockaded Woodpecker From Endangered to Threatened With a Section 4(d) Rule, 85 Fed. Reg. 63474 (proposed Oct. 8, 2020) (to be codified at 50 C.F.R. pt. 17).
87. Final Rule Removing the Virginia Northern Flying Squirrel (Glaucomys sabrinus fuscus) From the Federal List of Endangered and Threatened Wildlife, 73 Fed. Reg. 50226 (Aug. 26, 2008) (to be codified at 50 C.F.R. pt. 17).
88. *E.g.*, *Friends of Blackwater*, 691 F.3d at 428.
89. FWS, *supra* note 58.
90. *Friends of Blackwater*, 691 F.3d at 440 (Rogers, C.J., dissenting).
91. April 2019 Scoping Session, *supra* note 22.
92. October 2020 Workshop Roundtable, *supra* note 23.
93. *See*, *e.g.*, Special Rule Concerning Take of the Threatened Coastal California Gnatcatcher, 58 Fed. Reg. 65088 (Dec. 10, 1993) (to be codified at 50 C.F.R. pt. 17); Final Rule Governing Take of 14 Threatened Salmon and Steelhead Evolutionary Significant Units (ESUs), 65 Fed. Reg. 42421, 42422 (July 10, 2000) (to be codified at 50 C.F.R. pt. 223); Final Rule Governing Take of Four Threatened Evolutionary Significant Units (ESUs) of West Coast Salmonids, 67 Fed. Reg. 1116, 1133 (Jan. 9, 2002) (to be codified at 50 C.F.R. pt. 223).

programs in which states issue permits "have been absent from resource management law in general and the ESA in particular."[94] Because habitat degradation often results from private land uses that are under state or local control, a cooperative federalism program under the ESA could enhance species conservation.[95]

State and local land use controls provide opportunities to implement recovery plan protections.[96] In addition, a cooperative federalism program could better incorporate state and local authorities' site-specific knowledge, including "the needs of local people, local customs and culture, how to ease tensions of local property owners, and how ecosystems are changing over time" to more effectively implement recovery plans.[97] Moreover, a cooperative federalism program provides incentives to states to strengthen their species conservation laws, as discussed in Section II.D.2 below.

**Administrative**. One mechanism for implementing this recommendation is by using §4(d) of the ESA to exempt from the take prohibition those activities that comply with approved state species conservation programs.[98] A §4(d) rule can establish criteria for states to use in designing their land use controls.[99] Section 4(d) can be used in conjunction with §6 cooperative agreements to provide federal funding for state programs for recovery plan implementation.[100]

There are a number of trade offs of this recommendation if implemented through §4(d). It would only apply to threatened species, require additional federal funding, and have higher administrative costs.[101] Roundtable participants noted that there is not one example of a state-led recovery planning effort to date, and currently there is little hope of states doing this, with the possible exceptions of California and Florida.

Similarly, one participant noted that in the CWA context, there is significant state engagement in the §402 program while very few states administer §404. The reason is that there is federal funding for the former, but not the latter. There may also be resistance to developing a cooperative federalism program due to the "substantial investment in HCPs," and the fact that §4(d) rules are single-species-rather than multispecies-focused.[102] Finally, this recommendation may have the same problem of weak Services implementation that the §10(a) permit program does.[103]

Accordingly, a conservation-focused cooperative federalism regime would need to integrate safeguards that induce state programs to advance the ESA's conservation objectives, including science-based standards and opportunities for meaningful citizen involvement. This also reinforces that the many proposed revisions to the ESA that seek to adopt a significant recession of a federal role in ESA implementation, with the expectation of a transfer or reallocation of authority to the states, are really just pursuing deregulation masked as cooperative federalism.

Some roundtable participants emphasized the need to (1) reframe cooperative federalism so it is not about states taking control and federal government having less of a role, and (2) de-emphasize the focus of communications by state wildlife agencies on who has primary jurisdictional authority between the states and federal government. Meaningful cooperative federalism that promotes conservation requires significant federal involvement, including robust standards and funding, as well as a substantial and sustained state conservation commitment.

### D. *Provide Incentives for Species Conservation on Private, State, and Federal Lands*

Many listed and at-risk species require habitat improvement or population augmentation measures, yet the ESA itself is silent on incentives. Despite this silence, conservationists have developed regulatory, financial, reputational, and other positive incentives to conserve species. Participants agreed that there is a need to improve incentives for species recovery and proactive conservation under the ESA. Such incentives can be particularly effective where direct harm to species is *not* what needs to be managed, but rather where certain conservation actions need to be encouraged—for example, incentives to manage invasive species or prescribed fires.[104]

While there is this basic notion that incentives can enhance species conservation, there is limited empirical knowledge of where incentives are and are not working and where conservation funding is poorly used. Candidate conservation agreements with assurances (CCAAs), for example, can have strict confidentiality provisions that hinder public transparency and monitoring of conservation outcomes.[105] Participants offered the following recommendations for making incentives more effective.

#### 1. Incentivize Private Landowners to Promote Conservation

A majority of listed species occur on private lands.[106] Incentivizing private landowner engagement in conservation

94. Robert L. Fischman & Jaelith Hall-Rivera, *A Lesson for Conservation From Pollution Control Law: Cooperative Federalism for Recovery Under the Endangered Species Act*, 27 Colum. J. Env't L. 45, 133 (2002).
95. Robert L. Fischman, *Cooperative Federalism and Natural Resources Law*, 14 N.Y.U. Env't L.J. 179, 210 (2005).
96. Fischman & Hall-Rivera, *supra* note 94, at 134 (explaining "[a §]4(d) rule can require the planning jurisdiction to modify existing land use controls to conform with a recovery program"); *see also* Robert Fischman et al., *State Imperiled Species Legislation*, 48 Env't L. 81, 121 (2018).
97. Jordan K. Lofthouse & Camille Harmer, Strata, Improving the Endangered Species Act: Recommendations for More Effective Conservation 15 (2017), https://strata.org/pdf/2017/improving-esa.pdf.
98. Fischman, *supra* note 95, at 213-14.
99. Fischman & Hall-Rivera, *supra* note 94, at 133.
100. *Id.*; Fischman, *supra* note 95, at 212.
101. Fischman & Hall-Rivera, *supra* note 94, at 160-63.
102. *Id.* at 163-65.
103. *Id.* at 165-68.
104. April 2019 Scoping Session, *supra* note 22; *see also* Epanchin-Niell & Boyd, *supra* note 29, at 412.
105. October 2020 Workshop Roundtable, *supra* note 23.
106. Evans et al., *supra* note 51, at 14.

efforts has the potential to enhance species conservation.[107] Because a landowner does not typically capture the full value of species conservation, landowner preferences on land use will not necessarily align with goals to enhance species and habitat conservation.[108] In fact, some argue that §9 creates perverse incentives for landowners to hinder the gathering of information about species on their land, and even destroy habitat to avoid regulation.[109] Studies have found empirical evidence of the existence and influence of perverse incentives encouraging habitat destruction.[110]

**Administrative**. In order to promote conservation, policies should be adopted that encourage private landowners to engage in species management though a variety of financial incentives.

❑ *Direct government payments*. Direct payments made to landowners for providing and managing habitat can change the presence of endangered species on their land from a liability into an asset.[111] Direct payments can be made contingent on a commitment to specific management practices or tied to conservation outcomes such as an increase in the number of species.[112] For example, a direct payment program for species conservation could look to the Natural Resources Conservation Service's Wetlands Reserve Program, which pays landowners to "enhance wetlands on marginal agricultural lands,"[113] or alternatively provide landowners payment for eliminating invasive species.[114]

❑ *Tax incentives*. Providing tax credits can incentivize landowners to manage their land for species and habitat conservation purposes.[115] "Tax incentives do not seek to bridge the considerable distance between status quo, land-based revenues, and unrealized opportunity costs. They are intended as motivating incentives and economic signals, *not* as compensation for the effects of lawful and appropriate government regulation."[116] Thus, tax incentives should not be provided for mere compliance with the ESA, but rather for active conservation efforts such as creation of new habitat.[117] For example, legislation could provide estate tax deferral to landowners who agree to endangered species conservation agreements on inherited property.[118]

Scoping session participants pointed out that only regulating landowners with remaining habitat penalizes those landowners while overlooking landowners who have developed their land and destroyed habitat. A participant recommended creating a tax authority or another legal mechanism to enable capturing the economic benefit landowners realized from destroying habitat and developing on their land.[119] For example, a tax authority could be established to spread the costs of HCP management across landowners, and not just those specific landowners whose land is within the HCP.

❑ *Species conservation banking arrangements*. Species conservation banking is a market-based program that incentivizes landowners to permanently protect and manage habitat for species in exchange for credits, which can be sold to those who need to mitigate adverse impacts to species and habitat.[120] There are more than "130 conservation banks nationwide that collectively conserve more than 160,000 acres of valuable habitat."[121] Species conservation banking is based on a landscape-scale approach.[122] It has the benefit of achieving mitigation before impacts occur,[123] and creates opportunity for habitat connectivity if credits are banked for future use in a concentrated area, as opposed to mitigation conducted on a project-by-project basis.[124] Conservation banking can also address permanence and structural needs to promote long-term commitments.[125]

Given that species conservation banks generally offer the highest standard of offsets under the ESA, the Services should create an explicit requirement for ESA mitigation offsets to use banking credits where available or in-lieu-fee mitigation that is performed prior to a permitted impact. This preference would align ESA mitigation policy with the 2008 U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers rule on compensatory mitigation under §404 of the CWA.[126] That rule is gener-

107. *See id.*; Randy T. Simmons, *Fixing the Endangered Species Act*, 3 Indep. Rev. 511, 521-22 (1999).
108. Stephen Polasky et al., *Endangered Species Conservation on Private Land*, 25 Contemp. Econ. Pol'y 66, 75 (1997).
109. *E.g.*, Gardner M. Brown & Jason F. Shogren, *Economics of the Endangered Species Act*, 12 J. Econ. Persp. 3, 7, 16 (1998); Robert Innes et al., *Takings, Compensation, and Endangered Species Protection on Private Land*, 12 J. Econ. Persp. 35, 39 (1998); Christian Langpap, *Conservation Incentives Programs for Endangered Species: An Analysis of Landowner Participation*, 80 Land Econ. 375 (2004); Brown, *supra* note 82, at 246.
110. Christian Langpap et al., *The Economics of the U.S. Endangered Species Act: A Review of Recent Developments*, 12 Rev. Env't Econ. & Pol'y 69, 78 (2017).
111. *See*, *e.g.*, Robert L. Fischman, *Predictions and Prescriptions for the Endangered Species Act*, 34 Env't L. 451, 474-75 (2004).
112. *E.g.*, *id.*; Langpap et al., *supra* note 110, at 80 (citing study examining incentives where payments are tied to environmental outcomes and those that are contingent on specific conservation actions).
113. Fischman, *supra* note 111, at 474.
114. *Id.*; *see* April 2019 Scoping Session, *supra* note 22.
115. *E.g.*, The Wildlife Society, *supra* note 47, at 12; Donald C. Baur et al., *A Recovery Plan for the Endangered Species Act*, 39 ELR 10006, 10009 (Jan. 2009).
116. Simmons, *supra* note 107, at 531 (citing Larry D. McKinney, *Reauthorizing the Endangered Species Act: Incentives for Rural Landowners*, *in* Building Economic Incentives Into the Endangered Species Act 74 (Hank Fisher & Wendy Hudson eds., 1994)).
117. Jonathan Evans, *The GOP Endangers the ESA*, W. Env't L. Update, at 8 (2006), http://www.pielc.org/WELU/WELU2006.pdf (criticizing the Collaboration for the Recovery of Endangered Species Act of 2005 for "fail[ing] to limit . . . tax breaks to landowners who engage in active conservation" and "primarily paying developers to comply with the law" by requiring reimbursement for costs of conducting environmental analyses under the National Environmental Policy Act).
118. This was proposed in the Endangered Species Recovery Act of 1999, H.R. 960, 106th Cong. (1999).
119. April 2019 Scoping Session, *supra* note 22.
120. FWS, Conservation Banking 1 (2019), https://www.fws.gov/endangered/esa-library/pdf/conservation_banking.pdf.
121. FWS, *For Landowners—Conservation Banking*, https://www.fws.gov/endangered/landowners/conservation-banking.html (last updated Jan. 30, 2020).
122. Endangered Species Act Compensatory Mitigation Policy, 81 Fed. Reg. 95316, 95318 (Dec. 27, 2016).
123. *Id.*
124. Jessica Fox & Anamaria Nino-Murcia, *Status of Species Conservation Banking in the United States*, 19 Conservation Biology 996, 997 (2005).
125. October 2020 Workshop Roundtable, *supra* note 23.
126. Compensatory Mitigation for Losses of Aquatic Resources, 73 Fed. Reg. 19593 (Apr. 10, 2008) (to be codified at 40 C.F.R. pt. 230).

ally regarded as establishing far more effective mitigation requirements than those under the ESA.

❑ *Habitat leases*. As an alternative to easement or other legal determination for a parcel of land, habitat leases are "long-term contracts (e.g., 10-30 years) that recognize and compensate landowners for ecological benefits currently provided by open, well-stewarded lands."[127] These are "designed to secure existing habitat and ecological services currently provided on private lands that meet threshold requirements for ecological site condition."[128] Agricultural production would be allowed to continue so long as it is compatible with conservation patterns.[129] Further, "in some cases, supplemental lease and cost-share payments could support landowners for adoption of new practices or additional investments to increase habitat," for example.[130]

❑ *Strategies for securing funding for financial incentives*. Financial incentives for landowners require funding. Strategies for securing funding for these financial incentives to landowners could include the creation of a recovery fund for private landowners, the issuance of government bonds to pay for species recovery actions, and the diversion of additional funds through future farm bill legislation[131] to habitat conservation programs.

❑ *Trade offs of financial incentives*. While direct payments, tax incentives, and species conservation banking promote species conservation by incentivizing private landowners to manage their land in a way that protects species and their habitat, such incentives have their trade offs. Inadequate funding is a pervasive problem for most federal programs, and each of these incentive strategies relies on an adequate fund or budget allocation in the case of tax incentives.[132] Further, because species and habitat conservation in this context depends on the actions of private landowners, monitoring is critical.

However, limited resources may make effective monitoring difficult.[133] Finally, there are challenges to determining the precise payment or credit amount that will effectively incentivize landowners. Because such financial incentives are not intended to fully compensate landowners for the value of developing their land, some landowners may ultimately not be incentivized by these strategies.[134]

Given that the majority of listed species occur on private lands, the advantages of providing financial incentives to private landowners necessitate securing adequate funding and resources for financial incentives and the monitoring necessary to ensure their effectiveness.

### 2. Induce States to Strengthen Conservation Laws and Enhance Non-Game Species Programs

Most state conservation laws are weaker and less comprehensive than the ESA.[135] Only 18 states cover all animals and plants covered by the ESA, 2 states do not have any endangered species laws, and 17 states do not protect endangered or threatened plants.[136] Further, almost one-half of the states do not expressly require that decisions regarding whether to provide species protections be based on science.[137]

In order to enhance species conservation, participants stressed the need to induce states to strengthen their species conservation laws and enhance their non-game species programs. Not only would state laws be more on par with federal protections, but strengthened state laws might also enhance species conservation by integrating local knowledge and data more effectively than the federal ESA.[138]

**Legislative**. Some recommend inducing states to strengthen their conservation laws by granting them more authority similar to federal delegation of permitting under pollution-control statutes to the states.[139] This could mean delegating "otherwise federal protections, such as section 10 permitting, to states fulfilling minimum standards that advance the goals of the ESA."[140] Just as EPA can reassume primary enforcement authority if a state program is not achieving the goals of the CWA,[141] the Services could step in if a state program is no longer meeting minimum standards.

The cooperative federalism recommendation in Section II.C.3 above is an example of this type of incentive. Similarly, states could be allowed to develop ecosystem-protection agreements with the Secretary of the Interior in exchange for reduced federal ESA enforcement activities in the state.[142]

This type of delegation to the states has its trade offs. The already under-resourced Services would need to actively monitor states' species conservation programs to ensure they are enhancing species conservation and meeting the ESA's goals. Strengthening state conservation laws will also require funding, including an increase in §6 grant funds. Scoping session participants raised the possibility

127. Western Landowners Alliance, *Habitat Leasing*, https://westernlandowners.org/policy/habitat-lease/ (last visited July 7, 2021).
128. *Id.*
129. October 2020 Workshop Roundtable, *supra* note 23.
130. Western Landowners Alliance, *supra* note 127.
131. *Cf.* Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4490.
132. *See* Brown, *supra* note 82, at 247; Fischman, *supra* note 111, at 475.
133. *See*, *e.g.*, Royal C. Gardner, *Rehabilitating Nature: A Comparative Review of Legal Mechanisms That Encourage Wetland Restoration Efforts*, 52 Cath. U. L. Rev. 573, 596 (2003).
134. *See*, *e.g.*, David Farrier, *Conserving Biodiversity on Private Land: Incentives for Management or Compensation for Lost Expectations?*, 19 Harv. Env't L. Rev. 303, 406 (1995).
135. *See* Camacho et al., *supra* note 19, at 10838.
136. *Id.*
137. *Id.* at 10839.
138. *See*, *e.g.*, Keystone Center, *supra* note 49, at 27; Alejandro E. Camacho & Michael Robinson-Dorn, *Turning Power Over to States Won't Improve Protection for Endangered Species*, Conversation, Jan. 11, 2018, 6:42 AM, https://theconversation.com/turning-power-over-to-states-wont-improve-protection-for-endangered-species-87495.
139. Fischman et al., *supra* note 96, at 119.
140. *Id.*
141. *See id.*
142. Kristen Carden, *Bridging the Divide: The Role of Science in Species Conservation Law*, 30 Harv. Env't L. Rev. 165, 249 (2006).

that there are opportunities to provide funding through the Recovering America's Wildlife Act (RAWA).[143]

RAWA would "amend the Pittman-Robertson Wildlife Restoration Act to make supplemental funds available for management of fish and wildlife species of greatest conservation need as determined by State fish and wildlife agencies."[144] The bill would provide almost $1.4 billion in "dedicated annual funding for proactive, collaborative efforts by the states and tribes to recover wildlife species at risk."[145] However, some environmental groups have criticized the bill's inadequate funding for endangered species, lack of accountability measures to ensure the bill's objectives are met, and failure to address plant species conservation.[146]

Despite these trade offs, this recommendation is worth pursuing. Roundtable participants encouraged finding bipartisan ways to talk with state legislatures about changing state endangered species and wildlife laws to be more protective. This should be done on a state-by-state basis to account for the different political dispositions across states. Some participants also emphasized that state agencies need to be environmental agencies, not only fish and game agencies, in order to recognize the broader responsibility of wildlife protection. This change might be achieved through working with the National Caucus of Environmental Legislators.

### 3. Streamline §7 Consultations and §10 Agreements Where a "Net Benefit" Is Clear

On paper, the procedures required for §7 consultations and §10 agreements are the same regardless of whether a project would benefit listed species.[147] Some argue that projects that would clearly benefit species "face the same regulatory obstacles as projects that offer no benefits to listed species or would cause harm to them, thus delaying their approval and implementation."[148] To incentivize more projects that would benefit species, many suggest providing incentives in the form of reduced regulatory burdens.[149]

**Administrative**. Scoping session participants discussed how to best ensure enhanced species conservation by reducing regulatory burdens. Participants agreed that providing a voluntary opportunity to achieve a net benefit standard in exchange for a reduction in regulatory burden could provide an important incentive for conservation.[150] A reduced regulatory burden could take the form of streamlined consultations or §10 agreements where the net benefit is clear and established upfront.

Participants distinguished between providing assurances to federal agencies and private landowners. Some participants did not think federal agencies would be responsive to incentives because their obligations are not currently stringent enough, while others thought that federal agencies would be incentivized by receiving assurances similar to those provided to private landowners through safe-harbor agreements or by reducing transactional costs. Some also suggested that greater management flexibility could be provided as an incentive for federal agencies that "help a species exceed its recovery milestones."[151]

A trade off of this recommendation is that rigorous monitoring is essential to determining whether a net benefit to the species has been achieved. The same monitoring challenges discussed in Section II.C.1 above with respect to the lack of adequate resources apply here. In addition, as with financial incentives to private landowners and incentives to induce states to strengthen conservation laws, funding is needed to effectively implement this type of incentive program while ensuring enhanced species conservation. The challenge of ensuring adequate monitoring resources is common to many of these recommendations and, thus, ensuring additional resources would address the trade offs of multiple recommendations.

**Administrative**. This recommendation also implicates the question of what level of agency discretion is appropriate. Existing levels of discretion for the Services in CCAAs and other ESA permitting contexts seem to have been helpful for some species (e.g., Delta smelt,[152] New England cottontail[153]), but not others (e.g., dunes sagebrush lizard[154]).[155] One way to reconcile this difference is to evaluate the compatibility of the covered activity with the conservation of the species. That is, the degree of the Services' discretion would increase where the covered activity is compatible.

A roundtable participant also pointed out that there needs to be a clear trigger for the Services to be able to list the species if a CCAA is not working. Further, 12-month decisions that a species does not warrant listing should be

143. Recovering America's Wildlife Act of 2019, H.R. 3742, 116th Cong. (2019).
144. *Id*.
145. National Wildlife Federation, *Recovering America's Wildlife Act*, https://www.nwf.org/Our-Work/Wildlife-Conservation/Policy/Recovering-Americas-Wildlife-Act (last visited July 7, 2021).
146. Press Release, Defenders of Wildlife, The "Recovering America's Wildlife Act" Fails to Adequately Respond to the Extinction Crisis (Dec. 5, 2019), https://defenders.org/newsroom/recovering-americas-wildlife-act-fails-adequately-respond-extinction-crisis; Press Release, Center for Biological Diversity, Flawed Wildlife Bill OK'd by House Natural Resources Committee (Dec. 4, 2019), https://biologicaldiversity.org/w/news/press-releases/flawed-wildlife-bill-okd-by-house-natural-resources-committee-2019-12-04.
147. Baur et al., *supra* note 115, at 10008.
148. *Id*.
149. *E.g. id*. at 10009 (recommending revising the FWS consultation handbook to allow clearly beneficial actions to be authorized based on a concurrence letter from the Services and an appended incidental take statement, rather than require a formal consultation; applying programmatic safe-harbor agreements to participants in farm bill conservation programs so that "beneficial actions would not subject participants to new regulatory restrictions" and further incentivize species conservation on agricultural land); Keystone Center, *supra* note 49, at 27; Epanchin-Niell & Boyd, *supra* note 29.
150. *See* April 2019 Scoping Session, *supra* note 22.
151. Jake Li et al., *Species Protection Will Take More Than Rule Reversal*, 370 Science 665, 666 (2020).
152. FWS, Species Assessment and Listing Priority Assignment Form: Delta Smelt (2016), https://ecos.fws.gov/docs/species/uplisting/doc4835.pdf.
153. FWS, Programmatic Candidate Conservation Agreement With Assurances for the New England Cottontail in Southern New Hampshire (2011), https://ecos.fws.gov/docs/plan_documents/ccaa/ccaa_873.pdf.
154. FWS, Texas Conservation Plan for the Dunes Sagebrush Lizard (2012), https://ecos.fws.gov/docs/plan_documents/ccaa/ccaa_1611.pdf.
155. October 2020 Workshop Roundtable, *supra* note 23.

subject to peer review and public comment before being finalized.[156] A participant also noted that improving ESA enforcement is critical because without effective enforcement, the Services have few alternatives to accepting the terms of voluntary conservation agreements that states or private landowners offer the Services. This can lead to weak CCAA conservation measures.

This recommendation enhances species conservation by streamlining §7 and §10 agreements where a net benefit to species recovery is clear and established upfront, and in the permitting context, the Services' discretion is dependent on the compatibility of covered activities with the conservation of species.

### *E. Account and Prepare for Ecological Change*

The ESA conceptualizes its goals as maintaining the constancy of species within ecosystems that are actually dynamic.[157] Goals of static, enduring species populations are undoubtedly problematic in light of naturally occurring population fluctuations, evolution, and extinction.[158] Climate change is a growing threat to many species, but ESA decisions and processes often do not adequately address climate change, nor are there effective ESA policies on how to help species adapt to climate change. A 2019 study of ESA-listed endangered animals found that 99.8% are sensitive to climate change.[159] However, the Services "only consider climate change a threat to 64% of listed species and plan management actions for only 18%."[160]

Participants recognized that addressing ecological change is a larger issue that goes beyond the confines of the ESA. While the ESA could, in theory, allow the Services to regulate greenhouse gas emissions, it should not be the primary approach for doing so or for addressing climate change more broadly. Thus, participants focused the discussion on how the ESA could better account and prepare for ecological change in (1) listing, (2) authorizations, and (3) recovery planning and implementation.

#### 1. Expansively Define "Foreseeable Future," Integrate Climate Change Into Vulnerability Assessments, and More Effectively Analyze Data on Changes

The listing process does not adequately prepare and account for ecological change because of the ESA's static view of species and their habitats.[161] To address this, participants largely agreed that listing, reclassification, and delisting decisions need to be clarified to expansively define "foreseeable future" or replace the concept of the "foreseeable future" with time frames that better reflect the ESA's normative values.

The ESA defines "threatened species" as "any species which is likely to become endangered within the foreseeable future throughout all or a significant portion of its range,"[162] but it does not define "foreseeable future." On average, the foreseeable future time frame across ESA decisions from 2010 to July 2019 was 46 years.[163] In August 2019, the Donald Trump Administration finalized revisions to the ESA implementing regulations.[164] These revisions included defining "foreseeable future" as "extend[ing] only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely."[165]

Several environmental groups sued the Trump Administration over these revisions, specifically claiming that the definition of "foreseeable future" improperly deprives "species facing extinction from the impacts of climate change or other future events involving prediction and uncertainty . . . of protection."[166] Others see the definition as being ambiguous about how the foreseeable future interpretation would change.[167]

**Administrative**. To enhance species conservation, "foreseeable future" should be defined expansively and looked at along with climate change in light of the BAS.[168] A longer foreseeable future time frame is more informative, and is particularly important in delisting decisions because it is assumed that "a species will be secure for the *entire length* of the foreseeable future."[169] An expansive definition of "foreseeable future" acknowledges the impending effects of climate change and enables the Services to more proactively list species to address such effects.[170]

Some suggest that given that the year "2100 is embedded in many of the global climate projections constructed by the Intergovernmental Panel on Climate Change," that date should be used as "a conservative starting point for assessing species vulnerable to climate change."[171] The Services also need to establish internal guidance on how to address uncertainty in foreseeable future determinations in a consistent manner.[172]

156. *Id.*
157. Holly Doremus, *The Endangered Species Act: Static Law Meets Dynamic World*, 32 Wash. U. J.L. & Pol'y 175 (2010); Simmons, *supra* note 107, at 515 ("Instead of constancy and stability, disturbance and change have been the norm throughout the evolutionary history of the earth.").
158. Doremus, *supra* note 157, at 182; Simmons, *supra* note 107, at 516.
159. Aimee Delach et al., *Agency Plans Are Inadequate to Conserve U.S. Endangered Species Under Climate Change*, 9 Nature Climate Change 999 (2019).
160. *Id.*
161. *See, e.g.*, Doremus, *supra* note 157, at 188-203, 215.
162. 16 U.S.C. §1532(20).
163. *See* Jake Li & Angus McLean, *Why the "Foreseeable Future" Matters*, Env't Pol'y & Innovation Center, http://policyinnovation.org/foreseeable-future/ (last visited July 7, 2021).
164. Regulations for Listing Species and Designating Critical Habitat, 84 Fed. Reg. 45020 (Aug. 27, 2019) (to be codified at 50 C.F.R. pt. 424).
165. *Id.*
166. Complaint at 19, Center for Biological Diversity v. Bernhardt, No. 3:19-cv-05206 (N.D. Cal. Aug. 21, 2019).
167. Li & McLean, *supra* note 163.
168. October 2020 Workshop Roundtable, *supra* note 23.
169. *Id.*
170. *See* James Ming Chen, Αρκτούρος*: Protecting Biodiversity Against the Effects of Climate Change Through the Endangered Species Act*, 47 Wash. U. J.L. & Pol'y 11, 19 (2015).
171. Jake Li et al., *Species Protection Will Take More Than Rule Reversal*, 370 Science 665, 666 (2020).
172. October 2020 Workshop Roundtable, *supra* note 23.

**Administrative**. Further, given the significant "gap between the sensitivity of endangered animals to climate change and the attention that climate change receives from the agencies charged with recovery of these species,"[173] better integration of climate change into vulnerability assessments for listed species[174] is critical to enhancing species conservation. More effective analysis of data on range shifts, behavioral changes, and changes in habitat niche is important because such changes "can undermine even the largest and best-managed preserves."[175]

**Administrative**. Some roundtable participants also recommended shifting the focus to time frames embedded in the values reflected in the ESA, which may involve replacing the foreseeable future concept with a different standard of the time frame over which society values conservation. For example, participants suggested adopting the IUCN's approach to time horizons, which uses a maximum time horizon of 100 years.[176] Participants cautioned, however, that the time horizon should not be tied to the availability of evidence. This would create a perverse incentive not to learn and gather additional data, because more data reduces uncertainty and allows agencies to look further into the future, thus expanding the number of species that qualify for listing.

Clearly stated fundamental objectives could include the number of years or generations for which society wants the species to exist.[177] Participants also pointed out the importance of looking not only at when the foreseeable future ends, but also when it begins. Temporally, the latter distinguishes threatened and endangered species, a demarcation that has remained fuzzy for far too long. As discussed in Section II.A, the absence of a clear, meaningful distinction between these two categories is a major barrier to adjusting levels of ESA protection based on a species' level of vulnerability.

The trade offs of this recommendation include politicization of the issue of climate change,[178] which makes the feasibility of implementing a more expansive definition of "foreseeable future" and better integration of climate change into vulnerability assessments a challenge. While adjusting regulatory interpretation of "foreseeable future" is an option, the cleanest clarification to address the problems with the current definition of "foreseeable future" may require legislative change. The Services will also need additional resources, both in terms of funding and staff, to ensure adequate consideration of climate change and more effective analysis of range shifts, behavioral changes, and changes in habitat niche.

### 2. Develop More Proactive Recovery Planning and Implementation Policy

A 2019 study found that while many species are adapting to climate change, their long-term survival is not guaranteed because climate change is outpacing species adaptation.[179] Traditionally, conservation strategies focused on preservation—"[t]he idea that the best action for preserving nature is inaction."[180] However, such "[p]assive management strategies are poorly matched to climate change and will insufficiently safeguard biodiversity."[181] Recovery plans do not adequately recognize or address threats imposed by climate change, nor do they have enough principles to guide effective climate adaptation.[182] More proactive species management measures are needed to help species adapt to our rapidly changing climate.[183]

**Administrative**. The Services should develop policy for recovery planning and implementation that encourages proactive measures, including:

- Assisted migration or relocation of entire species where necessary for recovery;[184]
- Invasive species or disease control, proscribed fires, and other non-climatic stressors;[185]
- Wildlife corridors;[186]
- Protection of future suitable habitats;[187]
- Engineering of habitat;[188]
- Genetic augmentation;
- Section 5 land acquisition.

A policy encouraging these measures should ensure regular monitoring and evaluation of the measure employed, as well as online publication of such assessments to allow for "interjurisdictional information sharing and discourse."[189]

173. Delach et al., *supra* note 159, at 1001.
174. Evans et al., *supra* note 51, at 23 (discussing a three-factor framework: "(1) the species' exposure to climate change based on past and future projected change; (2) the species' biological sensitivity (using long term physiological or ecological studies documenting species' responses to climate change); and (3) the potential that both the species and their habitat has to adapt to climate change").
175. *See, e.g.*, Doremus, *supra* note 157, at 226.
176. IUCN, Guidelines for Using the IUCN Red List Categories and Criteria v. 14, at 19 (2019), http://cmsdocs.s3.amazonaws.com/RedListGuidelines.pdf.
177. October 2020 Workshop Roundtable, *supra* note 23.
178. *See* Delach et al., *supra* note 159, at 1002.
179. Victoria Radchuk et al., *Adaptive Responses of Animals to Climate Change Are Most Likely Insufficient*, Nature Commc'n, July 2019, at 1; *see also* Jenny Howard, *Some Animals Can Adapt to Climate Change—Just Not Fast Enough*, Nat'l Geographic, Aug. 19, 2019, https://www.nationalgeographic.com/environment/2019/08/many-animals-can-adapt-climate-change-just-not-fast-enough-/.
180. Doremus, *supra* note 157, at 206.
181. Alejandro E. Camacho, *Assisted Migration: Redefining Nature and Natural Resource Law Under Climate Change*, 27 Yale J. on Reg. 171, 234 (2010).
182. *See, e.g.*, Evans et al., *supra* note 51, at 28; The Wildlife Society, *supra* note 47, at 14.
183. Evans et al., *supra* note 51, at 24; *see also* Camacho, *supra* note 181.
184. *See, e.g.*, Camacho, *supra* note 181; Evans et al., *supra* note 51, at 24.
185. *See* Evans et al., *supra* note 51, at 23.
186. *Id.*
187. *Id.* at 24.
188. *Id.*
189. Camacho, *supra* note 181, at 255.

From these measures, the Services should also develop a set of emergency tools for species with an extremely high risk of extinction from threats, including climate change,[190] invasive species, and disease, and should develop guidance on when more active strategies can and should be adopted.[191] Such emergency measures may include assisted migration, genetic augmentation, and §5 land acquisition to create emergency habitat.[192] Further, recovery planning and implementation must be linked to other comprehensive adaptation planning efforts outside of the ESA.[193]

Trade offs of this recommendation can vary depending on the proactive measure. For example, assisted migration is particularly controversial, and may face more political resistance.[194] Skeptics of assisted migration criticize the uncertainty surrounding the strategy, information gaps, and risks of ecological harms.[195] Many also argue that proactive measures can have high administrative costs.[196] However, in light of the rapid pace of climate change, these challenges are outweighed by the need for proactive measures to help species adapt and to enhance conservation.

Climate-affected species also raise the question of whether those species can even survive in their current habitat. If not and they require translocation, do those species cease to exist as we understand them?[197] For example, if Key deer need to be moved to the mainland of Florida because their entire habitat is lost to sea-level rise, what then distinguishes this subspecies from the whitetail deer? This raises more fundamental questions about how society will deal with the ethical, legal, and scientific aspects of climate adaptation for highly vulnerable species, especially species that will become extirpated from their current range because of climate change. Today, the Services have no framework for handling these situations, and participants pointed to the need for a much broader discussion on this topic.

### *F. Improve Generation, Quality, and Public Dissemination of ESA Data*

The ESA is often criticized for its failure to use sound science due to a lack of quality data, as well as inadequate data-sharing and transparency.[198] There is a broad need for the Services to improve how they collect, analyze, and share data, and to more clearly differentiate between scientific and policy judgments.

#### 1. Develop an Organized Advocacy Campaign

Roundtable participants stressed the need for an advocacy campaign, organized and carried out by nongovernmental conservation organizations and directed at the leadership level of the Services, to address the lack of information and highlight the benefits of acquiring information, including the ability to use such information to ensure funds are invested in ways that are best for conservation.

To improve information generation, roundtable participants discussed the option of engaging third parties. However, participants were concerned that this would raise liability and data quality issues, and merely shift Services staff responsibilities away from data collection toward data review without alleviating work load. Instead, participants recommended placing the data-collection burden on permit applicants. The data standard could be more demanding in order to help the Services with the listing analysis.[199] One challenge of this approach is protecting the confidentiality of agency data. However, this might be addressed by the Services adopting a program similar to the U.S. Forest Service's Forest Inventory and Analysis Program,[200] which allows the public to seek agency information so long as an explanation is provided regarding the intended use of the information.[201]

The campaign should promote interagency coordination to leverage agency scientific expertise and resolve areas of scientific disagreement or uncertainty. With greater information generated and improved interpretation of that data through interagency coordination, the Services would better be able to enhance species conservation. Further, this data should be made more publicly accessible through a clearinghouse with a searchable online portal.

#### 2. Improve the BAS Standard

Decisions under the ESA pertaining to listing, critical habitat designations, and interagency consultation must be based on the BAS[202] to ensure "objective, value-neutral decision making by specially trained experts."[203] The ESA does not provide a definition of the standard[204]; however, courts have provided guidance. Courts have generally found that the BAS standard is met so long as the agency

190. For example, the habitat of the Key deer and Key Largo woodrat will be eliminated by climate change within the next few decades. October 2020 Workshop Roundtable, *supra* note 23.
191. *Id.*
192. *Id.*
193. *Id.*
194. *See* Camacho, *supra* note 181, at 173, 225; Jessica Kabaz-Gomez, *Rules for Playing God: The Need for Assisted Migration & New Regulation*, 19 Animal L. 111, 122-25 (2012).
195. Camacho, *supra* note 181, at 173, 185-88, 225; Kabaz-Gomez, *supra* note 194, at 120-21.
196. Camacho, *supra* note 181, at 184 (citing Jason S. McLachlan et al., *A Framework for Debate of Assisted Migration in an Era of Climate Change*, 21 Conservation Biology 297, 299-300 (2007)); *see also* Kabaz-Gomez, *supra* note 194, at 122; Evans et al., *supra* note 51, at 24.
197. October 2020 Workshop Roundtable, *supra* note 23.
198. *See*, *e.g.*, The Wildlife Society, *supra* note 47, at 13-14; Holly Doremus, *Preserving Citizen Participation in the Era of Reinvention: The Endangered Species Act Example*, 25 Ecology L.Q. 707, 715 (1999).
199. October 2020 Workshop Roundtable, *supra* note 23.
200. U.S. Department of Agriculture Forest Service, *Forest Inventory and Analysis*, https://www.fia.fs.fed.us (last modified Apr. 14, 2020).
201. October 2020 Workshop Roundtable, *supra* note 23.
202. Dennis D. Murphy & Paul S. Weiland, *Guidance on the Use of Best Available Science Under the U.S. Endangered Species Act*, Env't Mgmt., Apr. 2016, at 3.
203. Doremus, *supra* note 76, at 419; *see also* J. Tavener Holland, *Regulatory Daubert: A Panacea for the Endangered Species Act's "Best Available Science" Mandate*, 39 McGeorge L. Rev. 299, 303 (2008).
204. Elizabeth Kuhn, *Science and Deference: The "Best Available Science" Mandate Is a Fiction in the Ninth Circuit*, Geo. Env't L. Rev. Online 1, 3 (2016).

considers relevant, available data.[205] Courts have also refused to interpret the standard as placing an obligation on agencies to generate new data.[206]

Scoping session participants raised issues with the BAS standard, pointing out that it is the lowest standard because it creates no obligation to conduct science. Limited biological data are available for many listed species. As a result, the BAS at the time of a decision may be very poor. In other regulatory contexts, agencies are not permitted to make decisions if it is clear that additional data are needed to make an informed decision. For example, in stark contrast to the ESA's BAS standard, pesticide registrants under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)[207] must conduct research for eight to 10 years before a review.[208] Some argue the BAS standard has allowed agencies to hide behind the science screen, giving them unreviewable discretion.[209]

Scoping session participants also raised the issue that while decisions under the ESA about the acceptable amount of risk to a species need to be informed by science, they are also value or policy judgments.[210] This can be problematic if political appointees interfere in attempts to influence scientific findings in ways that advance their political or financial interests. This type of interference has existed in various administrations, but the Trump Administration, in particular, failed to insulate agency staff from political appointees.[211]

**Administrative**. These issues emphasize the need to improve the BAS standard. This could include:

- Requiring minimum standards that place the burden on project proponents to conduct the research needed to arrive at an informed regulatory decision;
- Mandating that other federal agencies collect relevant scientific data to support their §7(a)(1) duty;
- Placing limits on how political appointees can interpret the BAS standard; and
- Requiring consideration of any and all credible scientific data throughout the regulatory process, regardless of source.

These recommendations would enhance species conservation by building and improving the knowledge base on species to facilitate more well-informed, scientifically sound decisions. To mandate other federal agencies to collect relevant scientific data and place the duty of conducting research on project proponents, some recommend using information-forcing tools that already exist in the ESA,[212] or borrowing from other statutes such as the National Environmental Policy Act (NEPA).[213]

For example, the ESA's §7 consultation provisions require agencies to "use the best scientific and commercial data available or which can be obtained during the consultation."[214] This could be revised to require a jeopardy opinion, "unless the available information is sufficient to establish that the proposed action more likely than not will not jeopardize the species."[215] This would not only incentivize data generation where data are lacking, but would also place the burden of that data generation on project proponents.

Placing limits on how political appointees can interpret the BAS standard would enhance species conservation by ensuring that agency scientists' data analyses and findings are better insulated from influence by political appointees.[216] This ties into scoping session participants' more general recommendation to develop a protocol for the science process to avoid making policy decisions about the process of science itself.[217] "Both scientific and political integrity are essential to accurate and legitimate policy choices."[218]

**Administrative**. To preserve this integrity, the Services should publish regulations to better ensure the scientific research and analysis process is conducted by scientists who are firewalled from political staff and external interest groups.[219] These regulations should require distinguishing between scientific questions and policy questions in notices of proposed rules and guidance,[220] recording scientific synthesis documents before they go to political officials,[221] and logging and publishing all communications between staff and political officials and interest groups.[222] The Services should develop expertise and training standards for staff and possibly political appointees on applying the BAS stan-

205. *Id.* at 3, 7 (citing Conner v. Burford, 848 F.2d 1441, 1454, 18 ELR 21182 (9th Cir. 1988), and San Luis & Delta-Mendota Water Auth. v. Locke, 776 F.3d 971, 995, 44 ELR 20276 (9th Cir. 2014)).
206. *Id.* at 3 (citing *Locke*, 776 F.3d at 995, and American Wildlands v. Kempthorne, 530 F.3d 991, 998-99, 38 ELR 20165 (D.C. Cir. 2008)).
207. 7 U.S.C. §§136-136y, ELR Stat. FIFRA §§2-35.
208. *Id.*; 7 U.S.C. §136.
209. April 2019 Scoping Session, *supra* note 22; *see also* Wendy Wagner, *The Science Charade in Toxic Risk Regulation*, 95 Colum. L. Rev. 1613, 1662-66 (1995) (noting that judicial reluctance to oversee technical decisions encourages agency "science charades").
210. April 2019 Scoping Session, *supra* note 22; *see also* Holly Doremus, *Scientific and Political Integrity in Environmental Policy*, 86 Tex. L. Rev. 1601 (2008).
211. Coral Davenport, *Trump Administration Moves to Lift Protections for Fish and Divert Water to Farms*, N.Y. Times, Oct. 22, 2019, https://www.nytimes.com/2019/10/22/climate/trump-delta-smelt.html.
212. Doremus, *supra* note 76, at 444.
213. April 2019 Scoping Session, *supra* note 22; 42 U.S.C. §4332, ELR Stat. NEPA §102.
214. 16 U.S.C. §1536.
215. Doremus, *supra* note 76, at 445.
216. Doremus, *supra* note 210, at 1635.
217. April 2019 Scoping Session, *supra* note 22.
218. Doremus, *supra* note 210, at 1602.
219. *See* Center for Science and Democracy at the Union of Concerned Scientists & UCI Law Cleanr, Conflicts of Interest at Federal Agencies: Recommendations for 2021 and Beyond (2020), https://www.ucsusa.org/sites/default/files/2020-09/conflicts-of-interest-at-federal-agencies.pdf; Thomas O. McGarity & Wendy E. Wagner, *Deregulation Using Stealth "Science" Strategies*, 68 Duke L.J. 1719, 1802-03 (2019).
220. Bipartisan Policy Center, Improving the Use of Science in Regulatory Policy 15 (2009), https://bipartisanpolicy.org/wp-content/uploads/2019/03/BPC-Science-Report-fnl.pdf.
221. McGarity & Wagner, *supra* note 219, at 1792.
222. Martha Kinsella et al., Brennan Center for Justice, Executive Actions to Restore Integrity and Accountability in Government 14 (2020), https://www.brennancenter.org/sites/default/files/2020-07/ExecutiveActions_Draft03-2.pdf.

dard and addressing scientific uncertainty. To strengthen independent oversight of this process by which science is incorporated into ESA decisions, participants recommended periodic audits or creation of a scientific advisory body within the agency.[223]

There are trade offs associated with these recommendations. Building the knowledge base on species requires greater resources to not only generate data, but also review it. As with many of the recommendations in this report, this recommendation implicates the chronic problem of inadequate institutional capacity and funding at the Services.[224] There may also be greater delays in the regulatory process when other agencies are required to generate data and the additional steps that need to be taken to ensure effective firewalls are in place. Further, scoping session participants pointed out that changes to the BAS standard would reduce an agency's discretion, which will inevitably draw significant pushback from agencies.[225]

## III. Conclusion

Recommendations for improving the ESA from a conservation perspective are long overdue. Biodiversity loss is accelerating at an unprecedented rate—"a quarter of all species face extinction, many within decades."[226] The ESA has been effective at protecting many species, but there is far greater potential to enhance species conservation by implementing these six changes to the ESA or its implementation regulations and policies:

1. Tailor protections for endangered, threatened, and recovered species and their habitats based on level of vulnerability
2. Revise incidental take authorization standards to "no-net-loss," "full mitigation," or "net benefit or recovery contribution" standard
3. Improve recovery planning, including recovery plan implementation by all relevant federal agencies
4. Provide incentives for species conservation on private, state, and federal lands
5. Account and prepare for ecological change in listing, authorization processes, and recovery planning and implementation
6. Improve generation, quality, and public dissemination of ESA data

223. April 2019 Scoping Session, *supra* note 22, and October 2020 Workshop Roundtable, *supra* note 23.
224. *See*, *e.g.*, Murphy & Weiland, *supra* note 202, at 8.
225. April 2019 Scoping Session, *supra* note 22.
226. Gerardo Ceballos et al., *Vertebrates on the Brink as Indicators of Biological Annihilation and the Sixth Mass Extinction*, 117 Proc. Nat'l Acad. Sci. 13596, 13596 (2020) (citing recent United Nations report).

**From:** Li, Jake
**To:** Griffo, Shannon
**Cc:** Fugh, Justina
**Subject:** RE: Two ethics questions
**Date:** Tuesday, July 6, 2021 10:14:14 AM
**Attachments:** image001.png

---

Good morning Shannon – Great, thanks for the response.

Hope you both had a nice holiday weekend!
Jake

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Sent:** Tuesday, July 6, 2021 8:55 AM
**To:** Li, Jake <Li.Jake@epa.gov>
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: Two ethics questions

Hi Jake,

Yes, I agree that you would be able to attend a meeting where dicamba is on the agenda based on what you've described below (as long as your former client is not present). So for the Farm Bureau meeting, I do not see any issues with your participation.

Thanks!
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Friday, July 02, 2021 2:42 PM
**To:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: Two ethics questions

Hi Shannon,

Thanks for the thorough explanation. It's very useful and has helped me better understand the boundaries of the ethics pledge. The distinction between a pesticide being a single-registrant product (e.g., Enlist) versus a multiple-registrant product (e.g.,

some of the organophosphate pesticides) is particularly useful. I agree that it's fair to assume that the meeting at issue will involve discussion of the conditional registration of Enlist, so I'll work with OSCPP staff to structure the meeting to recuse myself from that portion of the discussion.

While you're drafting the recusal statement, I wanted to ask another meeting ethics question, which came up yesterday afternoon. This one involves an upcoming Farm Bureau meeting that has dicamba on the agenda. Corteva used to be a registrant for dicamba, but in February of this year the company announced that it was discontinuing its existing dicamba brand formulation, FeXapan, and won't seek reregistration under FIFRA. And in April, the company announced that it isn't seeking registration of any new dicamba formulation. So it seems clear that Corteva no longer has an interest or stake in the registration of dicamba. Further, Bayer and BASF still have dicamba registrations. In light of these facts, is it correct to interpret the ethics pledge as not requiring me to recuse myself from meetings in which dicamba is on the agenda (assuming Corteva isn't a meeting participant, which will be the case for the Farm Bureau meeting)?

Thanks
Jake

---

**From:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Sent:** Thursday, July 1, 2021 5:31 PM
**To:** Li, Jake <Li.Jake@epa.gov>
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: Two ethics questions

Hi Jake,

Instead of adding more text into your questions below, I'm just going to try to summarize my responses here. Let's see how I do…

Yes to your first question about 2641.201(h), and I find those examples extremely helpful as well! But let me see if I can simplify this and address your next questions by sticking with the terms we use in the Ethics world. As Justina explained, the Pledge says you cannot participate in any particular matter involving specific parties that includes your former employer or client – meaning the former client/employer is a party or represents a party. And as you know from the regs, a "particular matter involving a specific party" is defined as a specific proceeding affecting a party's rights or a discrete transaction between identified parties (e.g., contract, license, grant, **pesticide registration**, enforcement action, lawsuit, permit, administrative adjudication or decision). We also know that the pledge expands this definition to include "any meeting or communication with the former employer or client that relates to the performance of the official's duties, *unless that matter to be discussed is*

*a broad matter of general applicability and the meeting is open to all interested parties*." These matters of general applicability include rulemakings or policy matters that distinctively affect a particular industry or identifiable class of persons.

So let's go back to the example you provided below. In the past, we've determined that certain pesticides are particular matters involving specific parties for pesticide registration purposes (because we can identify each of the manufacturers of that chemical). If the stakeholders are discussing the actual conditional registration (which is what is listed on the agenda), then you would need to be recused from that portion of the meeting because we consider the conditional registration to be a specific party matter involving your former client. But if instead, they wanted to discuss certain pesticides generally (and the impact on all manufacturers or end-users of the pesticide), and don't get into the specifics of any registration, then we'd need to delve down a little deeper. Depending on the pesticide and what is being discussed, it's not always the case that you wouldn't be able to attend a general meeting about that pesticide. If there were multiple manufacturers of the pesticide, we'd say you would probably be able to participate in that general discussion. But in this case, your former client is the *only manufacturer* of the pesticide. So it is strictly a Corteva product. When we do the ethics analysis, the focus needs to be whether Corteva is itself a party or directly involved in whatever will be discussed. And again, because it's solely a Corteva product, we'd say that you should recuse from any meetings about this pesticide.

But let's go through some other examples. If you were giving a speech about the number of registrations pending (or conditional registrations), you'd be able to say "including Enlist Duo" because you are simply reporting out and not talking about any specifics, nor are you participating personally and substantially in any substantive discussions about the pesticide. Or let's say you are in an EPA meeting, and someone mentions Enlist Duo in passing, and does not get into the substance, then it's still okay to be there. But if anyone starts talking about litigation involving the pesticide, or the conditional registration, or anything substantive, you should recuse.

You mentioned being confused about what you called "matter-specific restrictions" which tend to deal with the former clients. You're right that the concern isn't necessarily with having privileged access, but the Office of Government Ethics has described the concern here as a "lingering affinity and mixed loyalties" related to former clients. Even if you didn't work on that specific party matter (Corteva's pesticide), you personally provided services to that entity within the two years prior to your appointment and the Executive Order is directed to the kind of affinities/mixed loyalties that could arise from that prior relationship.

I know this is a lot, but the good news is that we are here to assist along the way. We'll get a recusal statement in place for you which will notify others of your recusal obligations, and in that statement, you will identify someone in your office who will assist in screening matters that come before you (e.g., meeting invites, registrations, litigation, etc.). And we'll chat more about all this once I've gone through that list you sent me.

Just let me know if you have any follow-up questions and I'll start putting together a draft of your recusal.

Thanks!
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Thursday, July 01, 2021 11:50 AM
**To:** Li, Jake <Li.Jake@epa.gov>
**Cc:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Two ethics questions

Hi Jake,
Shannon Griffo, copied here, will reach out to you to follow up. She's the person who's going to review your new entrant report (hint, hint) and draft your recusal statement. Please send her your list of clients, including *pro bono,* over the last 2 years.
Cheers,
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Wednesday, June 30, 2021 6:56 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Two ethics questions

Hi Justina, Victoria, and Shannon –

Justina, thanks for the prompt response—much appreciated! And Victoria, thanks for the great training. Before I forget, I've attached my signed ethics pledge. I've also posted in blue text below my responses and a few follow-up questions. Please feel free to call me if it's easier than responding by email.

Thanks
Jake

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Wednesday, June 30, 2021 4:27 PM
**To:** Li, Jake <Li.Jake@epa.gov>
**Cc:** Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Two ethics questions

Hi Jake,
See my comments below:

I'm now on board at EPA and have the ethics and financial disclosures on my list of things to do.
JUSTINA: Welcome aboard! I hear you had great questions during your initial ethics training with Victoria, so I'm not surprised that you've got great questions now. In terms of your homework, though, don't forget to send us your signed pledge if you haven't already and also please work on your financial disclosure report. We also need a list of your former clients over the past two years so that we can help you navigate your recusal issues. We won't be able to actually draft your recusal statement until we have your clients and disclosure report. Shannon Griffo, copied here, will be reviewing your disclosure report and drafting your recusal statement.
It's quite lovely, really, that you're so keen on understanding the ethics rules, but we really are here to help you. After all, if you guess wrong, then we can't help you after the fact.

I did want to ask you two ethics questions about potential meetings.

1. Before joining EPA, I was in communications with Alex Dunn, the former AA OCSPP, about setting up a time to discuss her experience working at EPA. We never found the time to meet before I joined EPA. Are there ethics prohibitions on my meeting with Alex? We wouldn't cover any of her client matters (she's now a lawyer at Baker Botts) or any of my prior client matters. I don't recall learning of any ethics prohibitions that apply to this situation, but I also haven't had time to study all of those prohibitions in detail yet, which is why I wanted to reach out to you.

   A related scenario is that the former DAA for OCSPP (Nancy Beck) also offered to speak with me about her experience at EPA. That outreach didn't occur until my position was publicly announced (but before I started the job on Monday). I've talked with Nancy over the years on work matters, but never one-on-one. Would speaking with Nancy also be prohibited?

JUSTINA: There are ethics rules that apply to you as an EPA employee, and there are different rules that apply to both Nancy and Alex. Although we don't have your recusal situation buttoned up, I don't anticipate that you have any issues with Baker Botts so you may engage in a conversation with Alex. But for her part, Alex is precluded from representing back to EPA on anything at all, so if she pursues this, then she may do so only in her personal capacity. She should not bill the firm or any client for the time spent talking to you. We would encourage her to seek post-employment advice from EPA Ethics before talking to you since you are now a federal employee. Unlike Alex, Nancy Beck was not a PAS appointee and, in fact, was never a political appointee. Instead, she was

appointed to an administratively determined position that did not require her to sign the Trump Ethics Pledge. Though still our employee of record, she did not work directly for EPA in her last year, so she is not bound by the one-year cooling off period with EPA at 18 USC 207(c) like Alex. You may talk to Nancy directly so long as she does not represent her current employer back to you on something that she worked on personally and substantially previously. Nancy has always been an attentive ethics client, so I would expect her to contact me if she had any questions.

Thanks for the explanation. I can confirm that Alex (and Nancy) contacted me only in their personal capacity and not even using their current work email. I don't anticipate any discussions raising the post-employment issues you identified, including any client or law firm specific representations. The anticipated conversations (assuming I proceed with them) would center on each of their experiences working at OSCPP and ESA-FIFRA issues in general. And thanks for explaining Nancy's role—I had forgotten that she wasn't a political appointee.

2. OCSPP received a request by a coalition of agricultural stakeholders to discuss a variety of pesticide-related issues, including improving the ESA-FIFRA process (which is my main responsibility in the coming years). Although the coalition would like to discuss general process improvements (i.e., matter of general applicability), their agenda also includes EPA's conditional registration of the pesticide Enlist Duo. The registrant for Enlist is Corteva, which is a former client of mine and thus covered by the 2 year recusal. Although I've never worked on Enlist issues for Corteva, and although they won't be at this agricultural stakeholders meeting, I nonetheless wanted to run this situation by you. If I recall correctly from our prior discussions, the ethics recusal focuses on specific parties rather than issues. The agenda doesn't indicate what specifically about the Enlist conditional registration the meeting requestors seek to discuss. But I think it's noteworthy that the Enlist registration affects a very wide group of agricultural stakeholders rather than only specific parties. When I review the example below from 5 CFR 2641.201, I can come up with a reasonable argument that the effects of the Enlist registration are similar in breadth to the example of the MSHA regulations affecting mine workers. Although Enlist doesn't affect *all* of agriculture, it does affect a significant portion of the sector because of its very broad use.

> A former employee of the Mine Safety and Health Administration (MSHA) participated personally and substantially in the development of a regulation establishing certain new occupational health and safety standards for mine workers. Because the regulation applies to the entire mining industry, it is a particular matter of general applicability, not a matter involving specific parties, and the former employee would not be prohibited from making post-employment representations to the Government in connection with this regulation

Given that I'm only beginning to understand exactly how the Biden ethics pledge applies to me, I will lean in the direction of consulting with you or others at your office, at least in the beginning of my employment until I have a better understanding of how the ethics pledge applies. Meeting with a variety of stakeholders will be important to the success of my position, especially to ensuring that stakeholders feel that both Michal and I are listening to their concerns. Thus, if consistent with my ethics pledge and other related obligations, I would like to find ways for me to attend meetings like the one at issue (and if I'm recused from participating only in specific portions of the meeting, then

figuring out how to structure the meeting so that I don't participate in those portions).

JUSTINA: The ethics regulation you've cited appears in the *post-employment* regulation, which is not the genesis of your client restriction at all. Instead, focus on Executive Order 13989, Section 1, paragraph 2, and then also the definition in Section 2, paragraph (j). You are prohibited from working on any specific party matter in which your former client is a party or represents a party, which means that you cannot be involved in the conditional registration of the pesticide Enlist Duo at all since it's as specific party matter and the registrant is a former client. While you may attend the meeting at which other issues, such as matters of general applicability, are discussed, you will have to recuse yourself – *leave the meeting* – when the Enlist Duo issue arises on the agenda. If the item is omitted from the agenda yet someone brings it up anyway, then you must step out because you are prohibited from working on that specific party matter at all, including hearing what others – internal or external – to EPA have to say about it. The pledge is quite expansive when it comes to your former clients: no matter whether you worked on the specific party matter for them or not, you can't be involved simply because they are. What I explained to you previously (and Victoria did more recently in your initial ethics briefing) is that the only exception to allowing you to interact in any way with your former client is if: (a) it's a meeting or communication, (b) the subject of which is a matter of general applicability (so not the Enlist Duo registration), (c) there are at least five parties present, only one of which is your former client, and (d) those in attendance represent a diversity of viewpoints. To learn more about how to apply the pledge restrictions, look at DO-09-011 from the Office of Government Ethics.

Thanks for the explanation. A few responses and questions:

- I had looked at the post-employment regulation in section 2641.201(h) because Section 2, paragraph (j) refers to that regulation's definition of "particular matters involving specific parties" and I found the examples in 2641.201(h) useful to illustrate how to interpret this phrase. I recognize, however, that Section 2, paragraph (j) expands the definition in 2641.201(h) to cover "communications related to the performance of one's official duties." As a result, my assumption is that the examples in section 2641.201(h) provide useful context but don't define the outer limits of my ethics obligations—is that correct?

- As I understand it, there appears to be (1) matter-specific and (2) party-specific ethics restrictions, and they can operate independently? So as I understand it, my inability to participate in any meeting involving Enlist—even if Corteva is not a participant to those meetings, as is the case for the agricultural stakeholder meeting at issue—arises from the matter-specific restrictions. That is, because Corteva is a former client of mine, any specific party matter involving a Corteva product is covered by the recusal (*regardless of whether they appear in a meeting* and regardless of whether I worked on that specific party matter), absent the exception you specified.

  Separate from the matter-specific restrictions are the party-specific restrictions, which would prevent me from participating in any non-public meeting in which Corteva is present involving any specific matter, absent the exception you specified. It doesn't matter if the topic of that meeting is one that I had worked on. This second set of restrictions makes complete sense to me, especially given the language in the DO-0-11 document explaining that "[t]he purpose of

this expansion of the traditional definition is to address concerns that former employers and clients may appear to have privileged access, which they may exploit to influence an appointee out of the public view." What I'm still not completely grasping is the first set of matter-specific restrictions, which appear to apply in a situation in which a former client would have no ability to influence me (because that client isn't present in the meeting). In those situations, the concern presumably isn't with privileged access to me but something else, such as the appearance of bias judgment because of my prior work with the client?

I realize that these questions are probably getting ahead of the recusal statement, which will presumably cover all of the issues. But since we're already discussing these questions, I figured I can close the loop on my understanding of how the ethics restrictions operate. Understanding these questions will help me more effectively apply my ethics obligations in real-time, such as in situations where I don't have the luxury of emailing you in advance for guidance (e.g., at a conference).

Thanks again!

Thanks for reaching out, and happy to talk anytime!
justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Wednesday, June 30, 2021 2:26 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Two ethics questions

Hi Justina,

I'm now on board at EPA and have the ethics and financial disclosures on my list of things to do. I did want to ask you two ethics questions about potential meetings.

1. Before joining EPA, I was in communications with Alex Dunn, the former AA OCSPP, about setting up a time to discuss her experience working at EPA. We never found the time to meet before I joined EPA. Are there ethics prohibitions on my meeting with Alex? We wouldn't cover any of her client matters (she's now a lawyer at Baker Botts) or any of my prior client matters. I don't recall learning of any ethics prohibitions that apply to this situation, but I also haven't had time to study all of those prohibitions in detail yet, which is why I wanted to reach out to you.

A related scenario is that the former DAA for OCSPP (Nancy Beck) also offered to speak with me about her experience at EPA. That outreach didn't occur until my position was publicly announced (but before I started the job on Monday). I've talked with Nancy over the years on work matters, but never one-on-one. Would speaking with Nancy also be prohibited?

2. OCSPP received a request by a coalition of agricultural stakeholders to discuss a variety of pesticide-related issues, including improving the ESA-FIFRA process (which is my main responsibility in the coming years). Although the coalition would like to discuss general process improvements (i.e., matter of general applicability), their agenda also includes EPA's conditional registration of the pesticide Enlist Duo. The registrant for Enlist is Corteva, which is a former client of mine and thus covered by the 2 year recusal. Although I've never worked on Enlist issues for Corteva, and although they won't be at this agricultural stakeholders meeting, I nonetheless wanted to run this situation by you. If I recall correctly from our prior discussions, the ethics recusal focuses on specific parties rather than issues. The agenda doesn't indicate what specifically about the Enlist conditional registration the meeting requestors seek to discuss. But I think it's noteworthy that the Enlist registration affects a very wide group of agricultural stakeholders rather than only specific parties. When I review the example below from 5 CFR 2641.201, I can come up with a reasonable argument that the effects of the Enlist registration are similar in breadth to the example of the MSHA regulations affecting mine workers. Although Enlist doesn't affect *all* of agriculture, it does affect a significant portion of the sector because of its very broad use.

> A former employee of the Mine Safety and Health Administration (MSHA) participated personally and substantially in the development of a regulation establishing certain new occupational health and safety standards for mine workers. Because the regulation applies to the entire mining industry, it is a particular matter of general applicability, not a matter involving specific parties, and the former employee would not be prohibited from making post-employment representations to the Government in connection with this regulation

Given that I'm only beginning to understand exactly how the Biden ethics pledge applies to me, I will lean in the direction of consulting with you or others at your office, at least in the beginning of my employment until I have a better understanding of how the ethics pledge applies. Meeting with a variety of stakeholders will be important to the success of my position, especially to ensuring that stakeholders feel that both Michal and I are listening to their concerns. Thus, if consistent with my ethics pledge and other related obligations, I would like to find ways for me to attend meetings like the one at issue (and if I'm recused from participating only in specific portions of the meeting, then figuring out how to structure the meeting so that I don't participate in those portions).

Thanks in advance for you help. If it's easier to discuss over the phone, please feel free to call me.
Jake

Ya-Wei (Jake) Li
Deputy Assistant Administrator for Pesticide Programs

Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Li.Jake@epa.gov | 202.819.6914

| | |
|---|---|
| **From:** | Li, Jake |
| **To:** | Fugh, Justina |
| **Cc:** | Griffo, Shannon |
| **Subject:** | RE: Two ethics questions |
| **Date:** | Thursday, July 1, 2021 11:53:28 AM |
| **Attachments:** | image001.png |

Great, thanks Justina. I did start my new entrant report this morning but it will still take some time to gather all my financial records, so I will prioritize sending Shannon a list of my clients and employers over the past two years. Shannon, I'll plan to send you that list as a Word document over regular email, unless you prefer a different method.

Thanks all!
Jake

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Thursday, July 1, 2021 11:50 AM
**To:** Li, Jake <Li.Jake@epa.gov>
**Cc:** Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Two ethics questions

Hi Jake,
Shannon Griffo, copied here, will reach out to you to follow up. She's the person who's going to review your new entrant report (hint, hint) and draft your recusal statement. Please send her your list of clients, including *pro bono,* over the last 2 years.
Cheers,
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Wednesday, June 30, 2021 6:56 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Two ethics questions

Hi Justina, Victoria, and Shannon –

Justina, thanks for the prompt response—much appreciated! And Victoria, thanks for the great training. Before I forget, I've attached my signed ethics pledge. I've also posted in blue text below my

responses and a few follow-up questions. Please feel free to call me if it's easier than responding by email.

Thanks
Jake

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Wednesday, June 30, 2021 4:27 PM
**To:** Li, Jake <Li.Jake@epa.gov>
**Cc:** Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Two ethics questions

Hi Jake,
See my comments below:

I'm now on board at EPA and have the ethics and financial disclosures on my list of things to do.
JUSTINA: Welcome aboard! I hear you had great questions during your initial ethics training with Victoria, so I'm not surprised that you've got great questions now. In terms of your homework, though, don't forget to send us your signed pledge if you haven't already and also please work on your financial disclosure report. We also need a list of your former clients over the past two years so that we can help you navigate your recusal issues. We won't be able to actually draft your recusal statement until we have your clients and disclosure report. Shannon Griffo, copied here, will be reviewing your disclosure report and drafting your recusal statement.
It's quite lovely, really, that you're so keen on understanding the ethics rules, but we really are here to help you. After all, if you guess wrong, then we can't help you after the fact.

I did want to ask you two ethics questions about potential meetings.

1. Before joining EPA, I was in communications with Alex Dunn, the former AA OCSPP, about setting up a time to discuss her experience working at EPA. We never found the time to meet before I joined EPA. Are there ethics prohibitions on my meeting with Alex? We wouldn't cover any of her client matters (she's now a lawyer at Baker Botts) or any of my prior client matters. I don't recall learning of any ethics prohibitions that apply to this situation, but I also haven't had time to study all of those prohibitions in detail yet, which is why I wanted to reach out to you.

   A related scenario is that the former DAA for OCSPP (Nancy Beck) also offered to speak with me about her experience at EPA. That outreach didn't occur until my position was publicly announced (but before I started the job on Monday). I've talked with Nancy over the years on work matters, but never one-on-one. Would speaking with Nancy also be prohibited?

JUSTINA: There are ethics rules that apply to you as an EPA employee, and there are different rules that apply to both Nancy and Alex. Although we don't have your recusal situation buttoned up, I don't anticipate that you have any issues with Baker Botts so you may engage in a conversation with

Alex. But for her part, Alex is precluded from representing back to EPA on anything at all, so if she pursues this, then she may do so only in her personal capacity. She should not bill the firm or any client for the time spent talking to you. We would encourage her to seek post-employment advice from EPA Ethics before talking to you since you are now a federal employee. Unlike Alex, Nancy Beck was not a PAS appointee and, in fact, was never a political appointee. Instead, she was appointed to an administratively determined position that did not require her to sign the Trump Ethics Pledge. Though still our employee of record, she did not work directly for EPA in her last year, so she is not bound by the one-year cooling off period with EPA at 18 USC 207(c) like Alex. You may talk to Nancy directly so long as she does not represent her current employer back to you on something that she worked on personally and substantially previously. Nancy has always been an attentive ethics client, so I would expect her to contact me if she had any questions.

Thanks for the explanation. I can confirm that Alex (and Nancy) contacted me only in their personal capacity and not even using their current work email. I don't anticipate any discussions raising the post-employment issues you identified, including any client or law firm specific representations. The anticipated conversations (assuming I proceed with them) would center on each of their experiences working at OSCPP and ESA-FIFRA issues in general. And thanks for explaining Nancy's role—I had forgotten that she wasn't a political appointee.

2. OCSPP received a request by a coalition of agricultural stakeholders to discuss a variety of pesticide-related issues, including improving the ESA-FIFRA process (which is my main responsibility in the coming years). Although the coalition would like to discuss general process improvements (i.e., matter of general applicability), their agenda also includes EPA's conditional registration of the pesticide Enlist Duo. The registrant for Enlist is Corteva, which is a former client of mine and thus covered by the 2 year recusal. Although I've never worked on Enlist issues for Corteva, and although they won't be at this agricultural stakeholders meeting, I nonetheless wanted to run this situation by you. If I recall correctly from our prior discussions, the ethics recusal focuses on specific parties rather than issues. The agenda doesn't indicate what specifically about the Enlist conditional registration the meeting requestors seek to discuss. But I think it's noteworthy that the Enlist registration affects a very wide group of agricultural stakeholders rather than only specific parties. When I review the example below from 5 CFR 2641.201, I can come up with a reasonable argument that the effects of the Enlist registration are similar in breadth to the example of the MSHA regulations affecting mine workers. Although Enlist doesn't affect *all* of agriculture, it does affect a significant portion of the sector because of its very broad use.

> A former employee of the Mine Safety and Health Administration (MSHA) participated personally and substantially in the development of a regulation establishing certain new occupational health and safety standards for mine workers. Because the regulation applies to the entire mining industry, it is a particular matter of general applicability, not a matter involving specific parties, and the former employee would not be prohibited from making post-employment representations to the Government in connection with this regulation

Given that I'm only beginning to understand exactly how the Biden ethics pledge applies to me, I will lean in the direction of consulting with you or others at your office, at least in the beginning of my

employment until I have a better understanding of how the ethics pledge applies. Meeting with a variety of stakeholders will be important to the success of my position, especially to ensuring that stakeholders feel that both Michal and I are listening to their concerns. Thus, if consistent with my ethics pledge and other related obligations, I would like to find ways for me to attend meetings like the one at issue (and if I'm recused from participating only in specific portions of the meeting, then figuring out how to structure the meeting so that I don't participate in those portions).

JUSTINA: The ethics regulation you've cited appears in the *post-employment* regulation, which is not the genesis of your client restriction at all. Instead, focus on Executive Order 13989, Section 1, paragraph 2, and then also the definition in Section 2, paragraph (j). You are prohibited from working on any specific party matter in which your former client is a party or represents a party, which means that you cannot be involved in the conditional registration of the pesticide Enlist Duo at all since it's as specific party matter and the registrant is a former client. While you may attend the meeting at which other issues, such as matters of general applicability, are discussed, you will have to recuse yourself – *leave the meeting* – when the Enlist Duo issue arises on the agenda. If the item is omitted from the agenda yet someone brings it up anyway, then you must step out because you are prohibited from working on that specific party matter at all, including hearing what others – internal or external – to EPA have to say about it. The pledge is quite expansive when it comes to your former clients: no matter whether you worked on the specific party matter for them or not, you can't be involved simply because they are. What I explained to you previously (and Victoria did more recently in your initial ethics briefing) is that the only exception to allowing you to interact in any way with your former client is if: (a) it's a meeting or communication, (b) the subject of which is a matter of general applicability (so not the Enlist Duo registration), (c) there are at least five parties present, only one of which is your former client, and (d) those in attendance represent a diversity of viewpoints. To learn more about how to apply the pledge restrictions, look at DO-09-011 from the Office of Government Ethics.

Thanks for the explanation. A few responses and questions:

- I had looked at the post-employment regulation in section 2641.201(h) because Section 2, paragraph (j) refers to that regulation's definition of "particular matters involving specific parties" and I found the examples in 2641.201(h) useful to illustrate how to interpret this phrase. I recognize, however, that Section 2, paragraph (j) expands the definition in 2641.201(h) to cover "communications related to the performance of one's official duties." As a result, my assumption is that the examples in section 2641.201(h) provide useful context but don't define the outer limits of my ethics obligations—is that correct?

- As I understand it, there appears to be (1) matter-specific and (2) party-specific ethics restrictions, and they can operate independently? So as I understand it, my inability to participate in any meeting involving Enlist—even if Corteva is not a participant to those meetings, as is the case for the agricultural stakeholder meeting at issue—arises from the matter-specific restrictions. That is, because Corteva is a former client of mine, any specific party matter involving a Corteva product is covered by the recusal (*regardless of whether they appear in a meeting* and regardless of whether I worked on that specific party matter), absent the exception you specified.

Separate from the matter-specific restrictions are the party-specific restrictions, which would prevent me from participating in any non-public meeting in which Corteva is present involving any specific matter, absent the exception you specified. It doesn't matter if the topic of that meeting is one that I had worked on. This second set of restrictions makes complete sense to me, especially given the language in the DO-0-11 document explaining that "[t]he purpose of this expansion of the traditional definition is to address concerns that former employers and clients may appear to have privileged access, which they may exploit to influence an appointee out of the public view." What I'm still not completely grasping is the first set of matter-specific restrictions, which appear to apply in a situation in which a former client would have no ability to influence me (because that client isn't present in the meeting). In those situations, the concern presumably isn't with privileged access to me but something else, such as the appearance of bias judgment because of my prior work with the client?

I realize that these questions are probably getting ahead of the recusal statement, which will presumably cover all of the issues. But since we're already discussing these questions, I figured I can close the loop on my understanding of how the ethics restrictions operate. Understanding these questions will help me more effectively apply my ethics obligations in real-time, such as in situations where I don't have the luxury of emailing you in advance for guidance (e.g., at a conference).

Thanks again!

Thanks for reaching out, and happy to talk anytime!
justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Wednesday, June 30, 2021 2:26 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Two ethics questions

Hi Justina,

I'm now on board at EPA and have the ethics and financial disclosures on my list of things to do. I did want to ask you two ethics questions about potential meetings.

1. Before joining EPA, I was in communications with Alex Dunn, the former AA OCSPP, about setting up a time to discuss her experience working at EPA. We never found the time to meet before I joined EPA. Are there ethics prohibitions on my meeting with Alex? We wouldn't

cover any of her client matters (she's now a lawyer at Baker Botts) or any of my prior client matters. I don't recall learning of any ethics prohibitions that apply to this situation, but I also haven't had time to study all of those prohibitions in detail yet, which is why I wanted to reach out to you.

A related scenario is that the former DAA for OCSPP (Nancy Beck) also offered to speak with me about her experience at EPA. That outreach didn't occur until my position was publicly announced (but before I started the job on Monday). I've talked with Nancy over the years on work matters, but never one-on-one. Would speaking with Nancy also be prohibited?

2. OCSPP received a request by a coalition of agricultural stakeholders to discuss a variety of pesticide-related issues, including improving the ESA-FIFRA process (which is my main responsibility in the coming years). Although the coalition would like to discuss general process improvements (i.e., matter of general applicability), their agenda also includes EPA's conditional registration of the pesticide Enlist Duo. The registrant for Enlist is Corteva, which is a former client of mine and thus covered by the 2 year recusal. Although I've never worked on Enlist issues for Corteva, and although they won't be at this agricultural stakeholders meeting, I nonetheless wanted to run this situation by you. If I recall correctly from our prior discussions, the ethics recusal focuses on specific parties rather than issues. The agenda doesn't indicate what specifically about the Enlist conditional registration the meeting requestors seek to discuss. But I think it's noteworthy that the Enlist registration affects a very wide group of agricultural stakeholders rather than only specific parties. When I review the example below from 5 CFR 2641.201, I can come up with a reasonable argument that the effects of the Enlist registration are similar in breadth to the example of the MSHA regulations affecting mine workers. Although Enlist doesn't affect *all* of agriculture, it does affect a significant portion of the sector because of its very broad use.

> A former employee of the Mine Safety and Health Administration (MSHA) participated personally and substantially in the development of a regulation establishing certain new occupational health and safety standards for mine workers. Because the regulation applies to the entire mining industry, it is a particular matter of general applicability, not a matter involving specific parties, and the former employee would not be prohibited from making post-employment representations to the Government in connection with this regulation

Given that I'm only beginning to understand exactly how the Biden ethics pledge applies to me, I will lean in the direction of consulting with you or others at your office, at least in the beginning of my employment until I have a better understanding of how the ethics pledge applies. Meeting with a variety of stakeholders will be important to the success of my position, especially to ensuring that stakeholders feel that both Michal and I are listening to their concerns. Thus, if consistent with my ethics pledge and other related obligations, I would like to find ways for me to attend meetings like the one at issue (and if I'm recused from participating only in specific portions of the meeting, then figuring out how to structure the meeting so that I don't participate in those portions).

Thanks in advance for you help. If it's easier to discuss over the phone, please feel free to call me.

Jake

Ya-Wei (Jake) Li
Deputy Assistant Administrator for Pesticide Programs
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Li.Jake@epa.gov | 202.819.6914

| | |
|---|---|
| **From:** | Li, Jake |
| **To:** | Fugh, Justina |
| **Cc:** | Clarke, Victoria; Griffo, Shannon |
| **Subject:** | RE: Two ethics questions |
| **Date:** | Wednesday, June 30, 2021 6:55:35 PM |
| **Attachments:** | Biden Ethics Pledge for digital signature.pdf<br>image001.png |

---

Hi Justina, Victoria, and Shannon –
Justina, thanks for the prompt response—much appreciated! And Victoria, thanks for the great training. Before I forget, I've attached my signed ethics pledge. I've also posted in blue text below my responses and a few follow-up questions. Please feel free to call me if it's easier than responding by email.
Thanks
Jake

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Wednesday, June 30, 2021 4:27 PM
**To:** Li, Jake <Li.Jake@epa.gov>
**Cc:** Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Two ethics questions

Hi Jake,

See my comments below:

I'm now on board at EPA and have the ethics and financial disclosures on my list of things to do.
JUSTINA: Welcome aboard! I hear you had great questions during your initial ethics training with Victoria, so I'm not surprised that you've got great questions now. In terms of your homework, though, don't forget to send us your signed pledge if you haven't already and also please work on your financial disclosure report. We also need a list of your former clients over the past two years so that we can help you navigate your recusal issues. We won't be able to actually draft your recusal statement until we have your clients and disclosure report. Shannon Griffo, copied here, will be reviewing your disclosure report and drafting your recusal statement.
It's quite lovely, really, that you're so keen on understanding the ethics rules, but we really are here to help you. After all, if you guess wrong, then we can't help you after the fact.
I did want to ask you two ethics questions about potential meetings.

1. Before joining EPA, I was in communications with Alex Dunn, the former AA OCSPP, about setting up a time to discuss her experience working at EPA. We never found the time to meet before I joined EPA. Are there ethics prohibitions on my meeting with Alex? We wouldn't cover any of her client matters (she's now a lawyer at Baker Botts) or any of my prior client matters. I don't recall learning of any ethics prohibitions that apply to this situation, but I also haven't had time to study all of those prohibitions in detail yet, which is why I wanted to reach out to you.

   A related scenario is that the former DAA for OCSPP (Nancy Beck) also offered to speak with me about her experience at EPA. That outreach didn't occur until my position was publicly announced (but before I started the job on Monday). I've talked with Nancy over the years on work matters, but never one-on-one. Would speaking with Nancy also be prohibited?

JUSTINA: There are ethics rules that apply to you as an EPA employee, and there are different rules that apply to both Nancy and Alex. Although we don't have your recusal situation buttoned up, I don't anticipate that you have any issues with Baker Botts so you may engage in a conversation with Alex. But for her part, Alex is precluded from representing back to EPA on anything at all, so if she pursues this, then she may do so only in her personal capacity. She should not bill the firm or any client for the time spent talking to you. We would encourage her to seek post-employment advice from EPA Ethics before talking to you since you are now a federal employee. Unlike Alex, Nancy Beck was not a PAS appointee and, in fact, was never a political appointee. Instead, she was appointed to an administratively determined position that did not require her to sign the Trump Ethics Pledge. Though still our employee of record, she did not work directly for EPA in her last year, so she is not bound by the one-year cooling off period with EPA at 18 USC 207(c) like Alex. You may talk to Nancy directly so long as she does not represent her current employer back to you on something that she worked on personally and substantially previously. Nancy has always been an attentive ethics client, so I would expect her to contact me if she had any questions.

Thanks for the explanation. I can confirm that Alex (and Nancy) contacted me only in their personal capacity and not even using their current work email. I don't anticipate any discussions raising the post-employment issues you identified, including any client or law firm specific representations. The anticipated conversations (assuming I proceed with them) would center on each of their experiences working at OSCPP and ESA-FIFRA issues in general. And thanks for explaining Nancy's role—I had forgotten that she wasn't a political appointee.

2. OCSPP received a request by a coalition of agricultural stakeholders to discuss a variety of pesticide-related issues, including improving the ESA-FIFRA process (which is my main responsibility in the coming years). Although the coalition would like to discuss general process improvements (i.e., matter of general applicability), their agenda also includes EPA's conditional registration of the pesticide Enlist Duo. The registrant for Enlist is Corteva, which is a former client of mine and thus covered by the 2 year recusal. Although I've never worked on Enlist issues for Corteva, and although they won't be at this agricultural stakeholders meeting, I nonetheless wanted to run this situation by you. If I recall correctly from our prior discussions, the ethics recusal focuses on specific parties rather than issues. The agenda doesn't indicate what specifically about the Enlist conditional registration the meeting requestors seek to discuss. But I think it's noteworthy that the Enlist registration affects a very wide group of agricultural stakeholders rather than only specific parties. When I review the example below from 5 CFR 2641.201, I can come up with a reasonable argument that the effects of the Enlist registration are similar in breadth to the example of the MSHA regulations affecting mine workers. Although Enlist doesn't affect *all* of agriculture, it does affect a significant portion of the sector because of its very broad use.

> A former employee of the Mine Safety and Health Administration (MSHA) participated personally and substantially in the development of a regulation establishing certain new occupational health and safety standards for mine workers. Because the regulation applies to the entire mining industry, it is a particular matter of general applicability, not a matter involving specific parties, and the former employee would not be prohibited from making post-employment representations to the Government in connection with this regulation

Given that I'm only beginning to understand exactly how the Biden ethics pledge applies to me, I will

lean in the direction of consulting with you or others at your office, at least in the beginning of my employment until I have a better understanding of how the ethics pledge applies. Meeting with a variety of stakeholders will be important to the success of my position, especially to ensuring that stakeholders feel that both Michal and I are listening to their concerns. Thus, if consistent with my ethics pledge and other related obligations, I would like to find ways for me to attend meetings like the one at issue (and if I'm recused from participating only in specific portions of the meeting, then figuring out how to structure the meeting so that I don't participate in those portions).

JUSTINA: The ethics regulation you've cited appears in the *post-employment* regulation, which is not the genesis of your client restriction at all. Instead, focus on Executive Order 13989, Section 1, paragraph 2, and then also the definition in Section 2, paragraph (j). You are prohibited from working on any specific party matter in which your former client is a party or represents a party, which means that you cannot be involved in the conditional registration of the pesticide Enlist Duo at all since it's as specific party matter and the registrant is a former client. While you may attend the meeting at which other issues, such as matters of general applicability, are discussed, you will have to recuse yourself – *leave the meeting* – when the Enlist Duo issue arises on the agenda. If the item is omitted from the agenda yet someone brings it up anyway, then you must step out because you are prohibited from working on that specific party matter at all, including hearing what others – internal or external – to EPA have to say about it. The pledge is quite expansive when it comes to your former clients: no matter whether you worked on the specific party matter for them or not, you can't be involved simply because they are. What I explained to you previously (and Victoria did more recently in your initial ethics briefing) is that the only exception to allowing you to interact in any way with your former client is if: (a) it's a meeting or communication, (b) the subject of which is a matter of general applicability (so not the Enlist Duo registration), (c) there are at least five parties present, only one of which is your former client, and (d) those in attendance represent a diversity of viewpoints. To learn more about how to apply the pledge restrictions, look at DO-09-011 from the Office of Government Ethics.

Thanks for the explanation. A few responses and questions:

- I had looked at the post-employment regulation in section 2641.201(h) because Section 2, paragraph (j) refers to that regulation's definition of "particular matters involving specific parties" and I found the examples in 2641.201(h) useful to illustrate how to interpret this phrase. I recognize, however, that Section 2, paragraph (j) expands the definition in 2641.201(h) to cover "communications related to the performance of one's official duties." As a result, my assumption is that the examples in section 2641.201(h) provide useful context but don't define the outer limits of my ethics obligations—is that correct?

- As I understand it, there appears to be (1) matter-specific and (2) party-specific ethics restrictions, and they can operate independently? So as I understand it, my inability to participate in any meeting involving Enlist—even if Corteva is not a participant to those meetings, as is the case for the agricultural stakeholder meeting at issue—arises from the matter-specific restrictions. That is, because Corteva is a former client of mine, any specific party matter involving a Corteva product is covered by the recusal (*regardless of whether they appear in a meeting* and regardless of whether I worked on that specific party matter), absent the exception you specified.

  Separate from the matter-specific restrictions are the party-specific restrictions, which would

prevent me from participating in any non-public meeting in which Corteva is present involving any specific matter, absent the exception you specified. It doesn't matter if the topic of that meeting is one that I had worked on. This second set of restrictions makes complete sense to me, especially given the language in the DO-0-11 document explaining that "[t]he purpose of this expansion of the traditional definition is to address concerns that former employers and clients may appear to have privileged access, which they may exploit to influence an appointee out of the public view." What I'm still not completely grasping is the first set of matter-specific restrictions, which appear to apply in a situation in which a former client would have no ability to influence me (because that client isn't present in the meeting). In those situations, the concern presumably isn't with privileged access to me but something else, such as the appearance of bias judgment because of my prior work with the client?

I realize that these questions are probably getting ahead of the recusal statement, which will presumably cover all of the issues. But since we're already discussing these questions, I figured I can close the loop on my understanding of how the ethics restrictions operate. Understanding these questions will help me more effectively apply my ethics obligations in real-time, such as in situations where I don't have the luxury of emailing you in advance for guidance (e.g., at a conference).

Thanks again!

Thanks for reaching out, and happy to talk anytime!

justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Li, Jake <Li.Jake@epa.gov>
**Sent:** Wednesday, June 30, 2021 2:26 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Two ethics questions

Hi Justina,

I'm now on board at EPA and have the ethics and financial disclosures on my list of things to do. I did want to ask you two ethics questions about potential meetings.

1. Before joining EPA, I was in communications with Alex Dunn, the former AA OCSPP, about setting up a time to discuss her experience working at EPA. We never found the time to meet before I joined EPA. Are there ethics prohibitions on my meeting with Alex? We wouldn't cover any of her client matters (she's now a lawyer at Baker Botts) or any of my prior client matters. I don't recall learning of any ethics prohibitions that apply to this situation, but I also haven't had time to study all of those prohibitions in detail yet, which is why I wanted to reach out to you.

   A related scenario is that the former DAA for OCSPP (Nancy Beck) also offered to speak with me about her experience at EPA. That outreach didn't occur until my position was publicly announced (but before I started the job on Monday). I've talked with Nancy over the years on work matters, but never one-on-one. Would speaking with Nancy also be prohibited?

2. OCSPP received a request by a coalition of agricultural stakeholders to discuss a variety of pesticide-related issues, including improving the ESA-FIFRA process (which is my main responsibility in the coming years). Although the coalition would like to discuss general process improvements (i.e., matter of general applicability), their agenda also includes EPA's conditional registration of the pesticide Enlist Duo. The registrant for Enlist is Corteva, which is a former client of mine and thus covered by the 2 year recusal. Although I've never worked on Enlist issues for Corteva, and although they won't be at this agricultural stakeholders meeting, I nonetheless wanted to run this situation by you. If I recall correctly from our prior discussions, the ethics recusal focuses on specific parties rather than issues. The agenda doesn't indicate what specifically about the Enlist conditional registration the meeting requestors seek to discuss. But I think it's noteworthy that the Enlist registration affects a very wide group of agricultural stakeholders rather than only specific parties. When I review the example below from 5 CFR 2641.201, I can come up with a reasonable argument that the effects of the Enlist registration are similar in breadth to the example of the MSHA regulations affecting mine workers. Although Enlist doesn't affect *all* of agriculture, it does affect a significant portion of the sector because of its very broad use.

> A former employee of the Mine Safety and Health Administration (MSHA) participated personally and substantially in the development of a regulation establishing certain new occupational health and safety standards for mine workers. Because the regulation applies to the entire mining industry, it is a particular matter of general applicability, not a matter involving specific parties, and the former employee would not be prohibited from making post-employment representations to the Government in connection with this regulation

Given that I'm only beginning to understand exactly how the Biden ethics pledge applies to me, I will lean in the direction of consulting with you or others at your office, at least in the beginning of my employment until I have a better understanding of how the ethics pledge applies. Meeting with a variety of stakeholders will be important to the success of my position, especially to ensuring that stakeholders feel that both Michal and I are listening to their concerns. Thus, if consistent with my ethics pledge and other related obligations, I would like to find ways for me to attend meetings like the one at issue (and if I'm recused from participating only in specific portions of the meeting, then figuring out how to structure the meeting so that I don't participate in those portions).

Thanks in advance for you help. If it's easier to discuss over the phone, please feel free to call me.

Jake

Ya-Wei (Jake) Li
Deputy Assistant Administrator for Pesticide Programs
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Li.Jake@epa.gov | 202.819.6914

# ETHICS PLEDGE

I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. *Lobbyist Gift Ban*. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

2. *Revolving Door Ban — All Appointees Entering Government*. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

3. *Revolving Door Ban — Lobbyists and Registered Agents Entering Government*. If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 *et seq*., or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 *et seq*., within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

   (a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;

   (b) participate in the specific issue area in which that particular matter falls; or

   (c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.

4. *Revolving Door Ban — Appointees Leaving Government*. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.

5. *Revolving Door Ban — Senior and Very Senior Appointees Leaving Government*. If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections' implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.

6. *Revolving Door Ban — Appointees Leaving Government to Lobby*. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.

7. *Golden Parachute Ban*. I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.

8. *Employment Qualification Commitment*. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.

9. *Assent to Enforcement*. I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Personnel," issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.

Li, YaWei Digitally signed by Li, YaWei Date: 2021.06.30 16:31:14 -04'00'

Signature

6/30, 2021

Date

Name (Type or Print): Ya-Wei Li

**From:** Ya-Wei Li
**To:** Fugh, Justina
**Subject:** Re: Your ethics obligations at EPA (yes, already!)
**Date:** Friday, June 18, 2021 11:59:41 AM

---

Hi Justina. Ok sounds good. Thanks for the update.

Jake

Get Outlook for iOS

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Friday, June 18, 2021 12:16:07 AM
**To:** (b) (6) [redacted]
**Subject:** FW: Your ethics obligations at EPA (yes, already!)

Hi,
You hadn't yet started your new entrant report, so I've removed that assignment and that account. Since you're starting in a week, your EPA email address has been assigned to you already, so I've assigned you a new report using that email address. This report will be due no later than 7/27.21.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Fugh, Justina
**Sent:** Wednesday, June 09, 2021 8:01 PM
**To:** (b) (6) [redacted]
**Subject:** FW: Your ethics obligations at EPA (yes, already!)

Hi,
I heard that you'll be starting at EPA on 6/28. Congratulations! Do you plan on starting your new entrant report before you come on board or will you wait until later? We will eventually need to change your user id from your personal email to your EPA email, but that won't happen until you come on board.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Fugh, Justina
**Sent:** Monday, May 24, 2021 1:32 PM
**To:** (b) (6) [redacted]
**Subject:** Your ethics obligations at EPA (yes, already!)

Hi there,

Thanks for chatting with me earlier today, and here's your early welcome to EPA and the wonderful world of public financial disclosure reporting. Given the fact that you'll be a political appointee, you required by the Ethics in Government Act of 1978 to file the Public Financial Disclosure. As I explained, I'm here to help explain the ethics rules that will apply to you. Generally speaking, you'll be subject to three interrelated but different ethical constructs: (1) the federal ethics laws and regulations, (2) the Biden Ethics Pledge as set forth by Executive Order 13989, and (3) your bar obligations regarding former clients and their confidences. This note will provide you with the broad brush strokes of what I envision as your ethical obligations.

FINANCIAL CONFLICTS OF INTEREST

- You will be required to fill out a public financial disclosure report to help us to ascertain your potential conflicts issues. Put simply, we will be looking at your ownership interests in stocks, bonds, sector mutual funds as well as any fiduciary positions that you hold in entities. This form, called the OGE-278e, is a wretched and exacting document that you will fill out electronically. I've assigned you the new entrant report through INTEGRITY using your personal email address for now. The report is due 30 days after you join EPA, and I've included a lot more details below.
- From our discussion, you have (b) (6) [redacted]
- Your spouse works as (b) (6) [redacted] that does not do any business before the US EPA.
- Given your description of your assets, I do not anticipate that you will present any financial conflicts (b) (6) [redacted]. That said, it's unlikely that you will severely restricted in being able to carry out your EPA duties, even (b) (6) [redacted].

BIDEN ETHICS PLEDGE

- You are not a federally registered lobbyist.

- The pledge places additional restrictions upon political appointees with respect to their former employers and former clients. For the purposes of the pledge, we have to go back two years, which means that you have recusal issues with Sand County, EPIC and any clients you personally served over the past two years (since May 2019). Under the pledge, you will be restricted for two years (from the date you join EPA) from participating personally and substantially in any particular matter that involves any former employer or former client as a party or in which they represent a party. You will not be permitted to meet with any of them or interact with any of them in your official capacity. In addition, you will be restricted for two years from participating personally and substantially in any specific party matter in which any of them is a party or represents a party. You will also not be able to attend any meeting at which any of them is present, unless the subject matter of the discussion is generally applicable to a wider audience (such as all of the members of an affected sector or industry) and at least four other entities representing a diversity of interests are present, besides one of them.
- For more information about these restrictions, check out the Office of Government Ethics advisory DO-09-011.

## THE PUBLIC FINANCIAL DISCLOSURE REPORT

### DEADLINE FOR SUBMITTING THE REPORT

Technically, your "new entrant" report is due no later than 30 days from the date you start at EPA, but since I don't know when that is, I've used today's date. Don't worry about the deadline for now since you haven't started at EPA. I'll adjust your deadline after I get your start date. After that, if you need additional time, you must contact ethics@epa.gov before your deadline expires. There is a limit to how much additional time we can give you, and we can't grant any extension after the fact.

### THE FINANCIAL DISCLOSURE REPORT, OGE-278e

EPA uses an electronic filing system (called INTEGRITY) for the public financial disclosure reports that is operated and secured by the U.S. Office of Government Ethics (OGE). You are required by law to complete the form, and we will use it to determine whether you have any financial conflicts of interest or other ethics concerns.

We created an account for you in INTEGRITY and have assigned you a "new entrant" report. Your filer category is "Schedule C" and your filer status is "full time." For help in INTEGRITY, check out the OGE Public Financial Disclosure Guide. The email from INTEGRITY.gov will provide you with specific instructions to log into the federal government's max.gov site, the gateway to INTEGRITY. Check your clutter box for messages from INTEGRITY.gov and if you don't see it in the next day or so, contact ethics@epa.gov.

There are several important things to know about the OGE-278e: (1) it is a public form (which means that anyone can ask for a copy of your form, but Congress repealed the requirement

for public posting to the internet); (2) you have to fill it out every year you are in this position; (3) when you leave the position, you have to file a termination report (so remember to notify us); (4) you will be subject to a late filing fee of $200 for not filing your report timely. There are also civil and criminal penalties for failure to file at all or for inaccurate reporting.

REQUIREMENT TO ANSWER ANY FOLLOW UP QUESTIONS WITHIN 14 DAYS

We will review your report as quickly as possible. If we have any questions, then we will notify you. At that point, you will have 14 calendar days to respond and resubmit your report back to us with any necessary changes.

REPORTING TRANSACTIONS

While you are in this position, you are a public financial disclosure filer who is subject to the Ethics in Government Act as amended by the STOCK Act. You are required to report any purchase, sale or exchange of stocks, bonds, commodities futures or other forms of securities when the amount of the transaction exceeds $1000. Use INTEGRITY to disclose reportable transactions within 30 days of receiving notification of the transaction, but not later than 45 days after the transaction occurs. You will have to report transactions that occur within brokerage accounts, managed accounts, or other investment vehicles that you own or jointly own with your spouse or another person, as well as transactions of your spouse or dependent children. For a comprehensive review of reportable transactions, see EPA Ethics Advisory 2012-03 and our revised attached chart. Remember, you are responsible for reporting transactions, even if you have a managed account, and you will be fined for a tardy periodic transaction report.

YES, YOU CAN BE FINED FOR NOT FILING PROMPTLY

It's worth repeating that you can be fined $200 for not meeting the submission deadline (and you still have to file that report). PLEASE pay attention to your filing requirements! If you need an extension, then you must ask before your deadline expires. There is a limit to how much additional time you may receive.

HELPFUL HINTS FOR FILLING OUT THE FORM

- This is a wretched and exacting form, so just know that you will have to provide a lot of information.
- You will get three different places to report assets: filer's employment-related assets and income, spouse's employment related assets and income, and other assets and income. You must report assets for yourself, your spouse and any dependent children. We don't really care where you report your assets, just that you do report them all someplace.
- You must include any investment asset that is worth more than $1000. Include any

income from any source that exceeded $200 during the reporting period (including outside jobs or hobbies, rental income). Include any cash/savings accounts that have more than $5000.

- Enter each asset separately. Don't lump items together on one line. Be sure to provide the valuation of the asset AND the amount of the income. For assets that aren't mutual funds, you also have to report the type of income (e.g., dividends, cap gains).

- For 401(k) or IRA plans, provide the name of each of the underlying assets. Don't just write "Vanguard IRA" or "mutual fund." You must specify each asset separately and give the valuation but, for these assets in tax deferred instruments, you do not need to provide the amount of income accrued.

- Do not report your federal salary, your spouse's federal salary, or Thrift Savings Plan information

- If you (not your spouse) have any earned income (e.g., outside job, paid pension), you have to report the actual amount of that income.

- If your spouse works outside of federal service, then include your spouse's employer but not the amount of your spouse's salary. If you are not legally married, do not report your significant other's employer.

- Don't forget to include any life insurance policies (whole life or variable life) as well as the underlying investments. Do not report term life insurance.

- If you have nothing to report in a section, be sure to click the "nothing to report" button

- Remember to check out the Office of Government Ethics' Public Financial Disclosure Guide or to contact OGC/Ethics for help.

## OTHER ETHICS REQUIREMENTS FOR YOU

### HATCH ACT

You are "lesser restricted" under the Hatch Act. During your new employee orientation, the ethics staff will go over the Hatch Act, which governs the political activity of government employees. For a refresher, you can familiarize yourself with the Hatch Act as it affects you by reviewing our online Hatch Act training course (after you join EPA) or check out our attached handy chart that reminds you of your restrictions.

### ETHICS TRAINING

As a public financial disclosure filer, you must take one hour of ethics training this year. The

new employee training you will have with OGC/Ethics meets your annual training requirement for this year. Next year, you will take the annual training online.

If you have any questions regarding this message or your obligations, then please contact me directly or anyone in the OGC Ethics Office at ethics@epa.gov. We'll be happy to assist you.

Cheers,
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Fugh, Justina
**To:** (b) (6) [redacted]
**Subject:** FW: Your ethics obligations at EPA (yes, already!)
**Date:** Friday, June 18, 2021 12:15:00 AM
**Attachments:** Advisory to political appointees about late filing fee Jan 2021.pdf
Hatch Act chart Sept 2020.docx
When to Report Transactions on the OGE 278T and Part 7 - May 2019.docx

---

Hi,
You hadn't yet started your new entrant report, so I've removed that assignment and that account. Since you're starting in a week, your EPA email address has been assigned to you already, so I've assigned you a new report using that email address. This report will be due no later than 7/27.21.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Fugh, Justina
**Sent:** Wednesday, June 09, 2021 8:01 PM
**To:** (b) (6) [redacted]
**Subject:** FW: Your ethics obligations at EPA (yes, already!)

Hi,
I heard that you'll be starting at EPA on 6/28. Congratulations! Do you plan on starting your new entrant report before you come on board or will you wait until later? We will eventually need to change your user id from your personal email to your EPA email, but that won't happen until you come on board.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Fugh, Justina
**Sent:** Monday, May 24, 2021 1:32 PM
**To:** (b) (6) [redacted]

**Subject:** Your ethics obligations at EPA (yes, already!)

Hi there,

Thanks for chatting with me earlier today, and here's your early welcome to EPA and the wonderful world of public financial disclosure reporting. Given the fact that you'll be a political appointee, you required by the Ethics in Government Act of 1978 to file the Public Financial Disclosure. As I explained, I'm here to help explain the ethics rules that will apply to you. Generally speaking, you'll be subject to three interrelated but different ethical constructs: (1) the federal ethics laws and regulations, (2) the Biden Ethics Pledge as set forth by Executive Order 13989, and (3) your bar obligations regarding former clients and their confidences. This note will provide you with the broad brush strokes of what I envision as your ethical obligations.

FINANCIAL CONFLICTS OF INTEREST

- You will be required to fill out a public financial disclosure report to help us to ascertain your potential conflicts issues. Put simply, we will be looking at your ownership interests in stocks, bonds, sector mutual funds as well as any fiduciary positions that you hold in entities. This form, called the OGE-278e, is a wretched and exacting document that you will fill out electronically. I've assigned you the new entrant report through INTEGRITY using your personal email address for now. The report is due 30 days after you join EPA, and I've included a lot more details below.
- From our discussion, you have (b) (6) [redacted]
- Your spouse works as (b) (6) [redacted] that does not do any business before the US EPA.
- Given your description of your assets, I do not anticipate that you will present any financial conflicts other than (b) (6) [redacted]. That said, it's unlikely that you will severely restricted in being able to carry out your EPA duties, even (b) (6) [redacted].

BIDEN ETHICS PLEDGE

- You are not a federally registered lobbyist.
- The pledge places additional restrictions upon political appointees with respect to their former employers and former clients. For the purposes of the pledge, we have to go back two years, which means that you have recusal issues with Sand County, EPIC and any clients you personally served over the past two years (since May 2019). Under the pledge, you will be restricted for two years (from the date you join EPA) from participating personally and substantially in any particular matter that involves any

former employer or former client as a party or in which they represent a party. You will not be permitted to meet with any of them or interact with any of them in your official capacity. In addition, you will be restricted for two years from participating personally and substantially in any specific party matter in which any of them is a party or represents a party. You will also not be able to attend any meeting at which any of them is present, unless the subject matter of the discussion is generally applicable to a wider audience (such as all of the members of an affected sector or industry) and at least four other entities representing a diversity of interests are present, besides one of them.

- For more information about these restrictions, check out the Office of Government Ethics advisory DO-09-011.

## THE PUBLIC FINANCIAL DISCLOSURE REPORT

### DEADLINE FOR SUBMITTING THE REPORT

Technically, your "new entrant" report is due no later than 30 days from the date you start at EPA, but since I don't know when that is, I've used today's date. Don't worry about the deadline for now since you haven't started at EPA. I'll adjust your deadline after I get your start date. After that, if you need additional time, you must contact ethics@epa.gov before your deadline expires. There is a limit to how much additional time we can give you, and we can't grant any extension after the fact.

### THE FINANCIAL DISCLOSURE REPORT, OGE-278e

EPA uses an electronic filing system (called INTEGRITY) for the public financial disclosure reports that is operated and secured by the U.S. Office of Government Ethics (OGE). You are required by law to complete the form, and we will use it to determine whether you have any financial conflicts of interest or other ethics concerns.

We created an account for you in INTEGRITY and have assigned you a "new entrant" report. Your filer category is "Schedule C" and your filer status is "full time." For help in INTEGRITY, check out the OGE Public Financial Disclosure Guide. The email from INTEGRITY.gov will provide you with specific instructions to log into the federal government's max.gov site, the gateway to INTEGRITY. Check your clutter box for messages from INTEGRITY.gov and if you don't see it in the next day or so, contact ethics@epa.gov.

There are several important things to know about the OGE-278e: (1) it is a public form (which means that anyone can ask for a copy of your form, but Congress repealed the requirement for public posting to the internet); (2) you have to fill it out every year you are in this position; (3) when you leave the position, you have to file a termination report (so remember to notify us); (4) you will be subject to a late filing fee of $200 for not filing your report timely. There are also civil and criminal penalties for failure to file at all or for inaccurate reporting.

REQUIREMENT TO ANSWER ANY FOLLOW UP QUESTIONS WITHIN 14 DAYS

We will review your report as quickly as possible. If we have any questions, then we will notify you. At that point, you will have 14 calendar days to respond and resubmit your report back to us with any necessary changes.

REPORTING TRANSACTIONS

While you are in this position, you are a public financial disclosure filer who is subject to the Ethics in Government Act as amended by the STOCK Act. You are required to report any purchase, sale or exchange of stocks, bonds, commodities futures or other forms of securities when the amount of the transaction exceeds $1000. Use INTEGRITY to disclose reportable transactions within 30 days of receiving notification of the transaction, but not later than 45 days after the transaction occurs. You will have to report transactions that occur within brokerage accounts, managed accounts, or other investment vehicles that you own or jointly own with your spouse or another person, as well as transactions of your spouse or dependent children. For a comprehensive review of reportable transactions, see EPA Ethics Advisory 2012-03 and our revised attached chart. Remember, you are responsible for reporting transactions, even if you have a managed account, and you will be fined for a tardy periodic transaction report.

YES, YOU CAN BE FINED FOR NOT FILING PROMPTLY

It's worth repeating that you can be fined $200 for not meeting the submission deadline (and you still have to file that report). PLEASE pay attention to your filing requirements! If you need an extension, then you must ask before your deadline expires. There is a limit to how much additional time you may receive.

HELPFUL HINTS FOR FILLING OUT THE FORM

- This is a wretched and exacting form, so just know that you will have to provide a lot of information.
- You will get three different places to report assets: filer's employment-related assets and income, spouse's employment related assets and income, and other assets and income. You must report assets for yourself, your spouse and any dependent children. We don't really care where you report your assets, just that you do report them all someplace.
- You must include any investment asset that is worth more than $1000. Include any income from any source that exceeded $200 during the reporting period (including outside jobs or hobbies, rental income). Include any cash/savings accounts that have more than $5000.
- Enter each asset separately. Don't lump items together on one line. Be sure to

provide the valuation of the asset AND the amount of the income. For assets that aren't mutual funds, you also have to report the type of income (e.g., dividends, cap gains).

- For 401(k) or IRA plans, provide the name of each of the underlying assets. Don't just write "Vanguard IRA" or "mutual fund." You must specify each asset separately and give the valuation but, for these assets in tax deferred instruments, you do not need to provide the amount of income accrued.
- Do not report your federal salary, your spouse's federal salary, or Thrift Savings Plan information
- If you (not your spouse) have any earned income (e.g., outside job, paid pension), you have to report the actual amount of that income.
- If your spouse works outside of federal service, then include your spouse's employer but not the amount of your spouse's salary. If you are not legally married, do not report your significant other's employer.
- Don't forget to include any life insurance policies (whole life or variable life) as well as the underlying investments. Do not report term life insurance.
- If you have nothing to report in a section, be sure to click the "nothing to report" button
- Remember to check out the Office of Government Ethics' Public Financial Disclosure Guide or to contact OGC/Ethics for help.

## OTHER ETHICS REQUIREMENTS FOR YOU

### HATCH ACT

You are "lesser restricted" under the Hatch Act. During your new employee orientation, the ethics staff will go over the Hatch Act, which governs the political activity of government employees. For a refresher, you can familiarize yourself with the Hatch Act as it affects you by reviewing our online Hatch Act training course (after you join EPA) or check out our attached handy chart that reminds you of your restrictions.

### ETHICS TRAINING

As a public financial disclosure filer, you must take one hour of ethics training this year. The new employee training you will have with OGC/Ethics meets your annual training requirement for this year. Next year, you will take the annual training online.

If you have any questions regarding this message or your obligations, then please contact me

directly or anyone in the OGC Ethics Office at ethics@epa.gov. We'll be happy to assist you.

Cheers,
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
Washington, D.C. 20460

January 22, 2021

OFFICE OF
GENERAL COUNSEL

**MEMORANDUM**

SUBJECT: Timely filing of Public Financial Disclosure and Periodic Transaction Reports

FROM: Justina Fugh Justina Fugh Digitally signed by Justina Fugh Date: 2021.01.22 12:07:49 -05'00'
Alternate Designated Agency Ethics Official

TO: All EPA Political Appointees

In 1978, Congress enacted the Ethics In Government Act, 5 U.S.C. app. to establish the Executive Branch financial disclosure reporting system that requires mandatory public disclosure of financial and employment information of certain officials and their immediate families. Because you occupy a designated position, you are required by this law to file these reports in the electronic system, *INTEGRITY*. As an executive branch employee, you are bound by federal ethics laws and regulations, including prohibitions against financial conflicts of interest and loss of impartiality. Your disclosures allow the Office of General Counsel's Ethics Office (OGC/Ethics) to assist you in identifying and addressing potential or actual conflicts of interest in order to maintain the integrity of the Agency's programs and operations. These reports are publicly available upon request and the reports of certain Presidential Appointees confirmed by the Senate will be posted on the U.S. Office of Government Ethics' website at www.oge.gov.

This memorandum formally informs you that you are required by law to file timely and accurate Public Financial Disclosure Reports (OGE 278e)[1] and Periodic Transaction Reports (OGE 278-Ts).[2] **Filing a late report will result in a $200 late filing fee** unless you formally request and receive a waiver of the late fee from me or the Designated Agency Ethics Official (DAEO), Jim Payne, after describing extraordinary circumstances that caused you to file a late report.[3] **Unpaid late fees are subject to the Agency's[4] and the government's debt collection procedures and will be referred for collection if left unpaid after 30 days.**

Please refer to this chart for your filing obligations:

---

[1] *See* 5 U.S.C. app. § 101; 5 C.F.R. § 2634.201.
[2] Pub. L. 112-105 § 11 (STOCK Act).
[3] *See* 5 U.S.C. app. § 104(d)(1); 5 C.F.R. § 2634.704(a).
[4] *See* Resource Management Directive System 2540-03-P2 dated 07/12/2016.

| | |
|---|---|
| OGE 278e - New Entrant reports | **Within 30 days** of entering a covered position (either by appointment to a permanent or acting in covered position) |
| OGE 278e – Incumbent reports | **No later than May 15** |
| OGE 278e – Termination reports | **No later than 30 days after** leaving a covered position (either through reassignment, resignation, or the end of acting in a covered position) (Reports may be submitted within 15 days prior to termination) |
| OGE 278T – Periodic transaction reports[5] | **The *earlier of* 30 days** after learning of a transaction or **45 days** of the transaction taking place. |

How to request an extension of the filing deadline:

For good cause (e.g., travel, workload issues, sickness), you may request up to two 45-day extensions. Submit the request by email, including the reason, to ethics@epa.gov **prior to the due date.** Extensions cannot be granted after the due date has passed.

How to request the waiver of a late filing fee:

If *extraordinary circumstances* prevented you from meeting the deadline and OGC/Ethics assessed a late fee, you may request a waiver of the late fee. *See* 5 C.F.R. § 2634.704. Submit your request in writing to ethics@epa.gov describing the extraordinary circumstances and provide any supporting documentation. Please note that vacations or routine work obligations are not "extraordinary" circumstances. The decision to grant or deny a waiver is at the sole discretion of the DAEO/ADAEO and is final.

Your colleagues in OGC/Ethics are available to provide assistance but it is always your obligation to file your reports timely and accurately. In fact, ethics regulations *require* that we refer individuals to the Department of Justice (DOJ) when there is reasonable cause to believe that they have willfully failed to file a required report or provide the information that the report requires. The current maximum civil penalty is $56,216.[6]

As public servants, we hope that you will take your ethics obligations seriously. As such, we expect you to make a good faith effort to adhere to the timeliness and completeness requirements of your financial disclosure reporting obligations. If you have any questions, please contact ethics@epa.gov.

ATTACHMENT - *When to Report Transactions on the OGE 278 and OGE 278-T*

[5] *See* attached guidance – *When to Report Transactions on the OGE 278 and OGE 278-T.*
[6] In 2012, OGC/Ethics referred an individual to DOJ for failure to file a termination report despite repeated reminders and entreaties. That individual paid a civil penalty of $15,000 and still had to file the termination report.

Updated September 2020

# Political Activities and Federal Employees

The Hatch Act, enacted in 1939, was amended in 1993 and 2012. It regulates the political activities of executive branch employees, excluding the President and Vice President. The following table summarizes what political activities EPA employees can and cannot do based on their appointment. Note: Public Health Service officers must adhere to 45 CFR Part 73, Subpart F, which is most similar to the Career SES/ALJ column.

**Political activity means an activity "directed toward the success or failure of a political party, a candidate for partisan political office, or a partisan political group."**

| **Type of Activity** | **PAS*** | **Non-Career SES, Schedule C*, Title 42, SL/ST, AD*, GS, Other** | **Career SES, ALJs** |
|---|---|---|---|
| **Personal** (off premises and off duty) | | | |
| Express support for or opposition to a political candidate when off duty | Yes | Yes | Yes |
| Run as a partisan candidate for nomination or office in a partisan election | No | No | No |
| Solicit and accept contributions for your campaign in a non-partisan election | Yes | Yes | Yes |
| Solicit a contribution from a member of your union | N/A | Yes | N/A |
| Work a phone bank asking individuals to volunteer | Yes | Yes | No |
| Campaign on behalf of a candidate in a partisan election | Yes | Yes | No |
| Be active on behalf of a candidate at political rallies or meetings | Yes | Yes | No |
| Attend political rallies and meetings | Yes | Yes | Yes |
| Contribute money to political organizations | Yes | Yes | Yes |
| Work in non-partisan voter registration drives | Yes | Yes | Yes |
| Work in partisan voter registration drives | Yes | Yes | No |
| Register and vote | Yes | Yes | Yes |
| Sign a nominating petition | Yes | Yes | Yes |
| Distribute campaign material in a partisan election | Yes | Yes | No |
| Work as an election judge, poll watcher, clerical worker on election day and receive compensation for that work | Yes | Yes | Yes but nonpartisan only |
| Drive people to polling station on behalf of a campaign | Yes | Yes | No |
| **Affecting Official Resources** | | | |
| Use office time for political activity | Yes; IG-No | No | No |
| Use official space for political activity in general | Yes; IG-No | No | No |
| **Fundraising** | | | |
| Attend a political fundraiser | Yes | Yes | Yes |
| Solicit, accept or receive political contributions in general | No | No | No |
| Solicit or receive a political contribution on government premises | No | No | No |
| Plan or organize a political fundraiser when off duty | Yes | Yes | No |
| Sponsor, host, or allow your name as sponsor/host for a political fundraiser | No | No | No |
| Serve drinks or check coats at a political fundraiser | Yes | Yes | No |
| Speak at a partisan fundraiser without appealing for money | Yes | Yes | No |
| Allow only your name to be listed as speaker on fundraising invitation | Yes | Yes | No |

**PAS = Political Appointee Confirmed by the Senate; Schedule C = political appointees not confirmed by Senate; AD = Administratively Determined; SES = Senior Executive Service*

# When to Report Transactions

DUE DATE: The earlier of the following: 30 Days from Notification or 45 Days from Transaction

| Investment Assets | Periodic Transaction Report<br>Report on the OGE 278-T? | Annual and/or Termination Report<br>Report on Part 7 of the OGE 278e? |
|---|---|---|
| Transactions of $1,000 or less | | |
| • Any asset in which the transaction amount is $1,000 or less regardless of the type of asset or who owns the asset | No | No |
| Your investment assets (or jointly held) | | |
| • Your stocks | Yes | Yes |
| • Your bonds (except U.S. Treasury securities) | Yes | Yes |
| • Your commodity futures | Yes | Yes |
| • Your other investment securities | Yes | Yes |
| • Assets listed above in your (joint) brokerage accounts, (joint) managed accounts, IRAs, other retirement accounts, and/or other (joint) investment vehicles | Yes | Yes |
| Your spouse's investment assets | | |
| • Spouse's stocks | Yes | Yes |
| • Spouse's bonds (except U.S. Treasury securities) | Yes | Yes |
| • Spouse's commodity futures | Yes | Yes |
| • Spouse's other investment securities | Yes | Yes |
| • Assets listed above in spouse's own brokerage account, managed accounts, IRAs, other retirement accounts, and/or other investment vehicles | Yes | Yes |
| Your dependent child's investment assets | | |
| • Dependent child's stocks | Yes | Yes |
| • Dependent child's bonds (except U.S. Treasury securities) | Yes | Yes |
| • Dependent child's commodity futures | Yes | Yes |
| • Dependent child's other investment securities | Yes | Yes |
| • Assets listed above in dependent child's own brokerage account, IRAs, and/or other investment vehicles | Yes | Yes |
| Other investment assets irrespective of ownership | | |
| • Real Property | No | Yes[1] |
| • Mutual funds, exchange traded funds, index funds and/or other "excepted investment funds"[2] | No | Yes |
| • Any asset in which the transaction amount is $1,000 or less | No | No |
| • Cash accounts (deposits and/or withdrawals) | No | No |
| • Money market accounts | No | No |
| • Money market funds | No | No |
| • Certificates of deposits | No | No |
| • US Treasury Securities (e.g., T bills, Treasury bonds, U.S. savings bonds) | No | No |
| • Federal Government Retirement Accounts (e.g., Thrift Savings Plan) | No | No |
| • Life insurance and annuities | No | No |
| • Collectibles | No | No |
| • Assets held within an excepted trust[3] | No | No |
| • Transfer of assets between you, your spouse, and your dependent children | No | No |

[1] Do not report the purchase or sale of your personal residence on Part 7 unless you rent it out at any time during the reporting period.

[2] To be an excepted investment fund (EIF), the asset must be:

(a) widely held (more than 100 participants),
(b) independently managed – arranged so that you neither exercise control nor have the ability to exercise control over the financial interests held by the fund, and
(c) publicly traded (or available) or widely diversified.

Managed accounts, investment clubs, trusts, 529 accounts, brokerage accounts, and individual retirement accounts (IRAs) are not excepted investment funds in and of themselves. It may be that individual assets held within these types of investment vehicles may qualify as EIFs if, for example, your IRA holds a publicly-traded mutual fund. But the fact that you have a managed account does not absolve you of your reporting requirements. That account is legally owned by you, and you're responsible for its assets and reporting transactions. If you have questions, contact ethics@epa.gov.

[3] OGC/Ethics must determine that your trust qualifies as an "excepted trust." For help, email ethics@epa.gov.

# Ethics Briefing

## 1. The Ethics Program at the Environmental Protection Agency

You have ethics officials in the Office of General Counsel who can assist you:

| | |
|---|---|
| **Jim Payne**<br>Designated Agency Ethics Official<br>(202) 564-0212 payne.james@epa.gov | |
| **Justina Fugh**<br>Alternate Agency Ethics Official and Director of Ethics Office<br>(202) 564-1786 fugh.justina@epa.gov | |
| **Shannon Griffo**<br>Ethics Attorney<br>(202) 564-7061<br>griffo.shannon@epa.gov | **Margaret Ross**<br>Ethics Officer<br>(202) 564-3221<br>ross.margaret@epa.gov |
| **Jennie Keith**<br>Ethics Officer<br>(202) 564-3412<br>keith.jennie@epa.gov | **Victoria Clarke**<br>Ethics Attorney<br>202-564-1149<br>clarke.victoria@epa.gov |
| **Ferne Mosley**<br>Ethics Attorney<br>(202) 564-8046<br>mosley.ferne@epa.gov | **OGC/Ethics**<br>All Staff and Helpline<br>(202) 564-2200<br>ethics@epa.gov |

You can also visit the OGC/Ethics SharePoint site for more information.

## 2. The General Principles of Ethical Conduct

As public servants, we have a duty to ensure that every citizen has complete confidence in the integrity of the United States and that we are not putting personal or private interests ahead of the public trust. There are 14 principles that form your basic obligation of public service that we'll address in this briefing material.

## 3. The President's Executive Order (for political appointees only)

On January 20, 2021, President Biden issued an Executive Order that includes an ethics pledge you must sign as a condition of your appointment. You are agreeing to a broader "ethics in government" plan to restore and maintain public trust in government, so please review the preamble carefully. The significant points of the pledge itself are described below:

*If you were a federally registered lobbyist or registered foreign agent in the past 2 years:*

- For the next 2 years, do not participate in any particular matter on which you lobbied or were registrable for under the Foreign Agents Registration Act within the previous 2 years and do not participate in the specific issue area in which that particular matter falls.

- Do not seek or accept employment with any government agency that you lobbied or engaged in registrable activity under FARA within the past 2 years.

*While you are a federally employee:*

- Do not accept any gifts from a registered lobbyist, including attendance at a widely attended gathering. There are a few exceptions (e.g., preexisting personal relationship, discount or benefit available to all government employees) but check with an ethics official for guidance.

- For 2 years from the date of your appointment, do not participate in any particular matter involving specific parties that is directly and substantially related to your former employer or former clients, including regulations and contracts.

    - Note: The definition of *former employer* excludes the federal government, state or local governments, D.C., Native American tribes, U.S. territories or possessions, or any international organization in which the U.S. is a member state. But under the federal impartiality rules, you will still have a one-year cooling off period with those entities (except if your former employer was already the US government).

- Any hiring or other employment decisions that you make will be based on the candidate's qualifications, competence and experience.

- Do not accept any salary or cash payment or any other non-cash benefit from a former employer for entering into government service.

*When you leave federal service, you are agreeing to the following:*

- If you are a "senior employee" subject to the one-year cooling off period under 18 U.S.C. § 207(c), your cooling off period will be extended by another year, for a total of two years.

- If you are a "senior employee" subject to either 18 U.S.C. § 207(c) or (d), for one year following your departure from federal service, you will not work behind the scenes to materially assist others in making communications or appearances to the United States Government that you would otherwise be unable to make under the post-employment restrictions.

- You will not lobby any covered executive branch official or non-career SES appointee for the remainder of this Administration or for 2 years following the end of your appointment, whichever is later.

- You will not engage in any activity on behalf of a foreign government or foreign political party

that would require you to register under the Foreign Agents Registration Act for the remainder of this Administrator or 2 years following the end of your appointment, whichever is later.

A copy of the Executive Order and the Biden Ethics Pledge that you must sign are included in this packet of materials.

## 4. Financial Disclosure Reporting

In your position, you are required to complete a public financial disclosure report as you begin the federal service and every year thereafter. You will file this report in INTEGRITY, an electronic system managed by the Office of Government Ethics. When you leave EPA, you will be required to submit a termination financial disclosure report. In addition, you are required to have one hour of ethics training as a new entrant (PAS appointees have an additional requirement for a specialized one-on-one ethics briefing), and also required to have one hour of ethics training each year. The Ethics Office in the Office of General Counsel (OGC/Ethics) provides your training either in person or virtually.

You must report any transaction of securities (stocks or bonds) over $1000 on a periodic basis in INTEGRITY using the 278T. These periodic transactions must be reported the earlier of 30 days after learning of the transaction or 45 days after the transaction takes place. Failure to file timely results in late fees that are assessed as a matter of law.

In addition, you are required to notify OGC/Ethics within three days of beginning to negotiate for employment with any non-federal entity. To do so, use our Notification of Negotiation form.

Included in this packet of materials are reminders about the types of transactions that are to be reported periodically and not being tardy in filing any reports with OGC/Ethics.

## 5. Attorney Client Privilege & FOIA

By regulation, disclosure by an employee to an ethics official is not protected by the attorney-client privilege. 5 C.F.R. § 2635.107(b). This means that if our records (or yours) are requested under the Freedom of Information Act (FOIA), then we will not be able to redact our advice to you using the attorney-client privilege. However, we can -- and do -- assert personal privacy and deliberative process privileges where applicable. For example, the deliberative process privilege may apply to pre-decisional ethics advice documents, but please note that our final advice to you is generally releasable.

This should **not** stop you from seeking the advice of your ethics officials! Not only does it show you are being a steward of the public trust, but good faith reliance on advice received from your ethics officials after disclosing all relevant facts can shield you from disciplinary action and is a factor that the Department of Justice considers when deciding which cases they wish to prosecute.

## 6. Conflicts of Interest

Do not participate as an agency official in any matter if there is an actual conflict of interest or even the appearance of a conflict of interest. It's a crime to participate *personally and substantially* in *any particular matter* in which, to your knowledge, you or a person whose interests are imputed to you has a financial interest if the particular matter will have a *direct and predictable effect* on that interest.

Example: you own a lot of stock in XYZ Corporation, which is a chemical manufacturer. If your office is considering taking an enforcement action against XYZ Corporation, you must disqualify yourself from participating in the decision. Even if your mother gave your 10-year old twins the stock, you can't participate in the matter because their interest is imputed to you.

Remember, the interests of your spouse, dependent children, general business partner, and any organization in which you serve as officer, director, trustee or employee are imputed to you. This means that, under the criminal statute, it's the same thing as if you held those assets. So, you can't participate in any particular matter that may have a financial impact on the interests that are imputed to you.

## 7. Appearance of a Loss of Impartiality

Even if an action is not strictly prohibited, it is prudent to be careful of any action that a reasonable person with knowledge of the relevant facts may perceive as a violation of the ethics rules, or (if applicable) your ethics pledge and the Executive Order. You must avoid even the appearance of a loss of impartiality when performing official duties.

When we consider impartiality, we expand the ambit of relationships beyond the conflicts realm of "imputed interests." We consider all of your "covered relationships," which includes a lot more people: anybody with whom you have a business, contractual or financial relationship that is more than just a routine consumer transaction; any member of your household or a relative with whom you are close; the employer/partner or prospective employer/partner of your spouse, parent or dependent child; any person or organization for which you have served in the last year as an officer, agent, employee, etc.; and any organization in which you are an active participant.

You should refrain from engaging in official acts that may be perceived as an "appearance problem" by a reasonable person (and the reasonable person is not you, but rather your ethics officials).

Ethics officials can provide advice and determine whether a proposed course of action is appropriate by issuing an impartiality determination, but we cannot provide cover if you have already done the deed.

## 8. No representation back to the federal government

As a federal employee, you are prohibited from representing the interest of any other entity back to the federal government, whether you are paid for those services or not. For the purposes of these criminal statues, 18 U.S.C. §§ 203 and 205, it does not matter that you are representing the interests of another in your private capacity. You cannot serve as agent or attorney for another entity back to the United States on a particular matter in which the US is a party or has a direct and substantial interest.

## 9. Acceptance of Gifts

Be careful of any gift from people outside the Agency, particularly those that are worth more than $20. Gifts are anything of value and include allowing others to pick up the lunch tab, free tickets, invitations to receptions, and lovely fruit baskets. There are only a few exceptions, so consult your ethics officials before accepting any gift. Remember, political appointees can't take gifts from federally registered lobbyists.

EPA does not have broad Agency gift authority, so prohibited gifts must be paid for or returned. You should also not generally accept gifts exceeding $10 from EPA employees, nor give gifts exceeding $10 to your superiors. There are some exceptions, so check with an ethics official. By the way, you may give gifts to any EPA person who makes less money than you provided that person is not your supervisor.

## 10. Attendance at Widely-Attended Gatherings (ethics check required)

Your ethics official must make a written determination in advance as to whether your participation and attendance at certain events meet the criteria for a "widely attended gathering" exception of the gift rule. You can't make that determination yourself (nor can the sponsor of the event). For a WAG determination, your ethics official will consider the type of event, who is attending, and whether your attendance will further an Agency interest. This analysis must be done in writing and in advance of your attending the event. Any WAG that is approved is considered a gift to you, so you will be responsible for reporting the value of the gift on your financial disclose report if it exceeds the reporting threshold. For political appointees, though, please bear in mind that this exception does not apply to federally registered lobbyists. Political appointees cannot accept free attendance at a widely attended gathering that is sponsored by or hosted by a federally registered lobbyist.

IMPORTANT NOTE about **Embedding Ethics into Your Calendaring Process**

> Many ethics issues typically arise through the calendaring process of an EPA principal. Since you are responsible for your ethics obligations, we know you might need a little help. To assist you in navigating calendar and invitation issues, the EPA Ethics Office offers specialized assistance to you and your front office staff to advise on invitations, gifts associated with those invitations, etc. Embedding ethics is a proactive counseling practice that brings together the Principals, their staff, and local Deputy Ethics Officials to establish a process for incorporating ethics vetting into your or the Principal's calendar. Contact Jennie Keith to get started!

## 11. Travel Issues

Approval of gifts of travel, lodging and meals from non-Federal sources for meetings and similar events must be obtained from OGC/Ethics prior to the event. You can't accept such offerings on your own! We have an electronic form that we use to process such requests, and we must report the approvals to the Office of Government Ethics twice a year. See http://intranet.epa.gov/ogc/ethics/travel.htm . Prior to the pandemic, OGC/Ethics accepted over $1 million each year in discretionary travel paid by non-federal sources.

## 12. Preferential Treatment of Non-Federal Entities (Endorsement)

Be careful about showing preferential treatment to any entity. We cannot endorse the products, services or enterprises of another, so you need to be careful about extolling the virtues of a regulated entity, a particular contractor or applicant, etc. Seek ethics advice before collaborating with non-federal entities on initiatives and events because not all of EPA's statutes allow us to cooperate with non-feds.

## 13. Political Activities

You are now bound by the Hatch Act, which governs the political activity of federal employees, even in your personal capacity. Career SES employees are bound by even more restrictions, while Presidentially Appointed and Senate Confirmed (PAS) employees enjoy more liberties. Do not rely on what you think other people can do; find out for yourself by asking your ethics officials.

Some limitations under the Hatch Act are 24/7, meaning that you have restrictions even on your time. For example, you are never permitted to solicit, accept or receive political contributions, not even in your personal time. You can never use your EPA title or position to fundraise in connection with any political activity. Because the Hatch Act rules vary depending on your type of appointment, please see the attached chart and consult your ethics officials.

## 14. Lobbying Issues

EPA employees cannot use appropriated funds to engage in indirect or grassroots lobbying regarding any legislative proposal. Indirect or grassroots lobbying generally means urging members of special interest groups or the general public to contact legislators to support or oppose a legislative proposal. EPA employees cannot make explicit statements to the public to contact members of Congress in support of or in opposition to a legislative proposal. Other prohibited grassroots lobbying includes an employee's explicit request, while on official time, to an outside group asking it to contact Congress to support or oppose EPA's appropriations bill.

In addition, EPA is prohibited from using appropriated funds for activities that would "tend to promote" the public to contact Congress in support of or in opposition to a legislative proposal, even if an EPA employee does not expressly state that the public should contact Congress. This activity is considered "indirect lobbying" and is prohibited. You may, after coordinating with OCIR and Public Affairs, directly contact or lobby members of Congress and their staffs regarding the Administration's legislative proposals. Again, after getting approval from OCIR, you may also educate and inform the public of the Administration's position on legislative proposals by delivering speeches and making public remarks explaining the Administration's position on a legislative proposal.

## 15. Use of Government Personnel and Resources

EPA policy permits employees to "limited use" of government equipment, including the telephone, copying machines, fax machines, etc. Employees cannot, however, engage in outside activity or employment on government time. GSA regulations also prohibit any fundraising on federal property (except for the Combined Federal Campaign), so employees cannot raise money for their favorite charity (i.e., sell cookies, candy or wrapping paper for a "good cause"). They also cannot use the internet connection for gambling or to access pornography. See EPA's Limited Personal Use of Government Equipment Policy. Avoid using your EPA email address for personal matters, and do not use your personal email address for EPA matters.

## 16. Outside Activities

We were advised by the Biden Presidential Transition Team that non-PAS political appointees may have outside positions that are consistent with federal ethics regulations, including the Agency's ethics regulations. Non-Career SES and Schedule C appointees must seek prior approval from EPA Ethics for certain outside activity consistent with EPA's Supplemental Ethics Regulations at 5 C.F.R. § 6401.103. Examples of activity that require prior approval are practicing a profession or teaching, speaking or writing on subjects related to EPA programs, policies or operations. While there is a *de minimis* use of government equipment, that never applies to any compensated outside activity.

Most EPA employees may not receive any compensation for teaching, speaking or writing (including consulting) that relates in significant part to your assigned EPA duties, duties to which you've been assigned in the previous year, or to any ongoing Agency program, policy or operation. But if you are a non-career SES employee, then your restriction is even broader: you may not receive compensation at all for any teaching, speaking or writing that relates to your official duties or even to EPA's general subject matter area, industry, or economic sector primarily affected by EPA's programs and operations. 5 C.F.R. § 2635.807(a)(2)(i)(E)(3).

Non-Career SESers must also abide by these additional restrictions:

- You are subject to the outside earned income cap that is set each January. As of January 2021, that amount is $29,595. See 5 C.F.R. § 2635.804(b) and 5 C.F.R. § 2636.304. This amount changes each year;

- You cannot receive compensation for practicing a profession that involves a fiduciary relationship; affiliating with or being employed by a firm or other entity that provides professional services involving a fiduciary relationship; or teaching without prior approval. See note to 5 C.F.R. § 2635.804(b) and 5 C.F.R. § 2636.305;

- You may be permitted to serve as an officer or member of the board of any association, corporation or other entity, but cannot be compensated for such service. See 5 C.F.R. § 2636.306; and

- You may not receive compensation for any other teaching unless specifically authorized in advance by OGC/Ethics (specifically, the Designated or Alternate Designated Agency Ethics Official listed on the first page of this briefing material). See 5 C.F.R. § 2636.307.

## 17. Ethics Obligations of Supervisors

If you are a supervisor, you must model ethical behavior for your staff. Set forth below are your additional ethics responsibilities, found at 5 C.F.R. § 2638.103:

> Every supervisor in the executive branch has a heightened personal responsibility for advancing government ethics. It is imperative that supervisors serve as models of ethical behavior for subordinates. Supervisors have a responsibility to help ensure that subordinates are aware of their ethical obligations under the Standards of Conduct and that subordinates know how to contact agency ethics officials. Supervisors are also responsible for working with agency ethics officials to help resolve conflicts of interest and enforce government ethics laws and regulations, including those requiring certain employees to file financial disclosure reports. In addition, supervisors are responsible, when requested, for assisting agency ethics officials in evaluating potential conflicts of interest and identifying positions subject to financial disclosure requirements.

Your staff may ask you ethics questions, but unless you are an ethics official, you are not authorized to answer those ethics questions. If you receive an ethics question, then contact your own local Deputy Ethics Official or notify OGC/Ethics at ethics@epa.gov.

## 18. Seeking Employment

It's always odd to talk about seeking employment when we are welcoming you to EPA, but be mindful of the fact that there are restrictions that will apply. You won't be able to participate in a particular matter involving a party with which you are seeking employment, and that obligation starts as soon as you directly or indirectly contact a prospective employer, or as soon as you get a response expressing interest in you. You will need to disqualify yourself from particular matters that may affect the prospective employer.

## 19. Negotiating for Employment

Should your pursuit of future employment advance to "negotiating" for employment with a particular entity, then you will have conflicts of interest. The financial interests of any person or entity with whom you are "negotiating" for employment are imputed to you for the purposes of the criminal conflict of interest statute, 18 U.S.C. § 208. You will need to recuse yourself from participating in any particular matter that will have a direct and predictable effect upon the interests of the prospective employer, either as a specific party or as a member of a class, which will include particular matters that apply generally to the prospective employer's industry or class.

Filers of the public financial disclosure report are further subject to the Ethics In Government Act, as amended by the STOCK Act, which requires you to notify OGC/Ethics within three days of commencing negotiations for future employment with a non-federal employer. Yes, we have a form for that notification.

## 20. Post-Government Employment - Representational Restrictions

Even after you leave federal service, there are federal post-employment restrictions. Your pledge restrictions are supplementary to these restrictions. Your ethics officials are still available to answer your post-employment questions, even after you leave EPA. You will need to have an exit discussion with OGC/Ethics before you leave EPA, but here are the highlights of what we'll discuss regarding the federal law. You will also be bound by the additional restrictions of the Biden Ethics Pledge adumbrated on pp. 2-3 of this briefing material.

Lifetime bar - on particular matters that you worked on

You will be prohibited by criminal statute from representing back to the federal government on any particular matter involving specific parties in which you participated personally and substantially while in federal service. "Representation back""means making an appearance or communication, on behalf of another, with the intent to influence an official action. And the matter must involve the United States or be one in which the US has an interest.

> Example: You are asked by XYZ Corporation to contact EPA about seeking an exemption so that a particular permit you granted while in your position no longer applies to them. You cannot do that because you worked on that matter while at EPA. You are permanently barred from representing another back to the federal government on that same matter.

2-year bar - on EPA matters pending during your last year in federal service

You are prohibited (again, by criminal statute) from representing back to the federal government on any particular matter involving specific parties that was pending under your official responsibility during your last year of federal service. Even if you recuse yourself from a matter, you are still bound by the two-year bar. You are not permanently restricted, since you didn't work on the matter personally and substantially, but you are prohibited from representing another back to the federal government on that matter for two years.

Senior Employee "cooling off restriction" – on any matter

Depending on your rate of pay, you may be considered a "senior official" and will be restricted for one year from making any contact with EPA following your departure (under the federal ethics regulation). Political appointees have additional time restrictions under the Biden Ethics Pledge. This prohibition is not limited to particular matters. Rather, you cannot knowingly make any communication or appearance to EPA employees on behalf of another with the intent to influence in connection with any matter in which you seek official EPA action.

Effective January 3, 2021, the defining rate of pay for "senior officials" is $172,395 per year (excluding locality pay). If you make more than that (before locality pay), then you are a "senior employee" and will be bound by the cooling off period. By the way, SESers do not get locality pay so, most likely, any SESer will be a "senior employee" and subject to this restriction.

Welcome to EPA and thank you for keeping ethics in the forefront of all we do!

**REQUIREMENT: Notify OGC/Ethics within 3 business days of commencing the negotiation or agreement for post-government employment or compensation**

## NOTIFICATION OF NEGOTIATION OR AGREEMENT

| | | |
|---|---|---|
| **Your full name** | **Your telephone number*** | **Date negotiation or agreement began** |
| **Your Title / Office / AAship or Region** | **Your email address*** | **Name of non-federal entity that you are negotiating with or have an agreement for employment or compensation** |

* *Provide information for OGC/Ethics to use to contact you as part of our official duty. For this purpose, you may provide a personal email address or cell number.*

## RECUSAL STATEMENT

### To assist in identifying your recusal obligations, check the appropriate boxes below:

| | Yes | No | |
|---|---|---|---|
| **1.** | ☐ | ☐ | EPA's programs, policies, or operations affect the non-federal entity with which I am seeking employment. |
| **2.** | ☐ | ☐ | My office in EPA does work that affects the non-federal entity with which I am seeking employment. |
| **3.** | ☐ | ☐ | The work I participate in affects or will affect the non-federal entity with which I am seeking employment. |

Need help answering these statements? See page 2.

**For as long as I am negotiating for, or have an agreement of, employment or compensation with the entity listed above, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of this entity, unless I first obtain from OGC/Ethics a written authorization or waiver consistent with 5 C.F.R. § 2635.605 or 18 U.S.C. § 208(b)(1). I understand that it is my responsibility to consult with OGC/Ethics if I have questions regarding my recusal obligations.**

### Sign and submit to ethics@epa.gov:

**Your signature**

**OGC/Ethics Use Only:**

**Statement 1: EPA's programs, policies, or operations affect the non-federal entity with which I am seeking employment.**

If your answer is "yes" to any of the following questions, then you must answer "yes" to statement 1.

- Is the non-federal entity seeking official action from EPA (even if not your own office)?
- Does the non-federal entity do business or seek to do business with the EPA (even if not your own office)?
- Does the non-federal entity conduct activities that EPA regulates (even if not in your own office)?
- Does the non-federal entity have interests that may be substantially affected by the performance or non-performance of your official duties?
- Is the non-federal entity a membership organization in which the majority of the members are described in the preceding questions?

**Statement 2: My office in EPA does work that affects the non-federal entity with which I am seeking employment.**

To answer this question, think about the nexus between the work of your office and the non-federal entity. The closer the nexus, the more likely you will have to check "yes" to statement 2.

- Consider the particular matters your office works on and whether there is any connection to the work of this entity. Does your office work on permits, investigations, litigation, grants, licenses, contracts, applications, enforcement cases, or other similar types of matters where there is an identified non-federal entity (i.e., particular matters involving specific parties)?
- Also consider whether your office is involved in scientific programs, media programs, or other types of policies, procedures, guidance documents, regulations, etc., that would affect this particular industry or sector (i.e., particular matters of general applicability).

**Statement 3: The work I participate in affects or will affect the non-federal entity with which I am seeking employment.**

Think about the nexus between your work and the non-federal entity as well as its respective class, industry or sector. The closer the nexus between your work and the sector the non-federal entity belongs to, the more likely you will check have to check "yes" to statement 3.

- Will the work you do affect the sector? Don't concentrate on whether your personal contributions will be determinative but rather, overall, how the outcome of the work itself will affect the sector and the non-federal entity with which you are negotiating.
- Do you advise on or consult with your colleagues' projects and work? Does their work affect this sector or the non-federal entity?
- Do you actively supervise or assign work to subordinates? Do those assignments affect the sector or the non-federal entity?

**Need help answering these statements? Contact ethics@epa.gov to discuss.**

# EPA Ethics Program

**Counseling Practice Area:** **Vetting Invitations**

## Quick Summary:

One of the more visible ways ethics issues arise are those that come up during the calendaring of events and invitations for an EPA principal and their immediate staff. The ethics issues run the whole gambit:

Recusal Obligations ✦ Gifts ✦ Fundraising ✦ Political Activity ✦ Endorsements
President's Ethics Pledge ✦ Misuse of Position

Embedding ethics is a proactive counseling practice that brings together the Principals, their immediate staff, and Deputy Ethics Officials to establish a process for incorporating ethics vetting into the Principal's calendar. This helps and supports the EPA principal to meet their ethics obligations and maintain integrity of agency programs and operations.

---

## Who:

Principals (Administrator, Deputy Administrator, Assistant Administrators, and Regional Administrators, certain Deputy Associate Administrators), their immediate staff, and Deputy Ethics Officials.

## What:

Preventing conflicts of interest and other ethics issues by embedding ethics review into the calendaring process for principals.

## When:

Upon the appointee's start of EPA service

## Where:

Through coordination in the principal's front office and immediate staff

## Why:

Principals and other political appointees encounter frequent ethics issues arising through acceptance of external events, travel, and meetings with external participants. With increased public scrutiny and ethics legal frameworks, this is a high risk area in the ethics program. It is the principal's responsibility to avoid ethics issues and to maintain public trust in government.

## How:

To navigate these ethics issues, we establish a process, use standard event information gathering forms, and train periodically, so a principal's front office can obtain all relevant information for an event and ethics officials can advise appropriately and timely prior to acceptance.

# Executive Order on Ethics Commitments by Executive Branch Personnel

JANUARY 20, 2021 • PRESIDENTIAL ACTIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Ethics Pledge. Every appointee in every executive agency appointed on or after January 20, 2021, shall sign, and upon signing shall be contractually committed to, the following pledge upon becoming an appointee:

"I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

"Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

"1. Lobbyist Gift Ban. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

“2. Revolving Door Ban — All Appointees Entering Government. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

“3. Revolving Door Ban — Lobbyists and Registered Agents Entering Government. If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 et seq., or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 et seq., within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

(a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;

(b) participate in the specific issue area in which that particular matter falls; or

(c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.

“4. Revolving Door Ban — Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.

“5. Revolving Door Ban — Senior and Very Senior Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections’ implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment,

I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.

"6. Revolving Door Ban — Appointees Leaving Government to Lobby. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.

"7. Golden Parachute Ban. I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.

"8. Employment Qualification Commitment. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.

"9. Assent to Enforcement. I acknowledge that the Executive Order entitled 'Ethics Commitments by Executive Branch Personnel,' issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service."

Sec. 2. Definitions. For purposes of this order and the pledge set forth in section 1 of this order:

(a) "Executive agency" shall include each "executive agency" as defined by section 105 of title 5, United States Code, and shall include the Executive Office of the President; provided, however, that "executive agency" shall include the United States Postal Service and Postal Regulatory Commission, but shall exclude the Government Accountability Office.

(b) "Appointee" shall include every full-time, non-career Presidential or Vice-Presidential appointee, non-career appointee in the Senior Executive Service (or other SES-type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policymaking character (Schedule C and other positions excepted under comparable criteria) in an executive agency. It does not include any person appointed as a member of the Senior Foreign Service or solely as a uniformed service commissioned officer.

(c) "Gift":

(i) shall have the definition set forth in section 2635.203(b) of title 5, Code of Federal Regulations;

(ii) shall include gifts that are solicited or accepted indirectly, as defined in section 2635.203(f) of title 5, Code of Federal Regulations; and

(iii) shall exclude those items excluded by sections 2635.204(b), (c), (e)(1) and (3), and (j) through (l) of title 5, Code of Federal Regulations.

(d) "Covered executive branch official" and "lobbyist" shall have the definitions set forth in section 1602 of title 2, United States Code.

(e) "Registered lobbyist or lobbying organization" shall mean a lobbyist or an organization filing a registration pursuant to section 1603(a) of title 2, United States Code, and in the case of an organization filing such a registration, "registered lobbyist" shall include each of the lobbyists identified therein.

(f) “Lobby” and “lobbied” shall mean to act or have acted as a registered lobbyist.

(g) “Lobbying activities” shall have the definition set forth in section 1602 of title 2, United States Code.

(h) “Materially assist” means to provide substantive assistance but does not include providing background or general education on a matter of law or policy based upon an individual’s subject matter expertise, nor any conduct or assistance permitted under section 207(j) of title 18, United States Code.

(i) “Particular matter” shall have the same meaning as set forth in section 207 of title 18, United States Code, and section 2635.402(b)(3) of title 5, Code of Federal Regulations.

(j) “Particular matter involving specific parties” shall have the same meaning as set forth in section 2641.201(h) of title 5, Code of Federal Regulations, except that it shall also include any meeting or other communication relating to the performance of one’s official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.

(k) “Former employer” is any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner, except that “former employer” does not include any executive agency or other entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, any United States territory or possession, or any international organization in which the United States is a member state.

(l) “Former client” is any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service provided was limited to speeches or similar appearances. It does not include

clients of the appointee's former employer to whom the appointee did not personally provide services.

(m) "Directly and substantially related to my former employer or former clients" shall mean matters in which the appointee's former employer or a former client is a party or represents a party.

(n) "Participate" means to participate personally and substantially.

(o) "Government official" means any employee of the executive branch.

(p) "Administration" means all terms of office of the incumbent President serving at the time of the appointment of an appointee covered by this order.

(q) "Pledge" means the ethics pledge set forth in section 1 of this order.

(r) "Senior White House staff" means any person appointed by the President to a position under sections 105(a)(2)(A) or (B) of title 3, United States Code, or by the Vice President to a position under sections 106(a)(1)(A) or (B) of title 3.

(s) All references to provisions of law and regulations shall refer to such provisions as are in effect on January 20, 2021.

Sec. 3. Waiver. (a) The Director of the Office of Management and Budget (OMB), in consultation with the Counsel to the President, may grant to any current or former appointee a written waiver of any restrictions contained in the pledge signed by such appointee if, and to the extent that, the Director of OMB certifies in writing:

(i) that the literal application of the restriction is inconsistent with the purposes of the restriction; or

(ii) that it is in the public interest to grant the waiver. Any such written waiver should reflect the basis for the waiver and, in the case of a waiver of the restrictions set forth in paragraphs 3(b) and (c) of the pledge, a discussion of the findings with respect to the factors set forth in subsection (b) of this section.

(b) A waiver shall take effect when the certification is signed by the Director of OMB and shall be made public within 10 days thereafter.

(c) The public interest shall include, but not be limited to, exigent circumstances relating to national security, the economy, public health, or the environment. In determining whether it is in the public interest to grant a waiver of the restrictions contained in paragraphs 3(b) and (c) of the pledge, the responsible official may consider the following factors:

(i) the government's need for the individual's services, including the existence of special circumstances related to national security, the economy, public health, or the environment;

(ii) the uniqueness of the individual's qualifications to meet the government's needs;

(iii) the scope and nature of the individual's prior lobbying activities, including whether such activities were de minimis or rendered on behalf of a nonprofit organization; and

(iv) the extent to which the purposes of the restriction may be satisfied through other limitations on the individual's services, such as those required by paragraph 3(a) of the pledge.

Sec. 4. Administration. (a) The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish such rules or procedures (conforming as nearly as practicable to the agency's general ethics rules and procedures, including those relating to designated agency ethics officers) as are necessary or appropriate to ensure:

(i) that every appointee in the agency signs the pledge upon assuming the appointed office or otherwise becoming an appointee;

(ii) that compliance with paragraph 3 of the pledge is addressed in a written ethics agreement with each appointee to whom it applies, which agreement shall also be approved by the Counsel to the President prior to the appointee commencing work;

(iii) that spousal employment issues and other conflicts not expressly addressed by the pledge are addressed in ethics agreements with appointees or, where no such agreements are required, through ethics counseling; and

(iv) that the agency generally complies with this order.

(b) With respect to the Executive Office of the President, the duties set forth in section 4(a) of this order shall be the responsibility of the Counsel to the President.

(c) The Director of the Office of Government Ethics shall:

(i) ensure that the pledge and a copy of this order are made available for use by agencies in fulfilling their duties under section 4(a) of this order;

(ii) in consultation with the Attorney General or the Counsel to the President, when appropriate, assist designated agency ethics officers in providing advice to current or former appointees regarding the application of the pledge; and

(iii) in consultation with the Attorney General and the Counsel to the President, adopt such rules or procedures as are necessary or appropriate:

(A) to carry out the foregoing responsibilities;

(B) to authorize limited exceptions to the lobbyist gift ban for circumstances that do not implicate the purposes of the ban;

(C) to make clear that no person shall have violated the lobbyist gift ban if the person properly disposes of a gift as provided by section 2635.206 of title 5, Code of Federal Regulations;

(D) to ensure that existing rules and procedures for Government employees engaged in negotiations for future employment with private businesses that are affected by the employees' official actions do not affect the integrity of the Government's programs and operations;

(E) to ensure, in consultation with the Director of the Office of Personnel Management, that the requirement set forth in paragraph 6 of the pledge is honored by every employee of the executive branch;

(iv) in consultation with the Director of OMB, report to the President on whether full compliance is being achieved with existing laws and regulations governing executive branch procurement lobbying disclosure. This report shall include recommendations on steps the executive branch can take to expand, to the fullest extent practicable, disclosure of both executive branch procurement lobbying and of lobbying for Presidential pardons. These recommendations shall include both immediate actions the executive branch can take and, if necessary, recommendations for legislation; and

(v) provide an annual public report on the administration of the pledge and this order.

(d) The Director of the Office of Government Ethics shall, in consultation with the Attorney General, the Counsel to the President, and the Director of the Office of Personnel Management, report to the President on steps the executive branch can take to expand to the fullest extent practicable the revolving door ban set forth in paragraph 5 of the pledge to all executive branch employees who are involved in the procurement process such that they may not for 2 years after leaving Government service lobby any Government official regarding a Government contract that was under their official responsibility in the last 2 years of their Government service. This report shall include both immediate actions the executive branch can take and, if necessary, recommendations for legislation.

(e) All pledges signed by appointees, and all waiver certifications with respect thereto, shall be filed with the head of the appointee's agency for permanent retention in the appointee's official personnel folder or equivalent folder.

Sec. 5. Enforcement. (a) The contractual, fiduciary, and ethical commitments in the pledge provided for herein are solely enforceable by the United States pursuant to this section by any legally available means, including debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive, or monetary relief.

(b) Any former appointee who is determined, after notice and hearing, by the duly designated authority within any agency, to have violated his or her pledge may be barred from lobbying any officer or employee of that agency for up to 5 years in addition to the time period covered by the pledge. The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish procedures to implement this subsection, which procedures shall include (but not be limited to) providing for fact-finding and investigation of possible violations of this order and for referrals to the Attorney General for consideration pursuant to subsection (c) of this order.

(c) The Attorney General is authorized:

(i) upon receiving information regarding the possible breach of any commitment in a signed pledge, to request any appropriate Federal investigative authority to conduct such investigations as may be appropriate; and

(ii) upon determining that there is a reasonable basis to believe that a breach of a commitment has occurred or will occur or continue, if not enjoined, to commence a civil action against the former employee in any United States District Court with jurisdiction to consider the matter.

(d) In any such civil action, the Attorney General is authorized to request any and all relief authorized by law, including but not limited to:

(i) such temporary restraining orders and preliminary and permanent injunctions as may be appropriate to restrain future, recurring, or continuing conduct by the former employee in breach of the commitments in the pledge he or she signed; and

(ii) establishment of a constructive trust for the benefit of the United States, requiring an accounting and payment to the United States Treasury of all money and other things of value received by, or payable to, the former employee arising out of any breach or attempted breach of the pledge signed by the former employee.

Sec. 6. General Provisions. (a) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order and other dissimilar applications of such provision shall not be affected.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN JR.

THE WHITE HOUSE,
January 20, 2021.

# ETHICS PLEDGE

I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. *Lobbyist Gift Ban*. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

2. *Revolving Door Ban — All Appointees Entering Government*. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

3. *Revolving Door Ban — Lobbyists and Registered Agents Entering Government*. If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 *et seq*., or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 *et seq*., within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

   (a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;

   (b) participate in the specific issue area in which that particular matter falls; or

   (c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.

4. *Revolving Door Ban — Appointees Leaving Government*. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.

5. *Revolving Door Ban — Senior and Very Senior Appointees Leaving Government*. If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections' implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.

6. *Revolving Door Ban — Appointees Leaving Government to Lobby*. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.

7. *Golden Parachute Ban*. I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.

8. *Employment Qualification Commitment*. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.

9. *Assent to Enforcement*. I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Personnel," issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.

_____ _____, 20_____

Signature Date

Name (Type or Print): _____

## Clarke, Victoria

**Subject:** New Employee Ethics Briefing
**Location:** Microsoft Teams Meeting

**Start:** Mon 6/28/2021 1:00 PM
**End:** Mon 6/28/2021 2:00 PM

**Recurrence:** (none)

**Meeting Status:** Meeting organizer

**Organizer:** Clarke, Victoria
**Required Attendees:** li.jake@epa.gov (b) (6) [redacted] weaver.susannah@epa.gov; (b) (6) [redacted]; Schafer, Zach
**Optional Attendees:** Harris, Sincere; Mercado Violand, Fernando; Payne, James (Jim)

Ethics briefing for Susannah Weaver (Schd. C GS-15, Senior Counsel OGC); Jake Li (Schd. C GS-15, Deputy AA OCSPP); Zach Shafer (OW).

---

# Microsoft Teams meeting

**Join on your computer or mobile app**
Click here to join the meeting

**Or call in (audio only)**
(b) (5) [redacted] United States, Washington DC
Phone Conference ID: (b) (5) [redacted]
Find a local number | Reset PIN

By participating in EPA hosted virtual meetings and events, you are consenting to abide by the agency's terms of use. In addition, you acknowledge that content you post may be collected and used in support of FOIA and eDiscovery activities.

Learn More | Meeting options

---

**From:** Fugh, Justina
**To:** mccabe.janet@epa.gov; (b) (6) [redacted]
**Subject:** Initial Ethics Training (Janet McCabe)
**Attachments:** Ethics Briefing Packet for Political Appointees.pdf

---

Hi Janet,

Welcome back to EPA! Let's meet to go over your ethics obligations and get your signature on the ethics pledge.

Thanks!

Justina

---

Microsoft Teams meeting

Join on your computer or mobile app

Click here to join the meeting (b) (6) [redacted]

Or call in (audio only)

(b) (5) [redacted] United States, Washington DC

Phone Conference (b) (5) [redacted]

Find a local number <https://dialin.teams.microsoft.com/556a4b78-4afd-4fe6-b721-1d903e8cdaa6?id=247388100> | Reset PIN
(b) (6) [redacted]

[redacted]

---

Revised 2/24/21 (for political appointees)

# Ethics Briefing

## 1. The Ethics Program at the Environmental Protection Agency

You have ethics officials in the Office of General Counsel who can assist you:

| | |
|---|---|
| **Jim Payne**<br>Designated Agency Ethics Official<br>(202) 564-0212 payne.james@epa.gov | |
| **Justina Fugh**<br>Alternate Agency Ethics Official and Director of Ethics Office<br>(202) 564-1786 fugh.justina@epa.gov | |
| **Shannon Griffo**<br>Ethics Attorney<br>(202) 564-7061<br>griffo.shannon@epa.gov | **Margaret Ross**<br>Ethics Officer<br>(202) 564-3221<br>ross.margaret@epa.gov |
| **Jennie Keith**<br>Ethics Officer<br>(202) 564-3412<br>keith.jennie@epa.gov | **Victoria Clarke**<br>Ethics Attorney<br>202-564-1149<br>clarke.victoria@epa.gov |
| **Ferne Mosley**<br>Ethics Attorney<br>(202) 564-8046<br>mosley.ferne@epa.gov | **OGC/Ethics**<br>All Staff and Helpline<br>(202) 564-2200<br>ethics@epa.gov |

You can also visit the OGC/Ethics SharePoint site for more information.

## 2. The General Principles of Ethical Conduct

As public servants, we have a duty to ensure that every citizen has complete confidence in the integrity of the United States and that we are not putting personal or private interests ahead of the public trust. There are 14 principles that form your basic obligation of public service that we'll address in this briefing material.

## 3. <u>The President's Executive Order (for political appointees only)</u>

On January 20, 2021, President Biden issued an Executive Order that includes an ethics pledge you must sign as a condition of your appointment. You are agreeing to a broader "ethics in government" plan to restore and maintain public trust in government, so please review the preamble carefully. The significant points of the pledge itself are described below:

*If you were a federally registered lobbyist or registered foreign agent in the past 2 years:*

- Do not seek or accept employment with any government agency that you lobbied or engaged in registrable activity under FARA within the past 2 years.
- You will need a written ethics agreement which memorializes your compliance with the terms of the Pledge prior to starting, which must also be approved by the White House.
- For the next 2 years, do not participate in any particular matter on which you lobbied or were registrable for under the Foreign Agents Registration Act within the previous 2 years and do not participate in the specific issue area in which that particular matter falls.

*While you are a federally employee:*

- Do not accept any gifts from a registered lobbyist, including attendance at a widely attended gathering. There are a few exceptions (e.g., preexisting personal relationship, discount or benefit available to all government employees) but check with an ethics official for guidance.
- For 2 years from the date of your appointment, do not participate in any particular matter involving specific parties that is directly and substantially related to your former employer or former clients, including regulations and contracts.
    - Note: The definition of *former employer* excludes the federal government, state or local governments, D.C., Native American tribes, U.S. territories or possessions, or any international organization in which the U.S. is a member state. But under the federal impartiality rules, you will still have a one-year cooling off period with those entities (except if your former employer was already the US government).
- Any hiring or other employment decisions that you make will be based on the candidate's qualifications, competence, and experience.
- Do not accept any salary or cash payment or any other non-cash benefit from a former employer for entering into government service.

*When you leave federal service, you are agreeing to the following:*

- If you are a "senior employee" subject to the one-year cooling off period under 18 U.S.C. § 207(c), your cooling off period will be extended by another year, for a total of two years.

- If you are a "senior employee" subject to either 18 U.S.C. § 207(c) or (d), for one year following your departure from federal service, you will not work behind the scenes to materially assist others in making communications or appearances to the United States Government that you would otherwise be unable to make under the post-employment restrictions.

- You will not lobby any covered executive branch official or non-career SES appointee for the remainder of this Administration or for 2 years following the end of your appointment, whichever is later.

- You will not engage in any activity on behalf of a foreign government or foreign political party that would require you to register under the Foreign Agents Registration Act for the remainder of this Administrator or 2 years following the end of your appointment, whichever is later.

You are expected to abide by all commitments in the Pledge, however, the Pledge does allow for a waiver of certain restrictions, provided that certain criteria are met. The DAEO, in consultation with White House Counsel, is delegated the authority to grant Pledge waivers. LA-21-04. All Pledge waivers must be made public within ten days of issuance.

A copy of the Executive Order and the Biden Ethics Pledge that you must sign are included in this packet of materials.

**4. Financial Disclosure Reporting**

In your position, you are required to complete a public financial disclosure report as you begin the federal service and every year thereafter. You will file this report in INTEGRITY, an electronic system managed by the Office of Government Ethics. When you leave EPA, you will be required to submit a termination financial disclosure report. In addition, you are required to have one hour of ethics training as a new entrant (PAS appointees have an additional requirement for a specialized one-on-one ethics briefing), and also required to have one hour of ethics training each year. The Ethics Office in the Office of General Counsel (OGC/Ethics) provides your training either in person or virtually.

You must report any transaction of securities (stocks or bonds) over $1000 on a periodic basis in INTEGRITY using the 278T. These periodic transactions must be reported the earlier of 30 days after learning of the transaction or 45 days after the transaction takes place. Failure to file timely results in late fees that are assessed as a matter of law.

In addition, you are required to notify OGC/Ethics within three days of beginning to negotiate for employment with any non-federal entity. To do so, use our Notification of Negotiation form.

Included in this packet of materials are reminders about the types of transactions that are to be reported periodically and not being tardy in filing any reports with OGC/Ethics.

## 5. Attorney Client Privilege & FOIA

By regulation, disclosure by an employee to an ethics official is not protected by the attorney-client privilege. 5 C.F.R. § 2635.107(b). This means that if our records (or yours) are requested under the Freedom of Information Act (FOIA), then we will not be able to redact our advice to you using the attorney-client privilege. However, we can -- and do -- assert personal privacy and deliberative process privileges where applicable. For example, the deliberative process privilege may apply to pre-decisional ethics advice documents, but please note that our final advice to you is generally releasable.

This should **not** stop you from seeking the advice of your ethics officials! Not only does it show you are being a steward of the public trust, but good faith reliance on advice received from your ethics officials after disclosing all relevant facts can shield you from disciplinary action and is a factor that the Department of Justice considers when deciding which cases they wish to prosecute.

## 6. Conflicts of Interest

Do not participate as an agency official in any matter if there is an actual conflict of interest or even the appearance of a conflict of interest. It's a crime to participate *personally and substantially* in *any particular matter* in which, to your knowledge, you or a person whose interests are imputed to you has a financial interest if the particular matter will have a *direct and predictable effect* on that interest.

> Example: you own a lot of stock in XYZ Corporation, which is a chemical manufacturer. If your office is considering taking an enforcement action against XYZ Corporation, you must disqualify yourself from participating in the decision. Even if your mother gave your 10-year old twins the stock, you can't participate in the matter because their interest is imputed to you.

Remember, the interests of your spouse, dependent children, general business partner, and any organization in which you serve as officer, director, trustee or employee are imputed to you. This means that, under the criminal statute, it's the same thing as if you held those assets. So, you can't participate in any particular matter that may have a financial impact on the interests that are imputed to you.

## 7. Appearance of a Loss of Impartiality

Even if an action is not strictly prohibited, it is prudent to be careful of any action that a reasonable person with knowledge of the relevant facts may perceive as a violation of the ethics rules, or (if applicable) your ethics pledge and the Executive Order. You must avoid even the appearance of a loss of impartiality when performing official duties.

When we consider impartiality, we expand the ambit of relationships beyond the conflicts realm of "imputed interests." We consider all of your "covered relationships," which includes a lot more people: anybody with whom you have a business, contractual or financial relationship that is more than just a routine consumer transaction; any member of your household or a relative with whom you are close; the employer/partner or prospective employer/partner of your spouse, parent or dependent child; any person or organization for which you have served in the last year as an officer, agent, employee, etc.; and any organization in which you are an active participant.

You should refrain from engaging in official acts that may be perceived as an “appearance problem” by a reasonable person (and the reasonable person is not you, but rather your ethics officials).

Ethics officials can provide advice and determine whether a proposed course of action is appropriate by issuing an impartiality determination, but we cannot provide cover if you have already done the deed.

**8. <u>No representation back to the federal government</u>**

As a federal employee, you are prohibited from representing the interest of any other entity back to the federal government, whether you are paid for those services or not. For the purposes of these criminal statues, 18 U.S.C. §§ 203 and 205, it does not matter that you are representing the interests of another in your private capacity. You cannot serve as agent or attorney for another entity back to the United States on a particular matter in which the US is a party or has a direct and substantial interest.

**9. <u>Acceptance of Gifts</u>**

Be careful of any gift from people outside the Agency, particularly those that are worth more than $20. Gifts are anything of value and include allowing others to pick up the lunch tab, free tickets, invitations to receptions, and lovely fruit baskets. There are only a few exceptions, so consult your ethics officials before accepting any gift. Remember, political appointees can’t take gifts from federally registered lobbyists.

EPA does not have broad Agency gift authority, so prohibited gifts must be paid for or returned. You should also not generally accept gifts exceeding $10 from EPA employees, nor give gifts exceeding $10 to your superiors. There are some exceptions, so check with an ethics official. By the way, you may give gifts to any EPA person who makes less money than you provided that person is not your supervisor.

**10. <u>Attendance at Widely-Attended Gatherings (ethics check required)</u>**

Your ethics official must make a written determination in advance as to whether your participation and attendance at certain events meet the criteria for a “widely attended gathering” exception of the gift rule. You can’t make that determination yourself (nor can the sponsor of the event). For a WAG determination, your ethics official will consider the type of event, who is attending, and whether your attendance will further an Agency interest. This analysis must be done in writing and in advance of your attending the event. Any WAG that is approved is considered a gift to you, so you will be responsible for reporting the value of the gift on your financial disclose report if it exceeds the reporting threshold. For political appointees, though, please bear in mind that this exception does not apply to federally registered lobbyists. Political appointees cannot accept free attendance at a widely attended gathering that is sponsored by or hosted by a federally registered lobbyist.

IMPORTANT NOTE about **<u>Embedding Ethics into Your Calendaring Process</u>**

> Many ethics issues typically arise through the calendaring process of an EPA principal. Since you are responsible for your ethics obligations, we know you might need a little help. To assist you in navigating calendar and invitation issues, the EPA Ethics Office offers specialized assistance to

you and your front office staff to advise on invitations, gifts associated with those invitations, etc. Embedding ethics is a proactive counseling practice that brings together the Principals, their staff, and local Deputy Ethics Officials to establish a process for incorporating ethics vetting into your or the Principal's calendar. Contact Jennie Keith to get started!

## 11. Travel Issues

Approval of gifts of travel, lodging and meals from non-Federal sources for meetings and similar events must be obtained from OGC/Ethics prior to the event. You can't accept such offerings on your own! We have an electronic form that we use to process such requests, and we must report the approvals to the Office of Government Ethics twice a year. See http://intranet.epa.gov/ogc/ethics/travel.htm . Prior to the pandemic, OGC/Ethics accepted over $1 million each year in discretionary travel paid by non-federal sources.

## 12. Preferential Treatment of Non-Federal Entities (Endorsement)

Be careful about showing preferential treatment to any entity. We cannot endorse the products, services or enterprises of another, so you need to be careful about extolling the virtues of a regulated entity, a particular contractor or applicant, etc. Seek ethics advice before collaborating with non-federal entities on initiatives and events because not all of EPA's statutes allow us to cooperate with non-feds.

## 13. Political Activities

You are now bound by the Hatch Act, which governs the political activity of federal employees, even in your personal capacity. Career SES employees are bound by even more restrictions, while Presidentially Appointed and Senate Confirmed (PAS) employees enjoy more liberties. Do not rely on what you think other people can do; find out for yourself by asking your ethics officials.

Some limitations under the Hatch Act are 24/7, meaning that you have restrictions even on your time. For example, you are never permitted to solicit, accept or receive political contributions, not even in your personal time. You can never use your EPA title or position to fundraise in connection with any political activity. Because the Hatch Act rules vary depending on your type of appointment, please see the attached chart and consult your ethics officials.

## 14. Lobbying Issues

EPA employees cannot use appropriated funds to engage in indirect or grassroots lobbying regarding any legislative proposal. Indirect or grassroots lobbying generally means urging members of special interest groups or the general public to contact legislators to support or oppose a legislative proposal. EPA employees cannot make explicit statements to the public to contact members of Congress in support of or in opposition to a legislative proposal. Other prohibited grassroots lobbying includes an employee's explicit request, while on official time, to an outside group asking it to contact Congress to support or oppose EPA's appropriations bill.

In addition, EPA is prohibited from using appropriated funds for activities that would "tend to promote" the public to contact Congress in support of or in opposition to a legislative proposal, even if an EPA employee does not expressly state that the public should contact Congress. This activity is

considered “indirect lobbying” and is prohibited. You may, after coordinating with OCIR and Public Affairs, directly contact or lobby members of Congress and their staffs regarding the Administration's legislative proposals. Again, after getting approval from OCIR, you may also educate and inform the public of the Administration's position on legislative proposals by delivering speeches and making public remarks explaining the Administration's position on a legislative proposal.

## 15. Use of Government Personnel and Resources

EPA policy permits employees to “limited use” of government equipment, including the telephone, copying machines, fax machines, etc. Employees cannot, however, engage in outside activity or employment on government time. GSA regulations also prohibit any fundraising on federal property (except for the Combined Federal Campaign), so employees cannot raise money for their favorite charity (i.e., sell cookies, candy or wrapping paper for a “good cause”). They also cannot use the internet connection for gambling or to access pornography. See EPA’s Limited Personal Use of Government Equipment Policy. Avoid using your EPA email address for personal matters, and do not use your personal email address for EPA matters.

## 16. Outside Activities

We were advised by the Biden Presidential Transition Team that non-PAS political appointees may have outside positions that are consistent with federal ethics regulations, including the Agency’s ethics regulations. Non-Career SES and Schedule C appointees must seek prior approval from EPA Ethics for certain outside activity consistent with EPA’s Supplemental Ethics Regulations at 5 C.F.R. § 6401.103. Examples of activity that require prior approval are practicing a profession or teaching, speaking or writing on subjects related to EPA programs, policies or operations. While there is a *de minimis* use of government equipment, that never applies to any compensated outside activity.

Most EPA employees may not receive any compensation for teaching, speaking or writing (including consulting) that relates in significant part to your assigned EPA duties, duties to which you’ve been assigned in the previous year, or to any ongoing Agency program, policy or operation. But if you are a non-career SES employee, then your restriction is even broader: you may not receive compensation at all for any teaching, speaking or writing that relates to your official duties or even to EPA’s general subject matter area, industry, or economic sector primarily affected by EPA’s programs and operations. 5 C.F.R. § 2635.807(a)(2)(i)(E)(3).

Non-Career SESers must also abide by these additional restrictions:

- You are subject to the outside earned income cap that is set each January. As of January 2021, that amount is $29,595. See 5 C.F.R. § 2635.804(b) and 5 C.F.R. § 2636.304. This amount changes each year.
    - If you start after January 1, then the amount of earned income you can receive is pro-rated by the number of days in the calendar year that you hold the non-career SES position;
- You cannot receive compensation for practicing a profession that involves a fiduciary relationship; affiliating with or being employed by a firm or other entity that provides

professional services involving a fiduciary relationship; or teaching without prior approval. See note to 5 C.F.R. § 2635.804(b) and 5 C.F.R. § 2636.305;

- You may be permitted to serve as an officer or member of the board of any association, corporation or other entity, but cannot be compensated for such service. See 5 C.F.R. § 2636.306; and

- You may not receive compensation for any other teaching unless specifically authorized in advance by OGC/Ethics (specifically, the Designated or Alternate Designated Agency Ethics Official listed on the first page of this briefing material). See 5 C.F.R. § 2636.307.

## 17. Ethics Obligations of Supervisors

If you are a supervisor, you must model ethical behavior for your staff. Set forth below are your additional ethics responsibilities, found at 5 C.F.R. § 2638.103:

> Every supervisor in the executive branch has a heightened personal responsibility for advancing government ethics. It is imperative that supervisors serve as models of ethical behavior for subordinates. Supervisors have a responsibility to help ensure that subordinates are aware of their ethical obligations under the Standards of Conduct and that subordinates know how to contact agency ethics officials. Supervisors are also responsible for working with agency ethics officials to help resolve conflicts of interest and enforce government ethics laws and regulations, including those requiring certain employees to file financial disclosure reports. In addition, supervisors are responsible, when requested, for assisting agency ethics officials in evaluating potential conflicts of interest and identifying positions subject to financial disclosure requirements.

Your staff may ask you ethics questions, but unless you are an ethics official, you are not authorized to answer those ethics questions. If you receive an ethics question, then contact your own local Deputy Ethics Official or notify OGC/Ethics at ethics@epa.gov.

## 18. Seeking Employment

It's always odd to talk about seeking employment when we are welcoming you to EPA, but be mindful of the fact that there are restrictions that will apply. You won't be able to participate in a particular matter involving a party with which you are seeking employment, and that obligation starts as soon as you directly or indirectly contact a prospective employer, or as soon as you get a response expressing interest in you. You will need to disqualify yourself from particular matters that may affect the prospective employer.

## 19. Negotiating for Employment

Should your pursuit of future employment advance to "negotiating" for employment with a particular entity, then you will have conflicts of interest. The financial interests of any person or entity with whom you are "negotiating" for employment are imputed to you for the purposes of the criminal conflict of interest statute, 18 U.S.C. § 208. You will need to recuse yourself from participating in any particular matter that will have a direct and predictable effect upon the interests of the prospective employer, either as a specific party or as a member of a class, which will include particular matters that apply

generally to the prospective employer's industry or class.

Filers of the public financial disclosure report are further subject to the Ethics In Government Act, as amended by the STOCK Act, which requires you to notify OGC/Ethics within three days of commencing negotiations for future employment with a non-federal employer. Yes, we have a form for that notification.

## 20. Post-Government Employment - Representational Restrictions

Even after you leave federal service, there are federal post-employment restrictions. Your pledge restrictions are supplementary to these restrictions. Your ethics officials are still available to answer your post-employment questions, even after you leave EPA. You will need to have an exit discussion with OGC/Ethics before you leave EPA, but here are the highlights of what we'll discuss regarding the federal law. You will also be bound by the additional restrictions of the Biden Ethics Pledge adumbrated on pp. 2-3 of this briefing material.

Lifetime bar - on particular matters that you worked on

You will be prohibited by criminal statute from representing back to the federal government on any particular matter involving specific parties in which you participated personally and substantially while in federal service. "Representation back""means making an appearance or communication, on behalf of another, with the intent to influence an official action. And the matter must involve the United States or be one in which the US has an interest.

> Example: You are asked by XYZ Corporation to contact EPA about seeking an exemption so that a particular permit you granted while in your position no longer applies to them. You cannot do that because you worked on that matter while at EPA. You are permanently barred from representing another back to the federal government on that same matter.

2-year bar - on EPA matters pending during your last year in federal service

You are prohibited (again, by criminal statute) from representing back to the federal government on any particular matter involving specific parties that was pending under your official responsibility during your last year of federal service. Even if you recuse yourself from a matter, you are still bound by the two-year bar. You are not permanently restricted, since you didn't work on the matter personally and substantially, but you are prohibited from representing another back to the federal government on that matter for two years.

Senior Employee "cooling off restriction" – on any matter

Depending on your rate of pay, you may be considered a "senior official" and will be restricted for one year from making any contact with EPA following your departure (under the federal ethics regulation). Political appointees have additional time restrictions under the Biden Ethics Pledge. This prohibition is not limited to particular matters. Rather, you cannot knowingly make any communication or appearance to EPA employees on behalf of another with the intent to influence in connection with any matter in which you seek official EPA action.

Effective January 3, 2021, the defining rate of pay for "senior officials" is $172,395 per year (excluding

locality pay). If you make more than that (before locality pay), then you are a “senior employee” and will be bound by the cooling off period. By the way, SESers do not get locality pay so, most likely, any SESer will be a “senior employee” and subject to this restriction.

Welcome to EPA and thank you for keeping ethics in the forefront of all we do!

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
Washington, D.C. 20460

January 22, 2021

OFFICE OF
GENERAL COUNSEL

**MEMORANDUM**

SUBJECT: Timely filing of Public Financial Disclosure and Periodic Transaction Reports

FROM: Justina Fugh Justina Fugh Digitally signed by Justina Fugh Date: 2021.01.22 12:07:49 -05'00'
Alternate Designated Agency Ethics Official

TO: All EPA Political Appointees

In 1978, Congress enacted the Ethics In Government Act, 5 U.S.C. app. to establish the Executive Branch financial disclosure reporting system that requires mandatory public disclosure of financial and employment information of certain officials and their immediate families. Because you occupy a designated position, you are required by this law to file these reports in the electronic system, *INTEGRITY*. As an executive branch employee, you are bound by federal ethics laws and regulations, including prohibitions against financial conflicts of interest and loss of impartiality. Your disclosures allow the Office of General Counsel's Ethics Office (OGC/Ethics) to assist you in identifying and addressing potential or actual conflicts of interest in order to maintain the integrity of the Agency's programs and operations. These reports are publicly available upon request and the reports of certain Presidential Appointees confirmed by the Senate will be posted on the U.S. Office of Government Ethics' website at www.oge.gov.

This memorandum formally informs you that you are required by law to file timely and accurate Public Financial Disclosure Reports (OGE 278e)[1] and Periodic Transaction Reports (OGE 278-Ts).[2] **Filing a late report will result in a $200 late filing fee** unless you formally request and receive a waiver of the late fee from me or the Designated Agency Ethics Official (DAEO), Jim Payne, after describing extraordinary circumstances that caused you to file a late report.[3] **Unpaid late fees are subject to the Agency's[4] and the government's debt collection procedures and will be referred for collection if left unpaid after 30 days.**

Please refer to this chart for your filing obligations:

---

[1] *See* 5 U.S.C. app. § 101; 5 C.F.R. § 2634.201.
[2] Pub. L. 112-105 § 11 (STOCK Act).
[3] *See* 5 U.S.C. app. § 104(d)(1); 5 C.F.R. § 2634.704(a).
[4] *See* Resource Management Directive System 2540-03-P2 dated 07/12/2016.

| | |
|---|---|
| OGE 278e - New Entrant reports | **Within 30 days** of entering a covered position (either by appointment to a permanent or acting in covered position) |
| OGE 278e – Incumbent reports | **No later than May 15** |
| OGE 278e – Termination reports | **No later than 30 days after** leaving a covered position (either through reassignment, resignation, or the end of acting in a covered position) (Reports may be submitted within 15 days prior to termination) |
| OGE 278T – Periodic transaction reports[5] | **The *earlier of* 30 days** after learning of a transaction or **45 days** of the transaction taking place. |

How to request an extension of the filing deadline:

For good cause (e.g., travel, workload issues, sickness), you may request up to two 45-day extensions. Submit the request by email, including the reason, to ethics@epa.gov **prior to the due date.** Extensions cannot be granted after the due date has passed.

How to request the waiver of a late filing fee:

If *extraordinary circumstances* prevented you from meeting the deadline and OGC/Ethics assessed a late fee, you may request a waiver of the late fee. *See* 5 C.F.R. § 2634.704. Submit your request in writing to ethics@epa.gov describing the extraordinary circumstances and provide any supporting documentation. Please note that vacations or routine work obligations are not "extraordinary" circumstances. The decision to grant or deny a waiver is at the sole discretion of the DAEO/ADAEO and is final.

Your colleagues in OGC/Ethics are available to provide assistance but it is always your obligation to file your reports timely and accurately. In fact, ethics regulations *require* that we refer individuals to the Department of Justice (DOJ) when there is reasonable cause to believe that they have willfully failed to file a required report or provide the information that the report requires. The current maximum civil penalty is $56,216.[6]

As public servants, we hope that you will take your ethics obligations seriously. As such, we expect you to make a good faith effort to adhere to the timeliness and completeness requirements of your financial disclosure reporting obligations. If you have any questions, please contact ethics@epa.gov.

ATTACHMENT - *When to Report Transactions on the OGE 278 and OGE 278-T*

[5] *See* attached guidance – *When to Report Transactions on the OGE 278 and OGE 278-T.*
[6] In 2012, OGC/Ethics referred an individual to DOJ for failure to file a termination report despite repeated reminders and entreaties. That individual paid a civil penalty of $15,000 and still had to file the termination report.

# When to Report Transactions

DUE DATE: The earlier of the following: 30 Days from Notification or 45 Days from Transaction

| Investment Assets | Periodic Transaction Report<br>Report on the OGE 278-T? | Annual and/or Termination Report<br>Report on Part 7 of the OGE 278e? |
|---|---|---|
| Transactions of $1,000 or less | | |
| • Any asset in which the transaction amount is $1,000 or less regardless of the type of asset or who owns the asset | No | No |
| Your investment assets (or jointly held) | | |
| • Your stocks | Yes | Yes |
| • Your bonds (except U.S. Treasury securities) | Yes | Yes |
| • Your commodity futures | Yes | Yes |
| • Your other investment securities | Yes | Yes |
| • Assets listed above in your (joint) brokerage accounts, (joint) managed accounts, IRAs, other retirement accounts, and/or other (joint) investment vehicles | Yes | Yes |
| Your spouse's investment assets | | |
| • Spouse's stocks | Yes | Yes |
| • Spouse's bonds (except U.S. Treasury securities) | Yes | Yes |
| • Spouse's commodity futures | Yes | Yes |
| • Spouse's other investment securities | Yes | Yes |
| • Assets listed above in spouse's <u>own</u> brokerage account, managed accounts, IRAs, other retirement accounts, and/or other investment vehicles | Yes | Yes |
| Your dependent child's investment assets | | |
| • Dependent child's stocks | Yes | Yes |
| • Dependent child's bonds (except U.S. Treasury securities) | Yes | Yes |
| • Dependent child's commodity futures | Yes | Yes |
| • Dependent child's other investment securities | Yes | Yes |
| • Assets listed above in dependent child's <u>own</u> brokerage account, IRAs, and/or other investment vehicles | Yes | Yes |
| Other investment assets irrespective of ownership | | |
| • Real Property | No | Yes[1] |
| • Mutual funds, exchange traded funds, index funds and/or other "excepted investment funds"[2] | No | Yes |
| • Any asset in which the transaction amount is $1,000 or less | No | No |
| • Cash accounts (deposits and/or withdrawals) | No | No |
| • Money market accounts | No | No |
| • Money market funds | No | No |
| • Certificates of deposits | No | No |
| • US Treasury Securities (e.g., T bills, Treasury bonds, U.S. savings bonds) | No | No |
| • Federal Government Retirement Accounts (e.g., Thrift Savings Plan) | No | No |
| • Life insurance and annuities | No | No |
| • Collectibles | No | No |
| • Assets held within an excepted trust[3] | No | No |
| • Transfer of assets between you, your spouse, and your dependent children | No | No |

[1] Do not report the purchase or sale of your personal residence on Part 7 unless you rent it out at any time during the reporting period.

[2] To be an excepted investment fund (EIF), the asset must be:

(a) widely held (more than 100 participants),
(b) independently managed – arranged so that you neither exercise control nor have the ability to exercise control over the financial interests held by the fund, and
(c) publicly traded (or available) or widely diversified.

Managed accounts, investment clubs, trusts, 529 accounts, brokerage accounts, and individual retirement accounts (IRAs) are not excepted investment funds in and of themselves. It may be that individual assets held within these types of investment vehicles may qualify as EIFs if, for example, your IRA holds a publicly-traded mutual fund. But the fact that you have a managed account does not absolve you of your reporting requirements. That account is legally owned by you, and you're responsible for its assets and reporting transactions. If you have questions, contact ethics@epa.gov.

[3] OGC/Ethics must determine that your trust qualifies as an "excepted trust." For help, email ethics@epa.gov.

**REQUIREMENT: Notify OGC/Ethics within 3 business days of commencing the negotiation or agreement for post-government employment or compensation**

## NOTIFICATION OF NEGOTIATION OR AGREEMENT

| Your full name | Your telephone number* | Date negotiation or agreement began |
|---|---|---|
| Your Title / Office / AAship or Region | Your email address* | Name of non-federal entity that you are negotiating with or have an agreement for employment or compensation |

* *Provide information for OGC/Ethics to use to contact you as part of our official duty. For this purpose, you may provide a personal email address or cell number.*

## RECUSAL STATEMENT

To assist in identifying your recusal obligations, check the appropriate boxes below:

| | Yes | No | |
|---|---|---|---|
| 1. | ☐ | ☐ | EPA's programs, policies, or operations affect the non-federal entity with which I am seeking employment. |
| 2. | ☐ | ☐ | My office in EPA does work that affects the non-federal entity with which I am seeking employment. |
| 3. | ☐ | ☐ | The work I participate in affects or will affect the non-federal entity with which I am seeking employment. |

Need help answering these statements? See page 2.

**For as long as I am negotiating for, or have an agreement of, employment or compensation with the entity listed above, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of this entity, unless I first obtain from OGC/Ethics a written authorization or waiver consistent with 5 C.F.R. § 2635.605 or 18 U.S.C. § 208(b)(1). I understand that it is my responsibility to consult with OGC/Ethics if I have questions regarding my recusal obligations.**

Sign and submit to ethics@epa.gov:

**Your signature**

**OGC/Ethics Use Only:**

**Statement 1: EPA's programs, policies, or operations affect the non-federal entity with which I am seeking employment.**

If your answer is "yes" to any of the following questions, then you must answer "yes" to statement 1.

- Is the non-federal entity seeking official action from EPA (even if not your own office)?
- Does the non-federal entity do business or seek to do business with the EPA (even if not your own office)?
- Does the non-federal entity conduct activities that EPA regulates (even if not in your own office)?
- Does the non-federal entity have interests that may be substantially affected by the performance or non-performance of your official duties?
- Is the non-federal entity a membership organization in which the majority of the members are described in the preceding questions?

**Statement 2: My office in EPA does work that affects the non-federal entity with which I am seeking employment.**

To answer this question, think about the nexus between the work of your office and the non-federal entity. The closer the nexus, the more likely you will have to check "yes" to statement 2.

- Consider the particular matters your office works on and whether there is any connection to the work of this entity. Does your office work on permits, investigations, litigation, grants, licenses, contracts, applications, enforcement cases, or other similar types of matters where there is an identified non-federal entity (i.e., particular matters involving specific parties)?
- Also consider whether your office is involved in scientific programs, media programs, or other types of policies, procedures, guidance documents, regulations, etc., that would affect this particular industry or sector (i.e., particular matters of general applicability).

**Statement 3: The work I participate in affects or will affect the non-federal entity with which I am seeking employment.**

Think about the nexus between your work and the non-federal entity as well as its respective class, industry or sector. The closer the nexus between your work and the sector the non-federal entity belongs to, the more likely you will check have to check "yes" to statement 3.

- Will the work you do affect the sector? Don't concentrate on whether your personal contributions will be determinative but rather, overall, how the outcome of the work itself will affect the sector and the non-federal entity with which you are negotiating.
- Do you advise on or consult with your colleagues' projects and work? Does their work affect this sector or the non-federal entity?
- Do you actively supervise or assign work to subordinates? Do those assignments affect the sector or the non-federal entity?

**Need help answering these statements? Contact ethics@epa.gov to discuss.**

Updated September 2020

# Political Activities and Federal Employees

The Hatch Act, enacted in 1939, was amended in 1993 and 2012. It regulates the political activities of executive branch employees, excluding the President and Vice President. The following table summarizes what political activities EPA employees can and cannot do based on their appointment. Note: Public Health Service officers must adhere to 45 CFR Part 73, Subpart F, which is most similar to the Career SES/ALJ column.

**Political activity means an activity "directed toward the success or failure of a political party, a candidate for partisan political office, or a partisan political group."**

| Type of Activity | PAS* | Non-Career SES, Schedule C*, Title 42, SL/ST, AD*, GS, Other | Career SES, ALJs |
|---|---|---|---|
| **Personal** (off premises and off duty) | | | |
| Express support for or opposition to a political candidate when off duty | Yes | Yes | Yes |
| Run as a partisan candidate for nomination or office in a partisan election | No | No | No |
| Solicit and accept contributions for your campaign in a non-partisan election | Yes | Yes | Yes |
| Solicit a contribution from a member of your union | N/A | Yes | N/A |
| Work a phone bank asking individuals to volunteer | Yes | Yes | No |
| Campaign on behalf of a candidate in a partisan election | Yes | Yes | No |
| Be active on behalf of a candidate at political rallies or meetings | Yes | Yes | No |
| Attend political rallies and meetings | Yes | Yes | Yes |
| Contribute money to political organizations | Yes | Yes | Yes |
| Work in non-partisan voter registration drives | Yes | Yes | Yes |
| Work in partisan voter registration drives | Yes | Yes | No |
| Register and vote | Yes | Yes | Yes |
| Sign a nominating petition | Yes | Yes | Yes |
| Distribute campaign material in a partisan election | Yes | Yes | No |
| Work as an election judge, poll watcher, clerical worker on election day and receive compensation for that work | Yes | Yes | Yes but nonpartisan only |
| Drive people to polling station on behalf of a campaign | Yes | Yes | No |
| **Affecting Official Resources** | | | |
| Use office time for political activity | Yes; IG-No | No | No |
| Use official space for political activity in general | Yes; IG-No | No | No |
| **Fundraising** | | | |
| Attend a political fundraiser | Yes | Yes | Yes |
| Solicit, accept or receive political contributions in general | No | No | No |
| Solicit or receive a political contribution on government premises | No | No | No |
| Plan or organize a political fundraiser when off duty | Yes | Yes | No |
| Sponsor, host, or allow your name as sponsor/host for a political fundraiser | No | No | No |
| Serve drinks or check coats at a political fundraiser | Yes | Yes | No |
| Speak at a partisan fundraiser without appealing for money | Yes | Yes | No |
| Allow only your name to be listed as speaker on fundraising invitation | Yes | Yes | No |

**PAS = Political Appointee Confirmed by the Senate; Schedule C = political appointees not confirmed by Senate; AD = Administratively Determined; SES = Senior Executive Service*

# EPA Ethics Program

**Counseling Practice Area:** **Vetting Invitations**

## Quick Summary:

One of the more visible ways ethics issues arise are those that come up during the calendaring of events and invitations for an EPA principal and their immediate staff. The ethics issues run the whole gambit:

Recusal Obligations ✦ Gifts ✦ Fundraising ✦ Political Activity ✦ Endorsements
President's Ethics Pledge ✦ Misuse of Position

Embedding ethics is a proactive counseling practice that brings together the Principals, their immediate staff, and Deputy Ethics Officials to establish a process for incorporating ethics vetting into the Principal's calendar. This helps and supports the EPA principal to meet their ethics obligations and maintain integrity of agency programs and operations.

---

## Who:

Principals (Administrator, Deputy Administrator, Assistant Administrators, and Regional Administrators, certain Deputy Associate Administrators), their immediate staff, and Deputy Ethics Officials.

## What:

Preventing conflicts of interest and other ethics issues by embedding ethics review into the calendaring process for principals.

## When:

Upon the appointee's start of EPA service

## Where:

Through coordination in the principal's front office and immediate staff

## Why:

Principals and other political appointees encounter frequent ethics issues arising through acceptance of external events, travel, and meetings with external participants. With increased public scrutiny and ethics legal frameworks, this is a high risk area in the ethics program. It is the principal's responsibility to avoid ethics issues and to maintain public trust in government.

## How:

To navigate these ethics issues, we establish a process, use standard event information gathering forms, and train periodically, so a principal's front office can obtain all relevant information for an event and ethics officials can advise appropriately and timely prior to acceptance.

# Executive Order on Ethics Commitments by Executive Branch Personnel

JANUARY 20, 2021 • PRESIDENTIAL ACTIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Ethics Pledge. Every appointee in every executive agency appointed on or after January 20, 2021, shall sign, and upon signing shall be contractually committed to, the following pledge upon becoming an appointee:

"I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

"Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

"1. Lobbyist Gift Ban. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

“2. Revolving Door Ban — All Appointees Entering Government. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

“3. Revolving Door Ban — Lobbyists and Registered Agents Entering Government. If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 et seq., or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 et seq., within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

(a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;

(b) participate in the specific issue area in which that particular matter falls; or

(c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.

“4. Revolving Door Ban — Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.

“5. Revolving Door Ban — Senior and Very Senior Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections’ implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment,

I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.

"6. Revolving Door Ban — Appointees Leaving Government to Lobby. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.

"7. Golden Parachute Ban. I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.

"8. Employment Qualification Commitment. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.

"9. Assent to Enforcement. I acknowledge that the Executive Order entitled 'Ethics Commitments by Executive Branch Personnel,' issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service."

Sec. 2. Definitions. For purposes of this order and the pledge set forth in section 1 of this order:

(a) “Executive agency” shall include each “executive agency” as defined by section 105 of title 5, United States Code, and shall include the Executive Office of the President; provided, however, that “executive agency” shall include the United States Postal Service and Postal Regulatory Commission, but shall exclude the Government Accountability Office.

(b) “Appointee” shall include every full-time, non-career Presidential or Vice-Presidential appointee, non-career appointee in the Senior Executive Service (or other SES-type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policymaking character (Schedule C and other positions excepted under comparable criteria) in an executive agency. It does not include any person appointed as a member of the Senior Foreign Service or solely as a uniformed service commissioned officer.

(c) “Gift”:

(i) shall have the definition set forth in section 2635.203(b) of title 5, Code of Federal Regulations;

(ii) shall include gifts that are solicited or accepted indirectly, as defined in section 2635.203(f) of title 5, Code of Federal Regulations; and

(iii) shall exclude those items excluded by sections 2635.204(b), (c), (e)(1) and (3), and (j) through (l) of title 5, Code of Federal Regulations.

(d) “Covered executive branch official” and “lobbyist” shall have the definitions set forth in section 1602 of title 2, United States Code.

(e) “Registered lobbyist or lobbying organization” shall mean a lobbyist or an organization filing a registration pursuant to section 1603(a) of title 2, United States Code, and in the case of an organization filing such a registration, “registered lobbyist” shall include each of the lobbyists identified therein.

(f) “Lobby” and “lobbied” shall mean to act or have acted as a registered lobbyist.

(g) “Lobbying activities” shall have the definition set forth in section 1602 of title 2, United States Code.

(h) “Materially assist” means to provide substantive assistance but does not include providing background or general education on a matter of law or policy based upon an individual’s subject matter expertise, nor any conduct or assistance permitted under section 207(j) of title 18, United States Code.

(i) “Particular matter” shall have the same meaning as set forth in section 207 of title 18, United States Code, and section 2635.402(b)(3) of title 5, Code of Federal Regulations.

(j) “Particular matter involving specific parties” shall have the same meaning as set forth in section 2641.201(h) of title 5, Code of Federal Regulations, except that it shall also include any meeting or other communication relating to the performance of one’s official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.

(k) “Former employer” is any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner, except that “former employer” does not include any executive agency or other entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, any United States territory or possession, or any international organization in which the United States is a member state.

(l) “Former client” is any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service provided was limited to speeches or similar appearances. It does not include

clients of the appointee's former employer to whom the appointee did not personally provide services.

(m) "Directly and substantially related to my former employer or former clients" shall mean matters in which the appointee's former employer or a former client is a party or represents a party.

(n) "Participate" means to participate personally and substantially.

(o) "Government official" means any employee of the executive branch.

(p) "Administration" means all terms of office of the incumbent President serving at the time of the appointment of an appointee covered by this order.

(q) "Pledge" means the ethics pledge set forth in section 1 of this order.

(r) "Senior White House staff" means any person appointed by the President to a position under sections 105(a)(2)(A) or (B) of title 3, United States Code, or by the Vice President to a position under sections 106(a)(1)(A) or (B) of title 3.

(s) All references to provisions of law and regulations shall refer to such provisions as are in effect on January 20, 2021.

Sec. 3. Waiver. (a) The Director of the Office of Management and Budget (OMB), in consultation with the Counsel to the President, may grant to any current or former appointee a written waiver of any restrictions contained in the pledge signed by such appointee if, and to the extent that, the Director of OMB certifies in writing:

(i) that the literal application of the restriction is inconsistent with the purposes of the restriction; or

(ii) that it is in the public interest to grant the waiver. Any such written waiver should reflect the basis for the waiver and, in the case of a waiver of the restrictions set forth in paragraphs 3(b) and (c) of the pledge, a discussion of the findings with respect to the factors set forth in subsection (b) of this section.

(b) A waiver shall take effect when the certification is signed by the Director of OMB and shall be made public within 10 days thereafter.

(c) The public interest shall include, but not be limited to, exigent circumstances relating to national security, the economy, public health, or the environment. In determining whether it is in the public interest to grant a waiver of the restrictions contained in paragraphs 3(b) and (c) of the pledge, the responsible official may consider the following factors:

(i) the government's need for the individual's services, including the existence of special circumstances related to national security, the economy, public health, or the environment;

(ii) the uniqueness of the individual's qualifications to meet the government's needs;

(iii) the scope and nature of the individual's prior lobbying activities, including whether such activities were de minimis or rendered on behalf of a nonprofit organization; and

(iv) the extent to which the purposes of the restriction may be satisfied through other limitations on the individual's services, such as those required by paragraph 3(a) of the pledge.

Sec. 4. Administration. (a) The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish such rules or procedures (conforming as nearly as practicable to the agency's general ethics rules and procedures, including those relating to designated agency ethics officers) as are necessary or appropriate to ensure:

(i) that every appointee in the agency signs the pledge upon assuming the appointed office or otherwise becoming an appointee;

(ii) that compliance with paragraph 3 of the pledge is addressed in a written ethics agreement with each appointee to whom it applies, which agreement shall also be approved by the Counsel to the President prior to the appointee commencing work;

(iii) that spousal employment issues and other conflicts not expressly addressed by the pledge are addressed in ethics agreements with appointees or, where no such agreements are required, through ethics counseling; and

(iv) that the agency generally complies with this order.

(b) With respect to the Executive Office of the President, the duties set forth in section 4(a) of this order shall be the responsibility of the Counsel to the President.

(c) The Director of the Office of Government Ethics shall:

(i) ensure that the pledge and a copy of this order are made available for use by agencies in fulfilling their duties under section 4(a) of this order;

(ii) in consultation with the Attorney General or the Counsel to the President, when appropriate, assist designated agency ethics officers in providing advice to current or former appointees regarding the application of the pledge; and

(iii) in consultation with the Attorney General and the Counsel to the President, adopt such rules or procedures as are necessary or appropriate:

(A) to carry out the foregoing responsibilities;

(B) to authorize limited exceptions to the lobbyist gift ban for circumstances that do not implicate the purposes of the ban;

(C) to make clear that no person shall have violated the lobbyist gift ban if the person properly disposes of a gift as provided by section 2635.206 of title 5, Code of Federal Regulations;

(D) to ensure that existing rules and procedures for Government employees engaged in negotiations for future employment with private businesses that are affected by the employees' official actions do not affect the integrity of the Government's programs and operations;

(E) to ensure, in consultation with the Director of the Office of Personnel Management, that the requirement set forth in paragraph 6 of the pledge is honored by every employee of the executive branch;

(iv) in consultation with the Director of OMB, report to the President on whether full compliance is being achieved with existing laws and regulations governing executive branch procurement lobbying disclosure. This report shall include recommendations on steps the executive branch can take to expand, to the fullest extent practicable, disclosure of both executive branch procurement lobbying and of lobbying for Presidential pardons. These recommendations shall include both immediate actions the executive branch can take and, if necessary, recommendations for legislation; and

(v) provide an annual public report on the administration of the pledge and this order.

(d) The Director of the Office of Government Ethics shall, in consultation with the Attorney General, the Counsel to the President, and the Director of the Office of Personnel Management, report to the President on steps the executive branch can take to expand to the fullest extent practicable the revolving door ban set forth in paragraph 5 of the pledge to all executive branch employees who are involved in the procurement process such that they may not for 2 years after leaving Government service lobby any Government official regarding a Government contract that was under their official responsibility in the last 2 years of their Government service. This report shall include both immediate actions the executive branch can take and, if necessary, recommendations for legislation.

(e) All pledges signed by appointees, and all waiver certifications with respect thereto, shall be filed with the head of the appointee's agency for permanent retention in the appointee's official personnel folder or equivalent folder.

Sec. 5. Enforcement. (a) The contractual, fiduciary, and ethical commitments in the pledge provided for herein are solely enforceable by the United States pursuant to this section by any legally available means, including debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive, or monetary relief.

(b) Any former appointee who is determined, after notice and hearing, by the duly designated authority within any agency, to have violated his or her pledge may be barred from lobbying any officer or employee of that agency for up to 5 years in addition to the time period covered by the pledge. The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish procedures to implement this subsection, which procedures shall include (but not be limited to) providing for fact-finding and investigation of possible violations of this order and for referrals to the Attorney General for consideration pursuant to subsection (c) of this order.

(c) The Attorney General is authorized:

(i) upon receiving information regarding the possible breach of any commitment in a signed pledge, to request any appropriate Federal investigative authority to conduct such investigations as may be appropriate; and

(ii) upon determining that there is a reasonable basis to believe that a breach of a commitment has occurred or will occur or continue, if not enjoined, to commence a civil action against the former employee in any United States District Court with jurisdiction to consider the matter.

(d) In any such civil action, the Attorney General is authorized to request any and all relief authorized by law, including but not limited to:

(i) such temporary restraining orders and preliminary and permanent injunctions as may be appropriate to restrain future, recurring, or continuing conduct by the former employee in breach of the commitments in the pledge he or she signed; and

(ii) establishment of a constructive trust for the benefit of the United States, requiring an accounting and payment to the United States Treasury of all money and other things of value received by, or payable to, the former employee arising out of any breach or attempted breach of the pledge signed by the former employee.

Sec. 6. General Provisions. (a) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order and other dissimilar applications of such provision shall not be affected.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN JR.

THE WHITE HOUSE,
January 20, 2021.

# ETHICS PLEDGE

I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. *Lobbyist Gift Ban*. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

2. *Revolving Door Ban — All Appointees Entering Government*. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

3. *Revolving Door Ban — Lobbyists and Registered Agents Entering Government*. If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 *et seq*., or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 *et seq*., within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

   (a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;

   (b) participate in the specific issue area in which that particular matter falls; or

   (c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.

4. *Revolving Door Ban — Appointees Leaving Government*. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.

5. *Revolving Door Ban — Senior and Very Senior Appointees Leaving Government*. If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections' implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.

6. *Revolving Door Ban — Appointees Leaving Government to Lobby*. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.

7. *Golden Parachute Ban*. I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.

8. *Employment Qualification Commitment*. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.

9. *Assent to Enforcement*. I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Personnel," issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.

_____ _____, 20_____

Signature Date

Name (Type or Print): _____

| | |
|---|---|
| **From:** | Fugh, Justina |
| **To:** | McCabe, Janet |
| **Subject:** | draft recusal for your review |
| **Date:** | Monday, June 07, 2021 11:09:00 PM |
| **Attachments:** | Janet McCabe recusal statement for review.docx |

---

Hi Janet,

While you have very little from which to recuse, we've drafted a document for you anyway. We have not included any recusal obligations for your family trust or your spouse because there are no conflicts issues there or with your spouse's employer. See what you think and, if you have any comments, just send me back the Word file. Once we incorporate your comments, we'll send it back to you as pdf that you can digitally.

Thanks,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Fugh, Justina
**To:** McCabe, Janet
**Cc:** Drinkard, Andrea
**Subject:** Ethics advice concerning your invitation to the ELI annual awards dinner and fundraiser
**Date:** Friday, July 16, 2021 12:55:00 PM

---

Hi there,

OGC/Ethics understands that you have received or will soon receive an invitation from the Environmental Law Institute (ELI) to be its guest at its annual awards dinner to be held in person at and streamed virtually this year on October 19, 2021 from the Omni Shoreham Hotel in Washington, DC. I am writing to confirm that, if you decide to attend this event in person or virtually, you may do so consistent with the Standards of Ethical Conduct for Employees of the Executive Branch.

This event qualifies for the Widely-Attended-Gathering gift exception and the donor is not a federally registered lobbyist. Even though you are a political appointee, you may still accept this invitation if you wish. OGC/Ethics determines that your attendance at the event is in the Agency's interest because it will further agency programs and operations. Should you attend this event, you will NOT be required to report this as a gift on your financial disclosure report form because the gift is valued at $210, which is BELOW the reporting threshold.

*T*his approval applies only to invitations from ELI itself. Any invitations from other sources will require separate determinations by either OGC/Ethics. This determination covers you only -- the invitation is not transferable and is not intended for more than just one attendee.

Acceptance of Free Attendance to a Dinner and Fundraiser (WAG rule)

The gift offered is an evening reception and dinner sponsored by ELI. Because the organization is offering you a complimentary ticket, we must analyze it according the gift rules. Generally, federal employees are prohibited from accepting gifts given because of their official position or given by a prohibited source (typically, a person either regulated by or seeking to do business with the EPA). In this instance, the gift of free attendance is offered to you because of your official position. In analyzing the situation, we determined that the WAG exception is available because the reception will be widely attended, there will be a diversity of views represented, and there is an opportunity for the exchange of ideas. In order to utilize this gift exception, OGC/Ethics must also make a written determination that we believe your attendance is in the Agency's interest. We do, in fact, conclude that there is an Agency interest in your attendance if you wish to attend.

Limitations Due to the Fundraiser Event

Please note that this event is a fundraiser. Therefore, ELI cannot use or reference your official position or title or any authority associated with your public office in furtherance of the

fundraising effort. You may not actively or visibly participate in the promotion, production, or presentation of the event, which means that you cannot stand in a receiving line. We have confirmed with ELI that you will be placed by ELI and not seated at the request of any sponsoring entity that has bought a table.

Please let me know if you have any questions.

Regards,

Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

| | |
|---|---|
| **From:** | McCabe, Janet G |
| **To:** | Fugh, Justina |
| **Cc:** | McCabe, Janet G |
| **Subject:** | Ethics Agreement signed 2.5.21 |
| **Date:** | Friday, February 5, 2021 12:45:00 PM |
| **Attachments:** | Ethics Agreement signed 2.5.21.docx |

---

1 of 2 tasks....

Janet

Mr. James Payne
Designated Agency Ethics Official and
Deputy General Counsel for Environmental Media and
Regional Law Offices
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Mr. Payne:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Deputy Administrator for the United States Environmental Protection Agency. It is my responsibility to understand and comply with commitments outlined in this agreement.

SECTION 1 – GENERAL COMMITMENTS

As required by the criminal conflicts of interest law at 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the particular matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me:

- Any spouse or minor child of mine;
- Any general partner of a partnership in which I am a limited or general partner;
- Any organization in which I serve as an officer, director, trustee, general partner, or employee; and
- Any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

In the event that an actual or potential conflict of interest arises during my appointment, I will consult with an agency ethics official and take the measures necessary to resolve the conflict, such as recusal from the particular matter or divestiture of an asset.

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the regulatory exemption for diversified mutual funds and unit investment trusts at 5 C.F.R. § 2640.201(a), or obligations of the United States.

I will receive a live ethics briefing from a member of the ethics office after my confirmation but not later than 15 days after my appointment pursuant to the ethics program regulation at 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will submit my Certification of Ethics Agreement Compliance which documents my compliance with this ethics agreement.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order No. 13989) and that I will be bound by it. Among other obligations, I will be required to recuse from particular matters involving specific parties involving my former employer or former clients for a period of two years after I am appointed, with the exception of states and local governments.

I will not modify this ethics agreement without your approval and the approval of the U.S. Office of Government Ethics pursuant to the ethics agreement requirements contained in the financial disclosure regulation at 5 C.F.R. § 2634.803(a)(4).

SECTION 2 – RETENTION OF POSITIONS AS TRUSTEE

I will retain my position as a trustee of Family Trust #1 and as trustee of my own revocable trust. I will not receive any fees for the services that I provide as a trustee during my appointment to the position of Deputy Administrator. I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of Family Trust #1 or my own trust, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

SECTION 3 – RESIGNATIONS

Upon confirmation, I will resign from the following positions with Indiana University:

- a professor of practice at the McKinney School of Law
- Director of the Environmental Resilience Institute
- O'Neill School of Public and Environmental Affairs Deans Council

Pursuant to the impartiality regulation at 5 C.F.R. § 2635.502, for a period of one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which I know Indiana University is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

SECTION 4 – SPOUSAL EMPLOYMENT

My spouse is employed by Indiana Legal Services, Inc. in a position for which he receives a fixed annual salary and a bonus tied to his performance. Pursuant to the impartiality regulation at 5 C.F.R. § 2635.502, for as long as my spouse continues to work for Indiana Legal Services, Inc., I will not participate personally and substantially in any particular matter

involving specific parties in which I know Indiana Legal Services, Inc. is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

SECTION 4 – PUBLIC POSTING

I have been advised that this ethics agreement and the Certification of Ethics Agreement Compliance will be posted publicly, consistent with the public information law at 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,

Janet G. McCabe

cc: Justina Fugh, Alternate Designated Agency Ethics Official, US EPA

| | |
|---|---|
| **From:** | Keith, Jennie |
| **To:** | Drinkard, Andrea |
| **Cc:** | Atkinson, Emily |
| **Subject:** | ETHICS REVIEW: Following up: an invitation to a philanthropy / government convening |
| **Date:** | Friday, November 12, 2021 7:45:00 PM |
| **Attachments:** | Collaborative Change Event_Invite_Nov 17.pdf<br>Working Together for Lasting Collaborative Change (11.17.2021).pdf |

---

Hi Andrea,

Regarding this invitation, this is an invite-only event. Because of that, I would not recommend forwarding to others unless the inviter sought that action in place of Janet's declination . . . I don't see any ethics issues with attendance (virtual, does not appear to have registration fees . . .). I typically advise to follow the invitation – if it says invite-only, then it's not something to offer to others unless the inviter seeks that action.

Thank you for the follow up and additional insight into the PSR gala fundraiser.

Does this help?
Jennie for OGC/Ethics

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Thursday, November 04, 2021 3:18 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** ETHICS REVIEW: Following up: an invitation to a philanthropy / government convening

Hi Jennie,

Janet is unable to do this event, so I am asking you to review the event for general ethic issues as opposed to conflicts of interest. We are thinking that Jon Monger or others in the agency could attend if it is deemed appropriate.

Also as an update, I did decline the PSR event. (b) (5) [redacted]. Janet was fine with the decision.

-Andrea-

---

**From:** Max Stier <mstier@ourpublicservice.org>
**Sent:** Tuesday, November 02, 2021 12:59 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Cc:** Lucas Bladen <LBladen@ourpublicservice.org>; Shannon Carroll <SCarroll@ourpublicservice.org>; Atkinson, Emily <Atkinson.Emily@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>

**Subject:** Following up: an invitation to a philanthropy / government convening

Janet:

I am following up on an invitation we sent to you recently for a convening that will take place **on November 17th from 2:30 PM – 4:30 PM ET** that's focused on strengthening collaboration between government and philanthropy.

Hosted by the Partnership for Public Service, Freedman Consulting and the Council on Foundations, *Working Together for Lasting, Collaborative Change* is a two-hour convening featuring a moderated conversation with Secretary Pete Buttigieg and Ford Foundation President Darren Walker, as well as discussions with leaders in government and philanthropy on what is needed to develop and strengthen cross-sector partnerships.

I've re-attached the description with additional context on this event, as well as the electronic invitation. As the event gets closer, I wanted to check whether you'll be able to join us or **recommend any other senior leaders across EPA who can participate.**

Please RSVP to Lucas Bladen at lbladen@ourpublicservice.org. We hope to hear from you soon and to have you join us on November 17th!

Best,

Max

P.S. – On November 1st, the Partnership streamed the annual Samuel J. Heyman Service to America Medals ("Sammies") gala, the premier awards and recognition program for the unsung heroes in our nation's civil service. If you are interested, I invite you to visit the Sammies website to watch the virtual program.

**From:** McCabe, Janet
**To:** Keith, Jennie
**Cc:** Drinkard, Andrea; Atkinson, Emily
**Subject:** FW: APERG committee
**Date:** Tuesday, June 15, 2021 7:04:13 PM

---

I couldn't find an earlier note to Jim Blando about withdrawing from the APERG selection Committee, so I exchanged notes with him today. Please let me know if you need anything else on this.

Janet

---

**From:** [redacted]
**Sent:** Tuesday, June 15, 2021 6:19 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Subject:** FW: APERG committee

---

**From:** Blando, James D. <jblando@odu.edu>
**Sent:** Tuesday, June 15, 2021 11:58 AM
**To:** (b) (6) [redacted]
**Subject:** RE: APERG committee

Janet,

Hi, no problem, we totally understand. Congrats on the EPA appointment as Deputy Administrator, that is really great!!! Thank you for your contributions to the APERG committee, best regards,

Jim

---

**From:** (b) (6) [redacted]
**Sent:** Tuesday, June 15, 2021 8:34 AM
**To:** Blando, James D. <jblando@odu.edu>
**Subject:** APERG committee

> **EXTERNAL to ODU:** This email is not from an ODU account. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I hope you are doing well. I am writing to confirm that, given my return to US EPA, I need to withdraw from the APERG review committee. I wish you all good luck with the program, and many exciting students to support for years into the future.

Janet McCabe

| | |
|---|---|
| **From:** | Keith, Jennie |
| **To:** | Atkinson, Emily |
| **Cc:** | Drinkard, Andrea |
| **Subject:** | FW: ETHICS REVIEW REQ: Invitation for the Upcoming 2022 Renaissance Weekends |
| **Date:** | Friday, November 12, 2021 7:17:00 PM |
| **Attachments:** | Ambassador and Mrs. Philip Lader.pdf |

Evening Emily,

I reviewed the website here, I don't have an issue with EPA accepting the registration waiver through the use of the ethics travel form. This would be official travel and EPA would be responsible for all other expenses. Site locations look expensive, so I suppose your office would want to weigh those costs. I'm guessing the registration waiver is significant – covering the costs of the program while the participant is responsible for travel (hotel/meals/flights).

If you would like me to make further inquiry through a phone call, I'm okay with that. But on the face of it, this doesn't look problematic from ethics travel gift acceptance.

Regarding Janet's spouse, the waiver covers his attendance, too, and that's also a gift. The travel gift acceptance authority permits coverage of spousal travel gifts, but we have never applied it here at EPA. So, I would need to look into a few things to advise on whether EPA can and/or should also accept the gift for the spouse, if Janet would like to explore that possibility.

Do you need more assistance on this right now?

Thanks!
Jennie for OGC/Ethics

---

**From:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Sent:** Friday, November 05, 2021 11:00 AM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** ETHICS REVIEW REQ: Invitation for the Upcoming 2022 Renaissance Weekends

Hi Jennie,

Janet may be interested in participating in this.

Could you reach out to the organization to find out more about them and then let us know if this is something she could participate in?

Also, do you know if this is something other EPA staff has participated in the past?

Emily

---

**From:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Sent:** Friday, November 05, 2021 10:26 AM

**To:** McCabe, Janet <McCabe.Janet@epa.gov>; Monger, Jon <Monger.Jon@epa.gov>
**Subject:** FW: Invitation for the Upcoming 2022 Renaissance Weekends

---

**From:** Gaines, Cynthia <Gaines.Cynthia@epa.gov>
**Sent:** Wednesday, November 03, 2021 5:51 PM
**To:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** Invitation for the Upcoming 2022 Renaissance Weekends

Hi Emily and Andrea,

Please see the attached invitation for the Deputy Administrator.

Thank You.

Cynthia A. Gaines
Correspondence Specialist
Office of the Executive Secretariat
U.S. Environmental Protection Agency
(202) 564-1788

| | |
|---|---|
| **From:** | Keith, Jennie |
| **To:** | Drinkard, Andrea |
| **Cc:** | Atkinson, Emily |
| **Subject:** | FW: ETHICS REVIEW: Janet McCabe - Keynote Invitation for 31st Annual Sustainability & EHS Symposium on March 29 in Cincinnati |
| **Date:** | Friday, January 14, 2022 10:51:00 AM |
| **Attachments:** | Invitation for Deputy Administrator Janet McCabe.pdf |

Hi Andrea,

Why I love the event information form? Because this one is such a good example, lots of really great info there. Not just for me, but whoever is point in her office!

There are no ethics issues with the speaking engagement. Be mindful of who is introducing Janet. It looks like attendees from Indiana are a target audience, none of the entities I reviewed would implicate her recusal obligations . . . but I just want to flag that for you in case the host decides to get creative! Regarding who would introduce Janet, the event information form says, "**Member of Symposium Planning Committee** … possibly Kathy Wiedeman, Director, EHS, ND Paper, Dayton. Since Janet McCabe is from Indiana, deference will be given to planning committee members who personally have worked with her."

She may also accept the lunch buffet if staying, that is not a gift since it's open to all attendees, but should be deducted from her travel voucher if she accepts the meal.

Thanks!
Jennie for OGC/Ethics

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Wednesday, January 12, 2022 4:56 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** ETHICS REVIEW: Janet McCabe - Keynote Invitation for 31st Annual Sustainability & EHS Symposium on March 29 in Cincinnati

Hi Jennie,

Please let us know what you think about his possible event in March. Thanks so much and Happy New Year!

---

**From:** Mark Uher <mark@mecseminars.com>
**Sent:** Thursday, January 06, 2022 3:25 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: Janet McCabe - Keynote Invitation for 31st Annual Sustainability & EHS Symposium on March 29 in Cincinnati

Andrea,

Thank you. Attached is your form in a PDF with our draft agenda. Please let me know if you need any additional information.

We're so excited about the possibly of Deputy Administrator McCabe speaking again at our Symposium. She spoke several times while serving in President Obama's EPA and while she was with the Indiana Department of Environmental Management. She is an outstanding speaker and is highly-regarded in our tri-state area. We're all so blessed to have such a talented individual again in leadership at the U.S. EPA.

Thank you.

Mark W. Uher, President
Manufacturers' Education Council
BlendonView Office Park
5050 Pine Creek Drive, Suite A
Westerville, OH 43081-4852
614.392.0413 phone
(b) (6) [redacted] mobile
614.392.0415 fax
www.MECseminars.com

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Wednesday, January 5, 2022 2:56 PM
**To:** mark@mecseminars.com
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** FW: Janet McCabe - Keynote Invitation for 31st Annual Sustainability & EHS Symposium on March 29 in Cincinnati
**Importance:** High

Hi Mark,

Happy New Year! Janet passed along your invite and we wanted to reach out to get some additional information so we could run it through our review process. Please fill out the attached form and send it back to us at your earliest convenience. We will then review it along with the Deputy Administrator's schedule and will be in touch.

Thanks so much for thinking of us and for reaching out.

-Andrea-

Andrea Drinkard
Senior Advisor to the Deputy Administrator
U.S. Environmental Protection Agency
Desk: 202.564.1601
Cell: 202.236.7765

**From:** Mark Uher <mark@mecseminars.com>
**Sent:** Tuesday, January 4, 2022 12:37 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Subject:** Janet McCabe - Keynote Invitation for 31st Annual Sustainability & EHS Symposium on March 29 in Cincinnati
**Importance:** High

Deputy Administrator McCabe,

Congratulations on being sworn in as the 16th Deputy Administrator of the U.S. EPA! It must be a very exciting time to return to Washington and advance the very important EPA agenda. On behalf of the sponsoring trade associations and organizations such as Procter & Gamble, GE Aviation, Kroger's, Honda, Scotts Miracle Gro, ND Paper, Duke Energy and Cummins, I would like to invite you to be our opening keynote speaker for the **31st Annual Sustainability and Environmental Health and Safety Symposium**. With a pent-up demand for in-person educational events, the 2022 program will again draw nearly **350 attendees**. Your keynote would be:

## 31st Annual Business & Industry's Sustainability and Environmental Health & Safety Symposium

## Tuesday, March 29, 2022 from 8:55 a.m. to 9:30 a.m. Opening Keynote

*Sharonville Convention Center, 11355 Chester Road, Cincinnati – Northern Lights Ballroom*

***Draft Subject***: **Advancing Key U.S. EPA Priorities … Tackling the Climate Crisis, Delivering Environmental Justice, Cleaning up Toxic Waste, Investing in Water Infrastructure Projects, and Restoring Scientific Integrity/Rebuilding Core Functions at the EPA**

If interested and available, we would love to have you participate also in a Trinity Consultants-led concurrent workshop on Environmental Justice following your keynote from 9:45 a.m. to 11 a.m. The entire draft agenda is attached.

You've been a fantastic speaker at this Symposium in the past and we are so hopeful your hectic schedule will permit this year's event. Please let me know if you have need any additional information about the Symposium and your availability as soon as possible. Thank you. Thank you.

Mark W. Uher, President
Manufacturers' Education Council
BlendonView Office Park
5050 Pine Creek Drive, Suite A
Westerville, OH 43081-4852

614.392.0413 phone
(b) (6) [redacted] mobile
614.392.0415 fax
www.MECseminars.com

| | |
|---|---|
| **From:** | Drinkard, Andrea |
| **To:** | Keith, Jennie |
| **Cc:** | Atkinson, Emily |
| **Subject:** | FW: ETHICS REVIEW: Louisiana State of the Coast Conference and American Iron and Steel Meeting |
| **Date:** | Tuesday, May 18, 2021 2:49:00 PM |
| **Attachments:** | 2021 02 09 EPA Event Information Form Template SOC 2021_completed.docx<br>Letter to the Honorable Janet McCabe SOC2021.pdf<br>2021 02 09 EPA Event Information Form Template AISI.docx<br>Background on Climate Leadership Exchange speaking invitation.docx<br>2021 CLC_Exchange Invite_M Regan.pdf |

---

Hi Jennie,

Just reupping these and also adding that Janet will be stepping into the C2ES event for the Administrator so I'm adding that to the list. She will be prerecording remarks. I don't have the specific event form, but hopefully what I have attached is enough.

Also, when you have a minute, I'd like to connect with you to confirm when the Administrator's Office's brings you into the review process, so I know how to most efficiently handle the events that come down from their shop.

Thanks!

---

**From:** Drinkard, Andrea
**Sent:** Monday, May 17, 2021 6:50 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** ETHICS REVIEW: Louisiana State of the Coast Conference and American Iron and Steel Meeting

Hi Jennie,

We've got two event forms for your review. I think these seem pretty straightforward. Both are virtual, one is prerecorded, one is live. Please let me know if you need additional information.

Thanks!

Andrea Drinkard
Senior Advisor
EPA Office of Public Affairs
Desk: 202.564.1601
Cell: 202.236.7765

| | |
|---|---|
| **From:** | Fugh, Justina |
| **To:** | Griffo, Shannon |
| **Subject:** | FW: Janet McCabe recusal statement for signature 6-15-21.pdf |
| **Date:** | Tuesday, June 15, 2021 11:53:09 PM |
| **Attachments:** | Janet McCabe recusal statement for signature 6-15-21.pdf |

---

Here you go! I'll find out from Andrea and Emily who sends out the cc's.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>

**Sent:** Tuesday, June 15, 2021 7:40 PM

**To:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>

**Cc:** McCabe, Janet <McCabe.Janet@epa.gov>

**Subject:** Janet McCabe recusal statement for signature 6-15-21.pdf

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
Washington, D.C. 20460

OFFICE OF THE
ADMINISTRATOR

**MEMORANDUM**

SUBJECT: Recusal Statement

FROM: Janet McCabe
Deputy Administrator

Janet McCabe

Digitally signed by Janet McCabe
Date: 2021.06.15 19 39:14 -04'00'

TO: Michael S. Regan
Administrator

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed, as well as my own attorney bar obligations.

*FINANCIAL CONFLICTS OF INTEREST*

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment. I have been advised that I have no financial conflicts of interest at this time.

*OBLIGATIONS UNDER EXECUTIVE ORDER 13989*

Pursuant to Section 1, Paragraph 2 of the Executive Order, I understand that I am prohibited from participating in any particular matter involving specific parties in which my former employer, the **Environmental Law and Policy Center,** is a party or represents a party. I understand that my recusal will last for two years from the date that I joined federal service. This recusal will end after April 29, 2023.

The Executive Order provides more restrictions than the federal ethics rules, but I am advised by OGC/Ethics that the additional restrictions contained in the Executive Order regarding former employer do not apply to me for Indiana University. The definition of "former employer" excludes an entity of a state government, including a state university.[1] Therefore, OGC/Ethics has confirmed that I am not subject to the additional Executive Order restrictions regarding former employers for Indiana University.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term "particular matters involving specific parties" is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term "open to all interested parties" means that the meeting should include a multiplicity of parties. If, for example, there is "a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client."[2] Should a question arise as to whether a specific forum qualifies as "open to all interested parties," then I will consult with OGC/Ethics.

*OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS*

Pursuant to the federal impartiality standards, I understand that I have a "covered relationship" with my former employer, which is a state university. Therefore, I may not participate in a particular matter involving specific parties in which **Indiana University** is a party or represents a party, unless I am authorized to participate by OGC/Ethics pursuant to 5 C.F.R. § 2635.502(d). My recusal lasts until after April 29, 2022, which is one year after I resigned from the university.

I also have a "covered relationship" wth my spouse's current employer, **Indiana Legal Services, Inc**. Although it is unlikely that either his employer or he will have any business before the EPA, I will not participate personally and substantially in any particular matter involving specific parties in which I know his employer is a party or represents a party, unless I am first authorized by OGC/Ethics to participate, pursuant to 5 C.F.R. § 2635.502(d). My recusal remains in effect for the duration of my tenure at EPA and/or my spouse's current employment.

*ATTORNEY BAR OBLIGATIONS*

Pursuant to my obligations under my bar rules, I recognize that I am obliged to protect the confidences of my former clients. I also understand that I cannot participate in any matter that is the same as or substantially related to the same specific party matter that I participated in

[1] *See* Exec. Order 13989, Section 2(k) and Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

[2] *See* OGE Advisory DO-09-011 (3/26/09).

personally and substantially, unless my bar provides for and I first obtain informed consent and notify OGC/Ethics.

*DIRECTIVE AND CONCLUSION*

To avoid participating in matters from which I am recused, please direct them to the attention of **Andrea Drinkard, Special Assistant,** without my knowledge or involvement. Should these recusals have a significant impact on my ability to perform my duties, I will seek additional guidance from OGC/Ethics and will consult with them to revise my recusal statement if my circumstances change, including changes in my financial interests, my personal or business relationships, or my EPA duties, and provide a copy to you and the Ethics Office.

cc: Dan Utech, Chief of Staff
Assistant and Acting Assistant Administrators
Acting Regional Administrators
Alison Cassady, Deputy Chief of Staff for Policy
Dorien Blythers, Deputy Chief of Staff for Operations
Wesley J. Carpenter, Acting Deputy Chief of Staff
Kathleen Lance, Director of Scheduling and Advance
John Lucey, Special Assistant to the Administrator
James Payne, Designated Agency Ethics Official and Deputy General Counsel for Environmental Media and Regional Law Offices
Justina Fugh, Alternate Designated Agency Ethics Official

| | |
|---|---|
| **From:** | Drinkard, Andrea |
| **To:** | Keith, Jennie |
| **Cc:** | Atkinson, Emily |
| **Subject:** | FYI: ECOS Fall Meeting |
| **Date:** | Wednesday, July 14, 2021 12:35:00 PM |
| **Attachments:** | Revised Event Information Form ECOS Fall Mtg.docx |

---

Hi Jennie,

Janet will be delivering the keynote at ECOS. It's virtual, so no gift issues, but wanted to flag nonetheless. The event is September 9th!

Andrea Drinkard
Senior Advisor
EPA Office of Public Affairs
Desk: 202.564.1601
Cell: 202.236.7765

**From:** Fugh, Justina
**To:** mrwillet@iu.edu
**Cc:** Drinkard, Andrea; Atkinson, Emily
**Subject:** March 3rd Guest Speaker Request == for Janet McCabe
**Date:** Tuesday, January 04, 2022 1:06:00 AM
**Attachments:** Janet McCabe recusal statement signed June 2021.pdf

---

Dear Ms. Willett,
My name is Justina Fugh, and I'm the director of the EPA Ethics Office. Your request for our Deputy Administrator, Janet McCabe, to speak at your class was forwarded to me for response. I regret to inform you that we cannot allow Ms. McCabe to accept your very kind invitation at this time. The reason is that, as a political appointee, Ms. McCabe is subject to certain federal ethics restrictions, and she has memorialized her restrictions in the attached recusal statement. As you can see, for one year, she is recused from participation in her official capacity in any specific party matter in which Indiana University is a party or represents a party.

Please note that her recusal ends after April 29, 2022. You may, if you wish, make a renewed request of her after that date. If you do so, then please send your request to Andrea Drinkard and Emily Atkinson, copied here. They serve as Ms. McCabe's special assistants. If you have any questions about the terms of Ms. McCabe's recusal, then please contact me directly.
Happy New Year,
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Willett, Mary Rebecca <mrwillet@iu.edu>
**Sent:** Tuesday, December 14, 2021 11:57 AM
**To:** McCabe, Janet G <jgmccabe@iu.edu>; McCabe, Janet <McCabe.Janet@epa.gov>
**Subject:** March 3rd Guest Speaker Request

Janet,

You kindly were a guest speaker for Gwen White's and my IU/SPEA E543 Environmental Management graduate class two summers ago. I also teach E363 Environmental Management for undergraduates. I wanted to ask whether you would be available/willing to do a Zoom Guest Speaker spot for my spring semester class on Thursday March 3, 2022 from 5-6 pm. We are back in the classroom and I would Zoom you in for an hour to answer questions for the students (which I would solicit and provide to you beforehand).

Your schedule is probably slammed but I thought I would ask.

Mary R. Willett

IU/SPEA Adjunct Instructor

| | |
|---|---|
| **From:** | Fugh, Justina |
| **To:** | McCabe, Janet |
| **Subject:** | more stuff to sign digitally! |
| **Date:** | Thursday, April 29, 2021 11:22:00 PM |
| **Attachments:** | Biden Ethics Pledge for digital signature.pdf<br>Certification of Ethics Agreement Compliance - McCabe.pdf<br>CHEAT SHEET FOR COMPLETING THE ETHICS AGREEMENT COMPLIANCE FORM.docx |

---

Hi again,

As promised, here is the Biden ethics pledge for your signature, as well as the certification of your compliance with the ethics agreement. I've included a "cheat sheet" of the answers based on your own ethics agreement to guide you. You will be able to click on the radio buttons and then, at the end, digitally sign the document. Please return both to me.

Thanks!

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Janet McCabe
**To:** Fugh, Justina
**Subject:** Re: [External] Resilience Volume
**Date:** Thursday, April 29, 2021 10:00:25 PM

---

Thanks Justina. You are always very clear and helpful.

Sent from my iPhone

On Apr 29, 2021, at 9:55 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi there,
As discussed with Ms. McCabe earlier today during her initial ethics briefing, she may indeed continue to be listed as a co-author and co-editor on the book, even though she is no longer affiliated with Indiana University. But because she is now a federal employee, she is obliged to adhere to a myriad of ethics rules. For example, as a Presidentially Appointed Senate confirmed appointee, she is not permitted to engage in any outside activity, including editing or revising this book going forward.

I have reviewed the options for her bio that you thoughtfully provided, and either one will be acceptable. What I ask, though, is that you cease corresponding with Ms. McCabe using her EPA email address. One of her ethics restrictions is that she cannot, as part of her official duty, interact with any representative of Indiana University for one year. Since this exchange is unrelated to her official EPA work, she should be using a non-EPA email address instead.

There. Now you know that ethics lawyers really do suck the fun out of everything.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>

**Sent:** Thursday, April 29, 2021 3:43 PM
**To:** 'Allen, Eva' <evaallen@indiana.edu>
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: [External] Resilience Volume

Thanks, Eva. I think I like Option 2, subject to Justina's view as well.

Cheers,
Janet

---

**From:** Allen, Eva <evaallen@indiana.edu>
**Sent:** Thursday, April 29, 2021 3:37 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Re: [External] Resilience Volume

Hi Janet,

This is great news! It would have been quite disappointing to have to omit your name from the volume after all you've done to make it happen.

**Please let me know how I should revise your author bio to comply with this guidance** (keeping in mind this book is expected to come out in the spring of 2022). Below are two possibilities as well as the original wording; your additional tweaks are of course welcome.

- Option 1: Janet McCabe joined the Indiana University Environmental Resilience Institute in 2017 as its founding Assistant Director of Implementation, and served as Director from 2019-2021. She has served as Professor of Practice at the IU McKinney School of Law, and has held senior positions in environmental agencies in Massachusetts and Indiana as well as the US Environmental Protection Agency.
- Option 2: Janet McCabe joined the Indiana University Environmental Resilience Institute in 2017 as its founding Assistant Director of Implementation, and served as Director from 2019-2021. She has served as Professor of Practice at the IU McKinney School of Law, and has held senior positions in federal and state environmental agencies.
- Original wording: Janet McCabe is Director of the Indiana University Environmental Resilience Institute and Professor of Practice at the IU McKinney School of Law. She has held senior positions in environmental agencies in Massachusetts and Indiana as well as the US Environmental Protection Agency.

You will certainly hear from me when we know a publication release date.

Best, Eva

So glad your first day is going well! Fred mentioned you in the beginning of his all-hands VPR webinar today (we sent Janet McCabe off yesterday…where she'll basically run the EPA), and we had a moment of glum during roll call at the start of our book editors meeting this afternoon. So…you are missed, and we're all so thrilled you're doing what you're doing now.

> On Apr 29, 2021, at 2:39 PM, McCabe, Janet <McCabe.Janet@epa.gov> wrote:
>
> This message was sent from a non-IU address. Please exercise caution when clicking links or opening attachments from external sources.
>
> Hi Eva—
>
> I just spoke with EPA's Ethics Counsel, Justina Fugh, about the Resilience volume in the works and wanted to put in writing before I forget what she advised me, even though publication is many months away.
>
> It is ok for me to be listed as co-author and co-editor on the book. Information should cite my IU connection but not my current EPA position. I cannot do any further work on the book now that I am employed at EPA. Fortunately, you have a great team of editors to move the project along without my help!
>
> When it gets closer to the time of actual publication, if someone could send me a heads up, I'd appreciate it. And if you have any additional questions along the way, please let me know.
>
> Good first day at EPA so far!
>
> Janet

**From:** Allen, Eva
**To:** Fugh, Justina
**Cc:** (b) (6) [redacted]
**Subject:** Re: [External] Resilience Volume
**Date:** Friday, April 30, 2021 12:11:12 AM

---

Got it! All the best, Justina; we have our own fun-suckers in my corner of the world, too. I'll use option 2, Janet. Cheers, Eva

On Apr 29, 2021, at 9:55 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi there,
As discussed with Ms. McCabe earlier today during her initial ethics briefing, she may indeed continue to be listed as a co-author and co-editor on the book, even though she is no longer affiliated with Indiana University. But because she is now a federal employee, she is obliged to adhere to a myriad of ethics rules. For example, as a Presidentially Appointed Senate confirmed appointee, she is not permitted to engage in any outside activity, including editing or revising this book going forward.

I have reviewed the options for her bio that you thoughtfully provided, and either one will be acceptable. What I ask, though, is that you cease corresponding with Ms. McCabe using her EPA email address. One of her ethics restrictions is that she cannot, as part of her official duty, interact with any representative of Indiana University for one year. Since this exchange is unrelated to her official EPA work, she should be using a non-EPA email address instead.

There. Now you know that ethics lawyers really do suck the fun out of everything.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Thursday, April 29, 2021 3:43 PM
**To:** 'Allen, Eva' <evaallen@indiana.edu>

**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: [External] Resilience Volume

Thanks, Eva. I think I like Option 2, subject to Justina's view as well.

Cheers,
Janet

---

**From:** Allen, Eva <evaallen@indiana.edu>
**Sent:** Thursday, April 29, 2021 3:37 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Re: [External] Resilience Volume

Hi Janet,

This is great news! It would have been quite disappointing to have to omit your name from the volume after all you've done to make it happen.

**Please let me know how I should revise your author bio to comply with this guidance** (keeping in mind this book is expected to come out in the spring of 2022). Below are two possibilities as well as the original wording; your additional tweaks are of course welcome.

- Option 1: Janet McCabe joined the Indiana University Environmental Resilience Institute in 2017 as its founding Assistant Director of Implementation, and served as Director from 2019-2021. She has served as Professor of Practice at the IU McKinney School of Law, and has held senior positions in environmental agencies in Massachusetts and Indiana as well as the US Environmental Protection Agency.
- Option 2: Janet McCabe joined the Indiana University Environmental Resilience Institute in 2017 as its founding Assistant Director of Implementation, and served as Director from 2019-2021. She has served as Professor of Practice at the IU McKinney School of Law, and has held senior positions in federal and state environmental agencies.
- Original wording: Janet McCabe is Director of the Indiana University Environmental Resilience Institute and Professor of Practice at the IU McKinney School of Law. She has held senior positions in environmental agencies in Massachusetts and Indiana as well as the US Environmental Protection Agency.

You will certainly hear from me when we know a publication release date.

Best, Eva

So glad your first day is going well! Fred mentioned you in the beginning of his all-hands VPR webinar today (we sent Janet McCabe off yesterday…where she'll basically

run the EPA), and we had a moment of glum during roll call at the start of our book editors meeting this afternoon. So…you are missed, and we're all so thrilled you're doing what you're doing now.

> On Apr 29, 2021, at 2:39 PM, McCabe, Janet <McCabe.Janet@epa.gov> wrote:
>
> This message was sent from a non-IU address. Please exercise caution when clicking links or opening attachments from external sources.
>
> Hi Eva—
>
> I just spoke with EPA's Ethics Counsel, Justina Fugh, about the Resilience volume in the works and wanted to put in writing before I forget what she advised me, even though publication is many months away.
>
> It is ok for me to be listed as co-author and co-editor on the book. Information should cite my IU connection but not my current EPA position. I cannot do any further work on the book now that I am employed at EPA. Fortunately, you have a great team of editors to move the project along without my help!
>
> When it gets closer to the time of actual publication, if someone could send me a heads up, I'd appreciate it. And if you have any additional questions along the way, please let me know.
>
> Good first day at EPA so far!
>
> Janet

**From:** McCabe, Janet
**To:** Fugh, Justina
**Subject:** Re: [External] Resilience Volume
**Date:** Friday, April 30, 2021 9:02:46 AM

---

Got it—and thanks for the clarification, justina. I thought it was a good idea to have that clarification on the record, but will make sure not to do that again.

Sent from my iPhone

On Apr 29, 2021, at 9:45 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi Janet,
Under your ethics obligations, you can't interact with Indiana University for one year in your official capacity. Should anyone have occasion to dive into your official email, they will find this example written to an Indiana.edu email address during business hours on your first day. I realize that this email was intended to be relaying information following our ethics briefing, but I'll take this opportunity to remind you not to use your EPA email address to correspond with anyone at Indiana University, even in your personal capacity. As a PAS appointee, you are on duty 24/7, so we need you to work even harder to separate your personal life from your EPA life.

I will reply to Ms. Allen and you in a separate message, using your personal email address. It's still official business for me, of course.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Thursday, April 29, 2021 3:43 PM
**To:** 'Allen, Eva' <evaallen@indiana.edu>
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: [External] Resilience Volume

Thanks, Eva. I think I like Option 2, subject to Justina's view as well.

Cheers,
Janet

---

**From:** Allen, Eva <evaallen@indiana.edu>
**Sent:** Thursday, April 29, 2021 3:37 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Re: [External] Resilience Volume

Hi Janet,

This is great news! It would have been quite disappointing to have to omit your name from the volume after all you've done to make it happen.

**Please let me know how I should revise your author bio to comply with this guidance** (keeping in mind this book is expected to come out in the spring of 2022). Below are two possibilities as well as the original wording; your additional tweaks are of course welcome.

- Option 1: Janet McCabe joined the Indiana University Environmental Resilience Institute in 2017 as its founding Assistant Director of Implementation, and served as Director from 2019-2021. She has served as Professor of Practice at the IU McKinney School of Law, and has held senior positions in environmental agencies in Massachusetts and Indiana as well as the US Environmental Protection Agency.
- Option 2: Janet McCabe joined the Indiana University Environmental Resilience Institute in 2017 as its founding Assistant Director of Implementation, and served as Director from 2019-2021. She has served as Professor of Practice at the IU McKinney School of Law, and has held senior positions in federal and state environmental agencies.
- Original wording: Janet McCabe is Director of the Indiana University Environmental Resilience Institute and Professor of Practice at the IU McKinney School of Law. She has held senior positions in environmental agencies in Massachusetts and Indiana as well as the US Environmental Protection Agency.

You will certainly hear from me when we know a publication release date.

Best, Eva

So glad your first day is going well! Fred mentioned you in the beginning of his all-hands VPR webinar today (we sent Janet McCabe off yesterday…where she'll basically run the EPA), and we had a moment of glum during roll call at the start of our book editors meeting this afternoon. So…you are missed, and we're all so thrilled you're doing what you're doing now.

On Apr 29, 2021, at 2:39 PM, McCabe, Janet <McCabe.Janet@epa.gov> wrote:

This message was sent from a non-IU address. Please exercise caution when clicking links or opening attachments from external sources.

Hi Eva—

I just spoke with EPA's Ethics Counsel, Justina Fugh, about the Resilience volume in the works and wanted to put in writing before I forget what she advised me, even though publication is many months away.

It is ok for me to be listed as co-author and co-editor on the book. Information should cite my IU connection but not my current EPA position. I cannot do any further work on the book now that I am employed at EPA. Fortunately, you have a great team of editors to move the project along without my help!

When it gets closer to the time of actual publication, if someone could send me a heads up, I'd appreciate it. And if you have any additional questions along the way, please let me know.

Good first day at EPA so far!

Janet

| | |
|---|---|
| **From:** | Keith, Jennie |
| **To:** | Drinkard, Andrea |
| **Cc:** | Atkinson, Emily |
| **Subject:** | RE: AWARENESS: A&WMA Keynote |
| **Date:** | Friday, June 11, 2021 3:58:00 PM |

You're good to go, Andrea! Thanks, Jennie

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Friday, June 11, 2021 3:18 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** AWARENESS: A&WMA Keynote

Hi Jennie,

Janet was asked to sub in for the Administrator on this event. Max confirmed that you had already signed off on it for the Administrator I just wanted to do due diligence and make sure that there aren't any ethics issues for Janet. The speech is Tuesday.

Thanks!

---

**From:** Levy, Maxwell <Levy.Maxwell@epa.gov>
**Sent:** Friday, June 11, 2021 3:13 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>
**Subject:** RE: Administrator availability for Keynote

Yes that's correct Jennie signed off on this one – scheduling form attached!

**Max Levy**
Special Assistant
Office of Public Engagement and Environmental Education
U.S. EPA Office of the Administrator
Cell: 202.815.7752 | he/him

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Friday, June 11, 2021 2:52 PM
**To:** Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>
**Cc:** Levy, Maxwell <Levy.Maxwell@epa.gov>
**Subject:** RE: Administrator availability for Keynote

I assume Jennie approved the ethics for this, do you have the original event information form that I could have for our records, etc.?

We should be confirmed for Tuesday and I should be getting the Q&As in the next hour or so.

---

**From:** Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>
**Sent:** Friday, June 11, 2021 12:33 PM
**To:** Tracy Fedkoe <TFedkoe@AWMA.ORG>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Cc:** Levy, Maxwell <Levy.Maxwell@epa.gov>
**Subject:** RE: Administrator availability for Keynote

Hi Tracy,

The Administrator cant make that Monday timeframe work. We will however send over a video for you all to use for your event. Max will make sure you get it on Monday afternoon.

Regarding Janet, looping in Andrea Drinkard the Deputy's Advisor. She will let you know if Janet can make the Monday or Tuesday timeframe work for her schedule.

Again, thank you so much for bearing with us on this.

Thanks,
Rosemary

---

**From:** Tracy Fedkoe <TFedkoe@awma.org>
**Sent:** Friday, June 11, 2021 11:54 AM
**To:** Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>; Levy, Maxwell <Levy.Maxwell@epa.gov>
**Subject:** Administrator availability for Keynote

Hi Rosemary,

I am just following up to see if you were able to find out if the Administrator would be available during our Monday, June 14 Opening Keynote from 11:30 am – 12:00 pm ET. And, if he is not, then would Janet McCabe be able to take his place on Monday during those times, or Tuesday, during the Keynote Plenary where Administrator Regan was originally scheduled from 1:30 – 3:30 pm ET?

We have a meeting at 2 pm ET today with the A/V producers, who are hoping to get the final schedule for both the Monday and Tuesday sessions.

Please reply as soon as you know something or call my cell if that's easier.

Thanks,

*Tracy Fedkoe*
Director, Marketing and Project Management
Air & Waste Management Association
Cell (b) (6) [redacted]

| | |
|---|---|
| **From:** | Drinkard, Andrea |
| **To:** | Keith, Jennie; Fugh, Justina |
| **Cc:** | Atkinson, Emily |
| **Subject:** | RE: Baker Botts L.L.P."s 35th Annual Environmental Seminar - Speaker Invitation |
| **Date:** | Friday, January 07, 2022 10:38:29 AM |
| **Attachments:** | image001.jpg<br>image002.jpg |

---

Thanks to you both!

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Friday, January 07, 2022 10:34 AM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: Baker Botts L.L.P.'s 35th Annual Environmental Seminar - Speaker Invitation

Hi there,

I have not seen any other requests for this Baker Botts Seminar. That doesn't mean the firm is not seeking other EPA speakers, but no other EPA office has requested a consult on it with me.

Further, just chiming in based on past experiences . . . law firm seminars are legitimate speaking opportunities, however, we do give extra scrutiny to ensure that the seminar is developed with educational purpose in mind rather than solely a business interest. In several instances, law firms open up the seminar beyond clients, have registration sites, and seminar websites. Sometimes, it may be clients only but depending on the audience and the EPA speaking topic, those may be crucial factors in the principal deciding to accept the request . . . so there is a lot on the continuum here that an event information form would help to elucidate.

I didn't review the invitation letter (I don't think it was attached), so the above paragraph is just a general information, not specific to this event itself.

Cheers!
Jennie for OGC/Ethics

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Friday, January 07, 2022 10:02 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Subject:** RE: Baker Botts L.L.P.'s 35th Annual Environmental Seminar - Speaker Invitation

Thanks, Justina! I don't think Janet wanted to find a surrogate more so than she was curious whether anyone else had been invited. I will decline the invite.

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Friday, January 07, 2022 9:53 AM

**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Subject:** RE: Baker Botts L.L.P.'s 35th Annual Environmental Seminar - Speaker Invitation

Hi Andrea,
I'm actually glad that she declined because Baker Botts is a federally registered lobbyist, and this event (sent by their coordinator for *client development)* may well be considered a way to provide their clients with access to federal officials in a cozy, closed environment. We would want to know whether the event is open to more than just Baker Botts clients. And is it really our responsibility to suggest to them whom else to invite if she can't attend?
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Friday, January 7, 2022 8:53 AM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** FW: Baker Botts L.L.P.'s 35th Annual Environmental Seminar - Speaker Invitation

Hi Jennie and Justina,

Janet is going to decline this request, but she was curious if anyone else from the agency was attending. Do you know of anyone else? Thanks!

---

**From:** Marshall, Katie <katie.marshall@BakerBotts.com>
**Sent:** Thursday, January 06, 2022 10:12 AM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Cc:** matthew.kuryla@bakerbotts.com
**Subject:** RE: Baker Botts L.L.P.'s 35th Annual Environmental Seminar - Speaker Invitation

Hi Andrea,

Happy New Year! I am following up to see if you have any update on our invitation for Deputy Administrator McCabe to speak at our 2022 Environmental, Safety and Incident Response Seminar on February 24th. Please let me know if you need any additional information about the seminar from me.

Best regards,

**Katie Marshall**
Senior Coordinator, Client Development - Litigation

Baker Botts L.L.P.
katie.marshall@bakerbotts.com
T +1.713.229.1622

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Friday, December 10, 2021 3:24 PM
**To:** Marshall, Katie <katie.marshall@BakerBotts.com>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Cc:** Kuryla, Matthew <matthew.kuryla@bakerbotts.com>
**Subject:** RE: Baker Botts L.L.P.'s 35th Annual Environmental Seminar - Speaker Invitation

**[EXTERNAL EMAIL]**

Hi Katie,

Thanks for checking back. We are beginning to build out our 2022 schedule. We will be in touch as soon as we have a decision.

-Andrea-

Andrea Drinkard
Senior Advisor to the Deputy Administrator
U.S. Environmental Protection Agency
Desk: 202.564.1601
Cell: 202.236.7765

---

**From:** Marshall, Katie <katie.marshall@BakerBotts.com>
**Sent:** Friday, December 10, 2021 3:20 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Cc:** matthew.kuryla@bakerbotts.com
**Subject:** FW: Baker Botts L.L.P.'s 35th Annual Environmental Seminar - Speaker Invitation

Emily and Andrea,

I hope you are both doing well. I am following up on the email below inviting Deputy Administrator McCabe to join us as a speaker at our upcoming 35th Annual 2022 Environmental, Safety and Incident Response Seminar on February 24, 2022. Please see attached for the formal invitation.

Please let us know if you need any additional information from us. We would be honored if Deputy Administrator McCabe could join us.

Thank you,

**Katie Marshall**
Senior Coordinator, Client Development - Litigation

Baker Botts L.L.P.
katie marshall@bakerbotts.com
T +1.713.229.1622

---

**From:** Campbell, Marty <marty.campbell@bakerbotts.com> **On Behalf Of** Janoe, Scott
**Sent:** Friday, November 19, 2021 3:41 PM
**To:** McCabe.Janet@epa.gov
**Cc:** Lucey.John.D@epa.gov; Carpenter.Wesley@epa.gov; Marshall, Katie <katie.marshall@BakerBotts.com>; Kuryla, Matthew <matthew.kuryla@bakerbotts.com>; Janoe, Scott <Scott.Janoe@BakerBotts.com>; Campbell, Marty <marty.campbell@bakerbotts.com>
**Subject:** Baker Botts L.L.P.'s 35th Annual Environmental Seminar - Speaker Invitation

Dear Deputy Administrator McCabe,

Please see the attached invitation to join us as a speaker at our upcoming ***35th Annual 2022 Environmental, Safety and Incident Response Seminar*** on February 24, 2022. We would be honored if you would participate.

Thank you in advance for your time and consideration. If you have any questions or need further information, please let me know.

**Scott Janoe**
*Partner*

Baker Botts L.L.P.
scott.janoe@bakerbotts.com
T +1.713.229.1553
F +1.713.229.7953

M +1(b) (6)
910 Louisiana St.
Houston, TX 77002
USA

**Confidentiality Notice:**

The information contained in this email and any attachments is intended only for the recipient[s] listed above and may be privileged and confidential. Any dissemination, copying, or use of or reliance upon such information by or to anyone other than the recipient[s] listed above is prohibited. If you have received this message in error, please notify the sender immediately at the email address above and destroy any and all copies of this message.

**From:** Atkinson, Emily
**To:** Keith, Jennie
**Cc:** Drinkard, Andrea
**Subject:** RE: Designated Official on Recusals for Janet McCabe
**Date:** Tuesday, May 18, 2021 8:04:14 AM

---

Hi Jennie –

Circling back on this to confirm if there is anything else you need for us on recusals.

Emily

---

**From:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Sent:** Friday, May 07, 2021 4:11 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** Designated Official on Recusals for Janet McCabe

Hi Jennie,

We spoke to Janet and she has selected Andrea as her designated official on recusals.

You seemed to indicate there is a more formal process that needs to be in place, so please let us know what other steps should be taken. But I thought the first step would be to let you know it is Andrea.

Emily

Emily Atkinson
Special Assistant
Office of the Deputy Administrator
U.S. Environmental Protection Agency
Room 3412D, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-1850
Email: atkinson.emily@epa.gov

| | |
|---|---|
| **From:** | McCabe, Janet |
| **To:** | Fugh, Justina |
| **Cc:** | Drinkard, Andrea |
| **Subject:** | RE: EPA-Led Revival and Expansion of School Integrated Pest Management to Safely Manage Pests, Facilitate Pandemic Response and Reduce Risk in U.S. Schools. |
| **Date:** | Wednesday, October 27, 2021 6:01:25 PM |

Thank you, Justina. Clear, prompt and helpful, as always.

janet

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Wednesday, October 27, 2021 4:23 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: EPA-Led Revival and Expansion of School Integrated Pest Management to Safely Manage Pests, Facilitate Pandemic Response and Reduce Risk in U.S. Schools.

Hi Janet (and Andrea).
Thanks for worrying about the connection and for sending forward the materials. Now I get to apply the ethics analysis. Pursuant to your recusal statement, Janet, you have agreed not to participate in any specific party matter in which Indiana University is a party or represents a party unless your friendly neighborhood ethics officials clear it first. In this situation, we see that Dr. Lame is not actually representing IU but rather, as an emeritus, simply using his IU email address. He is representing himself on the National School Integrated Pest Management Steering Committee, and it is on that entity's behalf that he has reached out to you. I therefore conclude that you may, as part of your official duty, respond to Dr. Lame at his IU address and, further, that you may act on the information that he has provided to you. You may also meet with him on this topic if you wish.
Thanks again for asking!
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Wednesday, October 27, 2021 9:45 AM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** FW: EPA-Led Revival and Expansion of School Integrated Pest Management to Safely Manage Pests, Facilitate Pandemic Response and Reduce Risk in U.S. Schools.

Hi you two—I am forwarding this note to you before reading it, with a request that you confirm whether or not I should be recused from it.

The sender is a now retired but still connected to the university IU professor. I have known and worked with him for many years, long before I was at IU. He is a national expert on Integrated Pest Management (has in the past been on EPA advisory group(s)) and works with others from around the country.

Given his current connection with IU, I wanted to confirm with you how I should handle this, given my ethics obligations.

Thank you,

Janet

---

**From:** Lame, Marc Louis <mlame@indiana.edu>
**Sent:** Wednesday, October 27, 2021 9:13 AM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Cc:** mlame@indiana.edu; 'Gouge, Dawn H - (dhgouge)' <dhgouge@arizona.edu>
**Subject:** EPA-Led Revival and Expansion of School Integrated Pest Management to Safely Manage Pests, Facilitate Pandemic Response and Reduce Risk in U.S. Schools.

Deputy Administrator McCabe,
Members of the National School Integrated Pest Management Steering Committee with additional subject matter experts hope you will consider the attached letter and whiter paper addressing School Integrated Pest Management (SIPM) to "build back better" with our Administration. This core group of IPM change agents will eagerly await the opportunity to resume SIPM, partner with the EPA to expand its benefits and serve to protect our school communities.

Sincerely,
Marc L. Lame, Ph.D.
Professor Emeritus
Indiana University, O'Neill School of Public and Environmental Affairs

| | |
|---|---|
| **From:** | Drinkard, Andrea |
| **To:** | Keith, Jennie; Fugh, Justina |
| **Cc:** | Atkinson, Emily |
| **Subject:** | RE: Ethics Check for Deputy Administrator McCabe |
| **Date:** | Monday, May 03, 2021 12:25:40 PM |

Got it and will do! Thank you for the info and the official determination. Is determination the right word?

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Monday, May 03, 2021 12:24 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: Ethics Check for Deputy Administrator McCabe

Hi Andrea and Emily!

So, Janet should do this as part of official duty if she wants to accept the request.

I advise to have Stan complete the attached form (it's for OGC, but given the tight timeframes, we can use it this one time for Janet McCabe). It's important for the event planning to see the context and know how you're going to access the event. Would one of you be able to reach out to Stan and have him complete this form? Here's his email address:

meiburas@wfu.edu

Would you please advise Janet that this is permissible, and if she accepts, to direct him to check his Wake Forest email address for the form? So happy I'll get to work with you two again.

Thanks!
Jennie for OGC/Ethics

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Monday, May 03, 2021 10:43 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Subject:** RE: Ethics Check for Deputy Administrator McCabe

Hi Justina and Jennie,

I'm following up on my email from this morning. The official request came via text. Janet has copy and pasted the ask in the attached email. I also confirmed that it would be in her personal capacity, not her official EPA capacity.

Jennie, would you have a few minutes that we could touch base on this today? Janet wants to be able to give Stan a thumbs up or down ASAP since the session is this Friday.

**From:** Drinkard, Andrea
**Sent:** Monday, May 03, 2021 6:26 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Subject:** Re: Ethics Check for Deputy Administrator McCabe

Yea, we'd love to join the training session. Thank you!

As far as this invitation, it came to her prior to her confirmation, so at the time it was in her personal capacity. She would be speaking this Friday, May 7th. She was awaiting additional details, but I will check to see if it came in in writing.

Going forward we will be using the form that Kathleen developed. So this one is definitely an outlier due to timing.

I'll be in touch with more information.

Thanks!

On May 2, 2021, at 11:48 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi Andrea,
Jennie is our go-to person on invitations, but she needs to see the invitation itself. We don't know the date or time of the event or whether it was sent to her in her EPA capacity or to a personal email address. Are you using the template that she honed with Kathleen Lance? Can you send more information to us, please? And if you're going to be working with DA McCabe on invitations, then you should join Jennie's next invitations training session. Since there is a new scheduling person starting on Monday, she'll be putting another training session together.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>

**Sent:** Friday, April 30, 2021 4:43 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** Ethics Check for Deputy Administrator McCabe

Hi Justina and Jennie,

Emily Atkinson and I will be helping out with Deputy Administrator McCabe's external engagements, so our paths will be crossing quite a bit over the coming days and months as she gets out and about. Prior to Janet's confirmation, she had agreed to speak at Stan Meiburg's public policy class. We wanted to check with you to make sure that 1) the timing of the request and/or her acceptance or 2) the engagement itself posed any ethics issues. Stan teaches at Wake Forest University.

Please let me know if you have any questions or need additional info.

Thanks.

Andrea Drinkard
Senior Advisor
EPA Office of Public Affairs
Desk: 202.564.1601
Cell: 202.236.7765

| | |
|---|---|
| **From:** | Drinkard, Andrea |
| **To:** | Fugh, Justina |
| **Cc:** | Atkinson, Emily; Keith, Jennie |
| **Subject:** | RE: Ethics Check for Deputy Administrator McCabe |
| **Date:** | Monday, May 03, 2021 10:58:04 AM |

Understood and thank you. Will keep an eye out for Jennie's official determination. Thanks to both of you and I look forward to working with you on Janet's meetings and events going forward!!

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Monday, May 03, 2021 10:51 AM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Subject:** RE: Ethics Check for Deputy Administrator McCabe

Just because it predates her confirmation, I believe the intention is clear: Stan wishes for her to speak in her official capacity, and the event will take place during EPA duty hours. PAS appointees like Janet are "on the clock" 24/7, so it's very difficult for something like this to be considered personal capacity. Jennie will get back to you on this.

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Monday, May 03, 2021 6:26 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Subject:** Re: Ethics Check for Deputy Administrator McCabe

Yea, we'd love to join the training session. Thank you!

As far as this invitation, it came to her prior to her confirmation, so at the time it was in her personal capacity. She would be speaking this Friday, May 7th. She was awaiting additional details, but I will check to see if it came in in writing.

Going forward we will be using the form that Kathleen developed. So this one is definitely an outlier due to timing.

I'll be in touch with more information.

Thanks!

On May 2, 2021, at 11:48 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi Andrea,
Jennie is our go-to person on invitations, but she needs to see the invitation itself. We don't know the date or time of the event or whether it was sent to her in her EPA capacity or to a personal email address. Are you using the template that she honed with Kathleen Lance? Can you send more information to us, please? And if you're going to be working with DA McCabe on invitations, then you should join Jennie's next invitations training session. Since there is a new scheduling person starting on Monday, she'll be putting another training session together.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Friday, April 30, 2021 4:43 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** Ethics Check for Deputy Administrator McCabe

Hi Justina and Jennie,

Emily Atkinson and I will be helping out with Deputy Administrator McCabe's external engagements, so our paths will be crossing quite a bit over the coming days and months as she gets out and about. Prior to Janet's confirmation, she had agreed to speak at Stan Meiburg's public policy class. We wanted to check with you to make sure that 1) the timing of the request and/or her acceptance or 2) the engagement itself posed any ethics issues. Stan teaches at Wake Forest University.

Please let me know if you have any questions or need additional info.

Thanks.

Andrea Drinkard

Senior Advisor
EPA Office of Public Affairs
Desk: 202.564.1601
Cell: 202.236.7765

| | |
|---|---|
| **From:** | Drinkard, Andrea |
| **To:** | Atkinson, Emily; Keith, Jennie |
| **Subject:** | RE: ETHICS CHECK Today: Invitation from the National Tribal Air Association |
| **Date:** | Monday, August 30, 2021 2:39:20 PM |

Yes, thank you!

---

**From:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Sent:** Monday, August 30, 2021 2:33 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: ETHICS CHECK Today: Invitation from the National Tribal Air Association

Thank you!

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Monday, August 30, 2021 2:32 PM
**To:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: ETHICS CHECK Today: Invitation from the National Tribal Air Association

Hi Emily,

There are no ethics concerns with this event.

Thanks!
Jennie for OGC/Ethics

---

**From:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Sent:** Monday, August 30, 2021 2:00 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** ETHICS CHECK Today: Invitation from the National Tribal Air Association
**Importance:** High

Hi Jennie –

We would like an ethics check on this one – Janet would participate tomorrow virtually for about 15 minutes at the top of their agenda.

Let us know if there are any ethics issues.

Thank you.
Emily

---

**From:** Atkinson, Emily <Atkinson.Emily@epa.gov>

**Sent:** Friday, August 27, 2021 5:22 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** FW: Invitation from the National Tribal Air Association
**Importance:** High

The Administrator received the same invitation to join the executive committee meeting on Tuesday, 8/31 at 1:00pm.

His scheduling team decided late yesterday they were going to decline and pass this to you.

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Thursday, August 12, 2021 3:17 PM
**To:** andy.bessler@nau.edu; Childers, Pat <Childers.Pat@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; ckriebs@kootenai.org; Mariah.Ashley@nau.edu
**Subject:** FW: Invitation from the National Tribal Air Association

Hi Andy—thanks for the invite! I'm looping in Emily and Andrea who help with my schedule.

janet

---

**From:** Andy Bessler <Andy.Bessler@nau.edu>
**Sent:** Thursday, August 12, 2021 2:51 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Cc:** Childers, Pat <Childers.Pat@epa.gov>; ckriebs@kootenai.org; Mariah Tanay Ashley <Mariah.Ashley@nau.edu>
**Subject:** Invitation from the National Tribal Air Association

Hello Again Deputy Administrator McCabe:

Please find the attached letter from Chairwoman Kriebs inviting you and your staff to meet with the NTAA EC again. I hope the day and time work for you.

Let me know if you have any questions, otherwise feel free to confirm with Pat Childers or myself when you can.

Thanks and enjoy the rest of your day!

Andy

Andy Bessler
Project Director

National Tribal Air Association
Institute for Tribal Environmental Professionals
Northern Arizona University
P.O. Box 15004
Flagstaff, AZ 86011
Office 928-523-0526
Cell (b) (6) [redacted]
Fax 928-523-1266
www.ntaatribalair.org

**From:** Keith, Jennie
**To:** Atkinson, Emily
**Subject:** RE: ETHICS CHECK: [EXTERNAL]FW: Keynote Speaker Invite - AARST"s 35th Annual Symposium - Oct. 12, 2021 (Bethesda)
**Date:** Thursday, August 26, 2021 11:05:00 AM

---

Emily, Do you want to talk now? I completely forgot when speaking with you yesterday that it was the (b) (6) [redacted]. Thanks! Jennie

---

**From:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Sent:** Thursday, August 26, 2021 8:52 AM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: ETHICS CHECK: [EXTERNAL]FW: Keynote Speaker Invite - AARST's 35th Annual Symposium - Oct. 12, 2021 (Bethesda)

Thanks Jennie – I will confirm the no registration fees for speakers.

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Monday, August 23, 2021 12:55 PM
**To:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: ETHICS CHECK: [EXTERNAL]FW: Keynote Speaker Invite - AARST's 35th Annual Symposium - Oct. 12, 2021 (Bethesda)

Hi Emily!

There are no ethics concerns with this event. I think the organization meant to complete the "Registration Fee Charged?" row, with something to the effect of "no registration fee for speakers." But, it's currently incomplete. So, I would just confirm with the organization how it meant to complete that text. But otherwise, it looks good.

Thanks!
Jennie for OGC/Ethics

---

**From:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Sent:** Wednesday, August 18, 2021 9:19 AM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** ETHICS CHECK: [EXTERNAL]FW: Keynote Speaker Invite - AARST's 35th Annual Symposium - Oct. 12, 2021 (Bethesda)

Hi Jennie,

Attached is an event form for the AARST's 35th Annual Symposium – it would be for Janet to participate virtually on October 12 at 10:00am for 30 minutes.

Please advise if there are any ethics issues.

Thank you!
Emily

---

**From:** Gillay, David <David.Gillay@btlaw.com>
**Sent:** Friday, August 13, 2021 5:50 PM
**To:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>

**Subject:** Re: [EXTERNAL]FW: Keynote Speaker Invite - AARST's 35th Annual Symposium - Oct. 12, 2021 (Bethesda)

We should be able to accommodate virtually but would prefer in person … let us know and I am sure we can work out something that will work

Sent from my iPhone

On Aug 13, 2021, at 4:52 PM, Atkinson, Emily <Atkinson.Emily@epa.gov> wrote:

Hi David,

Could you clarify if this is an in person only event or if you have a virtual option.

Thank you!
Emily

---

**From:** Gillay, David <David.Gillay@btlaw.com>
**Sent:** Wednesday, August 11, 2021 6:54 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; McCabe, Janet <McCabe.Janet@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: Keynote Speaker Invite - AARST's 35th Annual Symposium - Oct. 12, 2021 (Bethesda)

Please see attached and look forward to hearing from you.

Have a nice evening.

**David Gillay** | Partner
Barnes & Thornburg LLP
11 South Meridian Street, Indianapolis, IN 46204-3535
Direct: (317) 231-7474 | Mobile: (b) (6) [redacted] | Fax: (317) 231-7433

<image001.gif>

Atlanta | California | Chicago | Delaware | Indiana | Michigan | Minneapolis
Ohio | Raleigh | Salt Lake City | Texas | Washington, D.C.

**Learn more about our COVID-19 Resources**

---

**From:** Gillay, David
**Sent:** Wednesday, August 11, 2021 2:58 PM
**To:** 'Drinkard, Andrea' <Drinkard.Andrea@epa.gov>; McCabe, Janet <McCabe.Janet@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: Keynote Speaker Invite - AARST's 35th Annual Symposium - Oct. 12, 2021 (Bethesda)

Absolutely. Thanks so much for the quick reply.

Be in touch ASAP.

dave

**David Gillay** | Partner
Barnes & Thornburg LLP
11 South Meridian Street, Indianapolis, IN 46204-3535
Direct: (317) 231-7474 | Mobile: (b) (6) [redacted] | Fax: (317) 231-7433

<image001.gif>

Atlanta | California | Chicago | Delaware | Indiana | Michigan | Minneapolis
Ohio | Raleigh | Salt Lake City | Texas | Washington, D.C.

**Learn more about our COVID-19 Resources**

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Wednesday, August 11, 2021 10:06 AM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>; Gillay, David <David.Gillay@btlaw.com>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** [EXTERNAL]RE: Keynote Speaker Invite - AARST's 35th Annual Symposium - Oct. 12, 2021 (Bethesda)

Thank you Janet and David! David, nice to meet you virtually! If you could fill out the attached event form, we'll get this into our review process and will hopefully be in touch ASAP.

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Wednesday, August 11, 2021 7:44 AM
**To:** Gillay, David <David.Gillay@btlaw.com>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: Keynote Speaker Invite - AARST's 35th Annual Symposium - Oct. 12, 2021 (Bethesda)

Hi Dave--Sorry not to have responded on this one . I forwarded to Emily and Andrea in my office and someone will get back to you to discuss this kind invitation.

Janet

---

**From:** Gillay, David <David.Gillay@btlaw.com>
**Sent:** Wednesday, August 11, 2021 5:48 AM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Subject:** Keynote Speaker Invite - AARST's 35th Annual Symposium - Oct. 12, 2021 (Bethesda)
**Importance:** High

Ms. McCabe – good morning, hope all is well, and greetings from your fellow Hoosier.

I am working with the Executive Director of AARST (Dallas Jones) and others on the planning committee for this Symposium. I understand that Mr. Jones extended an invite to you to be a keynote speaker in early June (please see attached letter). We are finalizing the agenda and would like to again request your availability to address the attendees. Please let me know if you need any further details or information.

We are of course proud to have you serving as Deputy Administrator and thank you for your service and commitment to the environment.

Thank you in advance for your consideration and the B&T Family (Cheryl, Tony, Mike, John, etc.) all say hello!

dave

**David Gillay** | Partner
Barnes & Thornburg LLP
11 South Meridian Street, Indianapolis, IN 46204-3535
Direct: (317) 231-7474 | Mobile: (b) (6) [redacted] | Fax: (317) 231-7433

<image001.gif>

Atlanta | California | Chicago | Delaware | Indiana | Michigan | Minneapolis
Ohio | Raleigh | Salt Lake City | Texas | Washington, D.C.

**Learn more about our COVID-19 Resources**

CONFIDENTIALITY NOTICE: This email and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute or take action in reliance upon this message. If you have received this in error, please notify us immediately by return email and promptly delete this message and its attachments from your computer system. We do not waive attorney-client or work product privilege by the transmission of this message.

CONFIDENTIALITY NOTICE: This email and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute or take action in reliance upon this message. If you have received this in error, please notify us immediately by return email and promptly delete this message and its attachments from your computer system. We do not waive attorney-client or work product privilege by the transmission of this message.

<Deputy Administrator Event Information Form .docx>

CONFIDENTIALITY NOTICE: This email and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute or take action in reliance upon this message. If you have received this in error, please notify us immediately by return email and promptly delete this message and its attachments from your computer system. We do not waive attorney-client or work product privilege by the transmission of this message.

| | |
|---|---|
| **From:** | Keith, Jennie |
| **To:** | Atkinson, Emily |
| **Cc:** | Drinkard, Andrea |
| **Subject:** | RE: ETHICS CHECK: Chesapeake Executive Council Meeting |
| **Date:** | Friday, December 10, 2021 2:38:00 PM |

Hi Emily!

So, there is a lunch, and we need the value of the lunch. Would you be able to obtain the value? She will be in travel status, so OGC can apply the ethics travel gift authority for the Agency to accept the lunch.

Now that this is the first time that we're using the travel gift acceptance authority, we should get together for 15 minutes to discuss administrative processes. Does that sound good?

Thanks!
Jennie for OGC/Ethics

---

**From:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Sent:** Thursday, December 09, 2021 3:51 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: ETHICS CHECK: Chesapeake Executive Council Meeting

Circling back on this request. Thank you!

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Wednesday, December 08, 2021 1:28 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** ETHICS CHECK: Chesapeake Executive Council Meeting

Hi Jennie,

Next week Janet will be participating in the Chesapeake Bay Executive Council. EPA is going to assume the chair of the Council next year, the Administrator specifically, but Janet will be standing in for him at this event. She will be traveling to Richmond for the event. Governor Northam is the current/outgoing chair of the Council and will hosting next week's event. The run of show is below. I'm also including a link to the event in case there's additional information that you need: https://www.chesapeakebay.net/who/ecmeeting/december_2021_executive_council_meeting

Diana Esher requested that I send you the start and stop time for the Chesapeake Executive Council meeting. The meeting has two parts:

- **11:15 – 12:25**
    - Arrival between 11:15 and 11:30 for a private lunch with Executive Council members or their designees and the Advisory Committee Chairs at the **Governor's mansion**.

    - This portion of the agenda ends at 12:25 with a photograph of attendees
- **12:30 – 1:30**
    - the public portion of the meeting at the **Patrick Henry Building** across the street.
    - Press conference is 1:20-1:30

---

**From:** Esher, Diana <Esher.Diana@epa.gov>
**Sent:** Tuesday, November 30, 2021 5:57 PM
**To:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Ortiz, Adam <Ortiz.Adam@epa.gov>; Katims, Casey <Katims.Casey@epa.gov>
**Subject:** RE: Chesapeake follow up

Hi Emily,

I spoke with Secretary Jennings from Virginia. They can set up a virtual option for Janet if it's preferable. As an FYI, Janet will be the only virtual participant as far as we know. Adam Ortiz will attend in person.

The participants at the meeting are

- Governor Northam, Virginia
- Secretary Ben Grumbles, MD
- Secretary Russell Redding, PA
- Secretary Shawn Garvin, DE
- Director Tommy Wells, DC
- Deputy Secretary Scott Mandirola, WV
- Chair, David Bulova, Chesapeake Bay Commission, VA House of Delegates

Please let me know if Janet prefers to attend in person or virtually. We'll work with VA to make sure that both options are available.

Diana

Diana Esher
Deputy Regional Administrator
US EPA Region 3
215-814-2706
esher.diana@epa.gov

---

**From:** Atkinson, Emily
**Sent:** Monday, November 29, 2021 1:40 PM
**To:** Esher, Diana <Esher.Diana@epa.gov>; Katims, Casey <Katims.Casey@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** FW: Chesapeake follow up

Hi Diana and Casey,

Janet asked me to circle back to you both on the 12/15 event – has it been confirmed as an in person or virtual event for Janet?

Emily

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Monday, November 22, 2021 12:39 PM
**To:** Esher, Diana <Esher.Diana@epa.gov>; Ortiz, Adam <Ortiz.Adam@epa.gov>
**Cc:** Katims, Casey <Katims.Casey@epa.gov>; Utech, Dan <Utech.Dan@epa.gov>; Niebling, William <Niebling.William@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>; Monger, Jon <Monger.Jon@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: Chesapeake follow up

Sure thing. Might as well include anyone who could benefit from it. thanks, Diana

| | |
|---|---|
| **From:** | Drinkard, Andrea |
| **To:** | Keith, Jennie |
| **Cc:** | Atkinson, Emily |
| **Subject:** | RE: ETHICS REVIEW ASAP: 2021 Lancet Countdown Oppty |
| **Date:** | Thursday, October 14, 2021 1:29:25 PM |

Good to know! And you are right that I would never ask for such a thing! Ha!

Thanks for the quick turn.

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Thursday, October 14, 2021 1:28 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: ETHICS REVIEW ASAP: 2021 Lancet Countdown Oppty

Hi Andrea, There are no ethics concerns with this. The organization offers an "honorarium, as requested." We cannot request this honorarium as that would violate an ethics statute (and I know you wouldn't anyway!).

Thanks!
Jennie for OGC/Ethics

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Thursday, October 14, 2021 1:06 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** ETHICS REVIEW ASAP: 2021 Lancet Countdown Oppty

Hi Jennie, can you give a quick read on this? I need to get back to Liz ASAP!

---

**From:** Purchia, Liz <lizpurchia@hsph.harvard.edu>
**Sent:** Thursday, October 14, 2021 1:01 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** Re: 2021 Lancet Countdown Oppty

Haha, no worries. Please see attached.

A recording is great. We could also make any time between 12-1:30 pm work on Oct. 21 if she wants to join live.

I can share the embargoed materials. If she doesn't want to do prepared remarks, we could do a moderated Q&A.

Let us know. Thanks!

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Thursday, October 14, 2021 12:43 PM
**To:** Purchia, Liz <lizpurchia@hsph.harvard.edu>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: 2021 Lancet Countdown Oppty

I'm so sorry!! I feel terrible. I swear I'm not ignoring you, just super busy! Can you fill out the attached event form. Janet is all in, but need to run it by ethics? Also, I think it would be easier for us to do a recording, but just in case she has free time when you need her can you let me know what time would be best for you on the 21st.

---

**From:** Purchia, Liz <lizpurchia@hsph.harvard.edu>
**Sent:** Thursday, October 14, 2021 12:38 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** Re: 2021 Lancet Countdown Oppty

Hey Andrea - How are things? Just wanted to see if you think we could confirm Janet for this event? Let me know if you want to chat. Thanks!

https://www.lancetcountdownus.org/2021-lancet-countdown-u-s-launch-event/

---

**From:** Purchia, Liz <lizpurchia@hsph.harvard.edu>
**Sent:** Wednesday, October 13, 2021 12:03 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** Re: 2021 Lancet Countdown Oppty

Hellloooo there! Adding Maria to BCC.

How are things going?? We'd love to have Janet speak at the launch event. We'd need no more than 5 minutes of her time on 10/21 or could take something pre-recorded.

I'm happy to give you whatever you need for it. We can help with remarks or turn it into a Q&A if that's easier.

Happy to hop on the phone if you want to discuss it.

Center for Climate, Health, and the Global Environment
Harvard T.H. Chan School of Public Health (Harvard Chan C-CHANGE)
315-794-6943
lizpurchia@hsph.harvard.edu
(She/Her/Hers)

For stories of climate hope and action, subscribe to *The Climate Optimist* newsletter: https://hsph.me/ClimateOptimist

Join the conversation: News | Twitter | Facebook | LinkedIn | YouTube | Instagram

---

**From:** Michalos, Maria <Michalos.Maria@epa.gov>
**Sent:** Wednesday, October 13, 2021 11:59 AM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Purchia, Liz <lizpurchia@hsph.harvard.edu>
**Subject:** 2021 Lancet Countdown Oppty

Hi Andrea and Liz,

Connecting you both here to discuss the opportunity for Deputy Adm. McCabe to speak at/record a video for this year's Lancet Countdown launch. Hope we can make this work!

Will let you two take it from here.

Thanks!

Maria Michalos
Speechwriter
US EPA
(202) 815-7547
*My pronouns are she/her*

| | |
|---|---|
| **From:** | Drinkard, Andrea |
| **To:** | Keith, Jennie |
| **Cc:** | Atkinson, Emily |
| **Subject:** | RE: ETHICS REVIEW: An Invitation to be a Special Guest Speaker at PSR"s Virtual Gala - 11/18/21 |
| **Date:** | Tuesday, November 02, 2021 1:53:59 PM |
| **Attachments:** | image001.jpg<br>image002.jpg<br>image003.jpg |

---

Thanks for the follow up! I'm going to check with Janet and will be in touch with you on our approach.

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Tuesday, November 02, 2021 1:53 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: ETHICS REVIEW: An Invitation to be a Special Guest Speaker at PSR's Virtual Gala - 11/18/21

Andrea,

Thanks for our phone call just now.

Given the speaking slot, as you aptly summarized, we're in the gray area. Contrast that with the time slot for the E&H keynote speaker – if Janet held that keynote speaking slot . . . OGC/Ethics would be much more comfortable approving the speaking engagement, since that is the more traditional role PAS employees have participated in when the event is a fundraiser.

Thanks!
Jennie for OGC/Ethics

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Friday, October 29, 2021 10:02 AM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** ETHICS REVIEW: An Invitation to be a Special Guest Speaker at PSR's Virtual Gala - 11/18/21

Hi Jennie,

I'm hoping you can give this one a quick review so that we can get back to them early next week. We're most likely going to be pre-recording remarks, so she would not be in attendance for the virtual gala since she'll be on a plane.

Thanks!

---

**From:** Cerece Rennie Murphy <cmurphy@psr.org>
**Sent:** Wednesday, October 27, 2021 8:32 AM

**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** Re: An Invitation to be a Special Guest Speaker at PSR's Virtual Gala - 11/18/21

Good Morning Andrea,
I hope you are well. We would be honored to have Deputy Administrator McCabe join our event. I have completed the form you requested and attached it below. I have also included a draft of our program which is still being finalized. Please let me know if you need any further information.

Best,
Cerece

**Draft Program Outline for the Gala**
**Theme: Meeting The Moment: New Solutions in A Time of Reckoning**

- Welcome – David Drake, PSR Board President, Intro to EPA Deputy Administrator McCabe (5-7 mins)
- A Message from EPA Deputy Administrator Janet McCabe (5 mins)
- 1st Appeal – Todd Sack and Lynn Ringenberg (Thanks Donors/Introduce Silent Auction(5-7 mins)
- Dr. Vishnu Laalitha Surapaneni, MD, MPH, PSR Board Member - A Year in Review. Introduces musical selection (5-7 minutes)
- Piano presentation (5-7 mins)
- 2nd Appeal (Todd and Lynn) (5 mins)
- PSR Chapter Video Intro (Randall – SF Bay) (5 mins)
- Chapter Video (5-7 mins)
- Intro of Keynote by (Joy Blackwood, PSR Board Member) (5 mins)
- E&H Keynote Address - Ebony Twilley-Martin, Co-Director, Greenpeace(10-15 mins)
- Thank you to Ebony and 3rd Appeal – Todd/Lynn (5 mins),
- Intro of NWA Keynote (5 mins) - (New Board Member - Tova) (5 mins)
- NWA Keynote Address (TBD) - (5-7mins)
- Thank you and closing remarks - Jeff Carter (5-7 mins)
- Silent Auction Winner Announcement and thanks - Todd and Lynn (5 mins)
- Final Farewell – Jeff Carter (5 mins)

On Fri, Oct 22, 2021 at 4:01 PM Drinkard, Andrea <Drinkard.Andrea@epa.gov> wrote:

> Hi Cerece,
>
> I am so sorry about the extreme delay in getting back to you. Needless to say it's been a crazy week and a half for me, but that's no excuse. Let me know if you might have a minute to chat. Deputy Administrator McCabe will be available to provide a short video, but unfortunately is not able to participate live as she will be on a plane at the time of your event. If this arrangement would work for you, could you please fill out the attached event form and get it back to us at your earliest convenience. We will do a quick ethics check and should be good to move forward. In the

meantime, if you have a few minutes to discuss her remarks that would be super helpful.

Thanks and again, my apologies for the delay in getting back to you.

-Andrea-

Andrea Drinkard
Senior Advisor to the Deputy Administrator
U.S. Environmental Protection Agency
Desk: 202.564.1601
Cell: 202.236.7765

---

**From:** Cerece Rennie Murphy <cmurphy@psr.org>
**Sent:** Wednesday, October 13, 2021 3:58 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Cc:** scheduling <scheduling@epa.gov>; Lance, Kathleen <Lance.Kathleen@epa.gov>
**Subject:** Re: An Invitation to be a Special Guest Speaker at PSR's Virtual Gala - 11/18/21

Hi Andrea,
And thanks so much for reaching out. I just left a voicemail on your desk phone. I'm able to talk from 9-11am or 1-2pm tomorrow. Please let me know if any of those times work for you.

Best,
Cerece

On Wed, Oct 13, 2021 at 3:43 PM Drinkard, Andrea <Drinkard.Andrea@epa.gov> wrote:

> Hi Cerece,
>
> Please let me know if you have a minute to chat. My contact is below.
>
> Andrea Drinkard
> Senior Advisor to the Deputy Administrator
> U.S. Environmental Protection Agency
> Desk: 202.564.1601
> Cell: 202.236.7765
>
> ---
>
> **From:** scheduling <scheduling@epa.gov>
> **Sent:** Wednesday, October 13, 2021 3:17 PM
> **To:** Cerece Rennie Murphy <cmurphy@psr.org>
> **Cc:** Lance, Kathleen <Lance.Kathleen@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
> **Subject:** RE: An Invitation to be a Special Guest Speaker at PSR's Virtual Gala - 11/18/21
>
> Hi Cerece –

Thank you so much for your patience regarding this request. The Administrator greatly appreciates the invitation but he is regretfully unavailable to attend. By copy of this email, I am connecting you with Andrea Drinkard, Senior Advisor for Public Affairs in the Office of the Administrator at EPA. Andrea will follow-up with you directly regarding the invitation. In the future, please do not hesitate to reach out with similar invitations.

We wish you and your team a successful event.

Thank you,

Scheduling Team
Office of Administrator Michael S. Regan
scheduling@epa.gov

---

**From:** Levy, Maxwell <Levy.Maxwell@epa.gov>
**Sent:** Wednesday, August 25, 2021 11:31 AM
**To:** Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>; Cerece Rennie Murphy <cmurphy@psr.org>
**Cc:** Cortez Russell, Loni <Russell.Loni@epa.gov>; Lance, Kathleen <Lance.Kathleen@epa.gov>; scheduling <scheduling@epa.gov>; Michalos, Maria <Michalos.Maria@epa.gov>
**Subject:** RE: An Invitation to be a Special Guest Speaker at PSR's Virtual Gala - 11/18/21

Hi Cerece, apologies for the delay but glad to be in touch! We'd love to chat briefly about this video in a little more detail, would you be able to send over some times that could work for you to meet later this week or some time next week?

Thanks,
Max

**Max Levy**
Special Assistant
Office of Public Engagement and Environmental Education
U.S. EPA Office of the Administrator
Cell: 202.815.7752 | he/him

---

**From:** Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>
**Sent:** Thursday, August 12, 2021 10:06 PM
**To:** Cerece Rennie Murphy <cmurphy@psr.org>
**Cc:** Cortez Russell, Loni <Russell.Loni@epa.gov>; Lance, Kathleen <Lance.Kathleen@epa.gov>; Levy, Maxwell <Levy.Maxwell@epa.gov>; scheduling <scheduling@epa.gov>
**Subject:** RE: An Invitation to be a Special Guest Speaker at PSR's Virtual Gala - 11/18/21

No, this doesn't confirm the Administrator's participation. We will run this through our process and circle back with you.

**From:** Cerece Rennie Murphy <cmurphy@psr.org>
**Sent:** Monday, August 9, 2021 9:12 AM
**To:** Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>
**Cc:** Cortez Russell, Loni <Russell.Loni@epa.gov>; Lance, Kathleen <Lance.Kathleen@epa.gov>; Levy, Maxwell <Levy.Maxwell@epa.gov>; scheduling <scheduling@epa.gov>
**Subject:** Re: An Invitation to be a Special Guest Speaker at PSR's Virtual Gala - 11/18/21

We're so excited! Does this mean Mr. Regan is able to participate?

On Mon, Aug 9, 2021 at 8:38 AM Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov> wrote:

> Great, Max Levy from my team will follow up with you. Thank you!
>
> **From:** Cerece Rennie Murphy <cmurphy@psr.org>
> **Sent:** Monday, August 9, 2021 8:02 AM
> **To:** Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>
> **Cc:** Cortez Russell, Loni <Russell.Loni@epa.gov>; Lance, Kathleen <Lance.Kathleen@epa.gov>; Levy, Maxwell <Levy.Maxwell@epa.gov>; scheduling <scheduling@epa.gov>
> **Subject:** Re: An Invitation to be a Special Guest Speaker at PSR's Virtual Gala - 11/18/21
>
> Good Morning!
> We'd love to have it by the first week in November. Please let me know if that works with your schedule.
>
> Thanks,
> Cerece
>
> On Sun, Aug 8, 2021 at 10:08 PM Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov> wrote:
>
>> Hi Cerece,
>>
>> When would you all need the recording for this event?
>>
>> **From:** scheduling <scheduling@epa.gov>
>> **Sent:** Wednesday, July 7, 2021 3:51 PM
>> **To:** cmurphy@psr.org
>> **Cc:** Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>; Cortez Russell, Loni <Russell.Loni@epa.gov>; Levy, Maxwell <Levy.Maxwell@epa.gov>; Lance, Kathleen <Lance.Kathleen@epa.gov>
>> **Subject:** RE: An Invitation to be a Special Guest Speaker at PSR's Virtual Gala - 11/18/21
>>
>> Good afternoon Cerece -

Thank you for your message and meeting request. By copy of this email, I am pleased to introuduce you to Rosemary Enobakhare, Associate Administrator with the Office of Public Engagement and Environmental Education.

Rosemary or her team will be reaching out to you to follow-up on your message.

Thank you,

Scheduling and Advance Team
Office of Administrator Michael S. Regan
scheduling@epa.gov

---

**From:** Cerece Murphy <cmurphy@psr.org>
**Sent:** Thursday, May 27, 2021 12:54 PM
**To:** Regan, Michael <Regan.Michael@epa.gov>
**Subject:** An Invitation to be a Special Guest Speaker at PSR's Virtual Gala - 11/18/21

Hello Mr. Regan:
My name is Cerece Rennie Murphy and I am the Director of Philanthropy with Physicians for Social Responsibility (PSR), a physician-led health activist 501(c)3 organization whose mission is to protect human life from the gravest threats to health and survival. Founded in 1961, and co-recipient of the Nobel Peace Prize in 1985, PSR works at the intersection of public health, the environment, and social justice, collaborating with public health and equity advocates to address climate change and nuclear weapons policy.

Our virtual gala will be held on Thursday, November 18, 2021, from 6-7:30 pm ET. It would be an honor to have you there as our Special Guest to deliver a few brief "pre-recorded" or "live" remarks regarding your perspective on this unique moment in our world, your agenda on climate change, and what we can do today, as organizations and citizens, to create the world we need. Our theme for this year's event is *Meeting The Moment*.

Unfortunately, as a nonprofit organization, our ability to compensate you financially for your participation is minimal. However, the impact you will have on the health professionals, climate and nuclear weapons abolition activists, and concerned citizens who attend our event would be profound. If you have any questions or concerns regarding this request, please contact me via email or phone at (202) 421-5232. On behalf of our staff and Board, I thank you in advance for your consideration and look forward to hearing from you.

Best,
Cerece Rennie Murphy

Director of Philanthropy

--


**Cerece Rennie Murphy (she/her/hers)**

Director of Philanthropy

Physicians for Social Responsibility

1111 14th Street NW, Suite 700 • Washington, DC 20005

202.421.5232

.202.587.5239

cmurphy@psr.org

www.psr.org


--


**Cerece Rennie Murphy (she/her/hers)**

Director of Philanthropy

Physicians for Social Responsibility

1111 14th Street NW, Suite 700 • Washington, DC 20005

202.421.5232

.202.587.5239

cmurphy@psr.org

www.psr.org

| | |
|---|---|
| **From:** | Keith, Jennie |
| **To:** | Drinkard, Andrea |
| **Cc:** | Atkinson, Emily |
| **Subject:** | RE: ETHICS REVIEW: Central Indiana Land Trust |
| **Date:** | Monday, May 24, 2021 1:10:00 PM |

Hi Andrea!

Given the context this press event, I think it makes perfect sense to entertain it should the agency have an interest in responding.

Points to think about for future requests . . . even though it originated from an acquaintance, you could develop some criteria of the press requests you accept. The criteria could be focused around "welcoming the new DAA at EPA," "substantive educational communication," "organizations with ## missions," etc. When you have a set of criteria you apply to these "notes from the new DAA", that reduces the ethics implications that an acquaintance has asked for Janet's participation. Do you see how that works? I can't choose the criteria you use (since I'm not working directly with the subject matter of the communications), but does that help you?

Thanks!
Jennie for OGC/Ethics

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Monday, May 24, 2021 9:59 AM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: ETHICS REVIEW: Central Indiana Land Trust

Hi Jennie,

I'm just reupping this one with you to see if you have any thoughts. Thanks!

---

**From:** Drinkard, Andrea
**Sent:** Friday, May 21, 2021 10:17 AM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** ETHICS REVIEW: Central Indiana Land Trust

Hi Jennie,

This is a press interview request, but because of the route that it came in I wanted to run it by you. Let me know if you need any additional information. I don't think we're in a hurry here, but we have some time on Janet's calendar later next week, so I would like to nail this down

Thanks!

-Andrea-

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Tuesday, May 18, 2021 9:21 PM
**To:** Conger, Nick <Conger.Nick@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** FW: Central Indiana Land Trust

Hi Nick—I got a note from a person I know through my choir here in Indianapolis who works at the Central Indiana Land Trust, who asked the question below. I told her I'd pass her info and request along to you. Could you, or someone, please let her know you've gotten the request, and we can talk about how to respond substantively.

Thanks,
Janet

---

**From:** [redacted]
**Sent:** Tuesday, May 18, 2021 9:16 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Subject:** Central Indiana Land Trust

Hi Janet!!

This is Andrea from the Indianapolis Women's Chorus (writing from my work email)… I hope you are doing well!

as you can see from this email, I work for the Central Indiana Land Trust (CILTI). If you're not familiar with us, we are a land protection organization that has been in operation for 30+ years and has over 6,000 acres of protected land (both nature preserves and conservation easements) in the central third of Indiana. You can learn more about us here!

I was wondering if you'd have any interest in being interviewed for an upcoming Newsletter, **or** writing a guest blog for CILTI! It is so exciting to have a Hoosier picked for this position, and we'd be incredibly honored if you'd be willing to shed some light on your unique perspective. Please let me know if you have any interest, and I will connect you with our Communications Specialist!

| | |
|---|---|
| **From:** | Drinkard, Andrea |
| **To:** | Fugh, Justina; Keith, Jennie |
| **Cc:** | Atkinson, Emily |
| **Subject:** | RE: ETHICS REVIEW: Dr. Harrison thank you |
| **Date:** | Wednesday, October 27, 2021 3:38:16 PM |

Thank you and will do!

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Wednesday, October 27, 2021 3:34 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: ETHICS REVIEW: Dr. Harrison thank you

Andrea,
Yours is not directly an ethics question but rather an appropriations question: may you use EPA money to purchase a gift for this purpose? The only ethics concern is being sure that you don't misuse your positions by doing something illegal. You should connect with someone like Allison Holden on OGC's appropriations team.
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Wednesday, October 27, 2021 3:27 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** ETHICS REVIEW: Dr. Harrison thank you

Hi Justina and Jennie,

On Janet's request Dr Jill Lindsey Harrison provided a number of sessions for EPA leadership on our environmental justice efforts. As you can see below, Janet wanted to see what might be appropriate from an ethics perspective.

Thanks so much!

-Andrea-

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Wednesday, October 27, 2021 3:21 PM

**To:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** Dr. Harrison thank you

Emily, Andrea—could you find out whether it's ok for us to send some kind of small thank you gift—an EPA mug perhaps—to Dr. Harrison, and how we would go about that?

Thanks.

Janet G. McCabe
Deputy Administrator
U.S. Environmental Protection Agency
WJC-N Room 3406, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-4711
Email: mccabe.janet@epa.gov

| | |
|---|---|
| **From:** | Keith, Jennie |
| **To:** | Drinkard, Andrea |
| **Cc:** | Atkinson, Emily |
| **Subject:** | RE: ETHICS REVIEW: Event Request for DA - Society of Automotive Engineers |
| **Date:** | Wednesday, November 24, 2021 8:27:00 AM |
| **Attachments:** | RE Society of Automotive Engineers .msg |

---

Morning, Andrea!
I cleared a similar request for the Administrator's Office, advice attached. So, I'm not sure if it's been delegated to you and/or seeking additional Administration speakers for this event. The advice holds as applied to DA McCabe. Please note that the Washington Auto Show is complex in terms of all the events that are going on, and EPA has participated in many aspects of these converging events – but we need to be careful about lobbyists, offering access to the show (typically admission charged), and other types of gifts associated with the show.
Thanks!
Jennie for OGC/Ethics

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Tuesday, November 23, 2021 8:50 AM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** ETHICS REVIEW: Event Request for DA - Society of Automotive Engineers
**Importance:** High
Hi Jennie,
I'm hoping you can take a quick look at this one too. I'd like to get back to them this week. Thank you!

---

**From:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Sent:** Wednesday, October 27, 2021 3:03 PM
**To:** Kim, Eunjung <Kim.Eun@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: Event Request for DA - Society of Automotive Engineers
Thanks Eun – we will take a look and get back to you.

---

**From:** Kim, Eunjung <Kim.Eun@epa.gov>
**Sent:** Wednesday, October 27, 2021 2:59 PM
**To:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** Event Request for DA - Society of Automotive Engineers
Hey Emily and Andrea,
The Society of Automotive Engineers would like to invite DA McCabe to speak at Society of Automotive Engineers' annual conference. This is an in-person only invitation at the Washington DC Convention Center on January 20th, 2022. They are asking for 10 minutes of remarks from 1-1:10pm ET and asking DA McCabe stay for lunch right after, if she is available.
The event organizers are hoping to get a response by next Friday, if not sooner.
Please let me know if you have any questions.
Thanks!
Eunjung Kim
Special Assistant
Office of Air and Radiation
Environmental Protection Agency

(202) 815-7252

**From:** Keith, Jennie
**To:** Morgan, Ashley
**Cc:** Lance, Kathleen; Dickerson, Aaron
**Subject:** RE: Society of Automotive Engineers
**Date:** Monday, October 18, 2021 8:32:00 PM

---

Hi Ashley,

There are no ethics concerns with respect to this event. I'm reviewing this for the luncheon slot only, which appears to have a separate pricing registration scheme ($50) than the rest of the conference. If the Administrator wishes to attend other parts of the conference, please let me know; or if the speaking slot changes, please let me know. Also, this is one of many events for the Washington Auto Show. Depending on the Administrator's interest and invitations, this can be tricky to review from an ethics perspective. When we get nearer to January, please loop me in on Washington Auto Show events. See the following for more complete details.

Best, Jennie for OGC/Ethics

White House Ethics Pledge

The White House Ethics Pledge does not allow political appointees to accept gifts from registered lobbyists. The persons extending the invitation are not registered lobbyists or lobbying organizations, therefore the Ethics Pledge is not implicated.

Acceptance of Free Attendance (including a meal)

Because the official has been invited to speak and present information on behalf of the agency, pursuant to 5 CFR 2635.203(b)(8) and (203)(g), acceptance of free attendance and any meals provided on the day of the event is not considered a gift. The official's participation in the event is viewed as a customary and necessary part of his performance of the event and does not involve a gift to him or to the agency. While free attendance will cover a meal that is provided to all attendees, it does not cover side events, receptions, and other meals that are not open to all attendees (unless it's a meal for presenters organized by the host of the event; follow up with OGC/Ethics if that is under consideration).

Financial Disclosure Implications

Because this is not a gift, there are no financial disclosure reporting obligations.

---

**From:** Morgan, Ashley <Morgan.Ashley.M@epa.gov>
**Sent:** Friday, October 15, 2021 10:46 AM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Lance, Kathleen <Lance.Kathleen@epa.gov>; Dickerson, Aaron <dickerson.aaron@epa.gov>

**Subject:** Society of Automotive Engineers

Hi Jennie –

Could you please let us know if it is okay to proceed with this event?

Thanks!
Ashley

**Ashley M. Morgan**
Deputy Director of Scheduling and Advance
U.S. Environmental Protection Agency
Cell: (202) 909-9983

| | |
|---|---|
| **From:** | Drinkard, Andrea |
| **To:** | Keith, Jennie |
| **Cc:** | Atkinson, Emily |
| **Subject:** | RE: ETHICS REVIEW: IN A&WMA - Winter Technical Meeting |
| **Date:** | Monday, November 22, 2021 9:10:19 AM |

Thanks, Jennie. We actually did (b) (5) [redacted] but I think it is a good idea to raise it to her. Either way, you will start seeing fewer of these A&WMA requests OR I'll be in touch about the MOU.

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Friday, November 19, 2021 5:16 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: ETHICS REVIEW: IN A&WMA - Winter Technical Meeting

Happy Friday!

There are no ethics concerns with this. (b) (5) [redacted] . . . I don't see it necessary now, but something to think about.

Thanks!
Jennie for OGC/Ethics

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Tuesday, November 16, 2021 5:38 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** ETHICS REVIEW: IN A&WMA - Winter Technical Meeting

Hi Jennie,

I thought for sure we had gotten this one cleared, but Emily and I can find a record of it in our email. Could you please take a quick look and let us know if there are any issues? Janet will be participating virtually and there will be a full docket of speakers (unlike the last one!).

Thanks!

---

**From:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Sent:** Tuesday, November 16, 2021 5:06 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** FW: IN A&WMA - Winter Technical Meeting

---

**From:** Gardner, Will <WGardner@taftlaw.com>
**Sent:** Thursday, August 12, 2021 9:09 AM
**To:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; skipp.kropp@steptoe-johnson.com; John Wellspring <jwellspring@keramida.com>
**Subject:** RE: IN A&WMA - Winter Technical Meeting

Hi Emily,

Please see attached completed form, and let me know if you have any questions.

Thank you again for your help with this.

Best,

Will

---

**From:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Sent:** Wednesday, August 11, 2021 3:15 PM
**To:** Gardner, Will <WGardner@taftlaw.com>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: IN A&WMA - Winter Technical Meeting

[EXTERNAL MESSAGE]
Hi Will,

Circling back to see if you could fill out the attached event form so we can get additional information about the event.

Thank you!
Emily

Emily Atkinson
Special Assistant
Office of the Deputy Administrator
U.S. Environmental Protection Agency
Cell: 202-805-1220

---

**From:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Sent:** Tuesday, July 20, 2021 9:32 AM
**To:** Gardner, Will <wgardner@taftlaw.com>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: IN A&WMA - Winter Technical Meeting

Hi Will,

Please fill out the attached meeting request form and we can then look at scheduling options.

Emily

---

**From:** Gardner, Will <WGardner@taftlaw.com>
**Sent:** Monday, July 19, 2021 8:56 AM
**To:** (b) (6) [redacted]
**Cc:** McCabe, Janet <McCabe.Janet@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: IN A&WMA - Winter Technical Meeting

Thanks very much, Janet.

Emily & Andrea – Just let me know what information you need from me.

Best Regards,

Will

---

**From:** (b) (6) [redacted]
**Sent:** Monday, July 19, 2021 7:50 AM
**To:** Gardner, Will <WGardner@taftlaw.com>
**Cc:** 'McCabe, Janet' <McCabe.Janet@epa.gov>; 'Atkinson, Emily' <Atkinson.Emily@epa.gov>; 'Drinkard, Andrea' <Drinkard.Andrea@epa.gov>
**Subject:** RE: IN A&WMA - Winter Technical Meeting

[EXTERNAL MESSAGE]
HI Will,
Thanks for this nice invitation, and no problem using my gmail address. I'm copying my epa address, so you'll have it, as well as my colleagues Emily and Andrea who help with my schedule and invitations. It certainly is the kind of thing I like to do, so we'll see if we can make it happen.

Janet

---

**From:** Gardner, Will <WGardner@taftlaw.com>
**Sent:** Wednesday, July 14, 2021 4:19 PM
**To:** (b) (6) [redacted]
**Cc:** John Wellspring <jwellspring@keramida.com>; skipp.kropp@steptoe-johnson.com
**Subject:** IN A&WMA - Winter Technical Meeting

Hi Janet,

I hope all is well with you these days and that you're getting back into the rhythm of things in DC. The Indiana Chapter of the Air & Waste Management Association is preparing for our annual Winter Technical Meeting, which is going to be on December 2nd this year. We are going to have a hybrid event, with both in person and virtual options, and we were wondering if you might be interested and available to participate as our keynote speaker. We are open to your preferences in terms of format and timing on the 2nd as well as presentation topic. If you happen to be in Indy that day, it would be great to have you join us in person. But if a virtual presentation would be easier for you, that's certainly fine with us.

I know you have many demands on your time these days, so we really appreciate your consideration of this invitation. Our members are always very interested in your insight. In the event that you are not available to join us, one topic that I know our members are interested in is environmental justice. If there happened to be someone else at EPA who you could recommend that might be able to speak to that issue, that would be great.

Best,

Will

P.S. Hope you don't mind me sending this to your personal email address. I don't have your new EPA email address yet, but I figured I could still reach you this way.

**Taft /**

**Will Gardner**
Partner
WGardner@taftlaw.com
Dir: 317.713.3562
Tel: 317.713.3500 | Fax: 317.713.3699

One Indiana Square, Suite 3500
Indianapolis, Indiana 46204-2023

**taftlaw.com**

This message may contain information that is attorney-client privileged, attorney work product or otherwise confidential. If you are not an intended recipient, use and disclosure of this message are prohibited. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.

| | |
|---|---|
| **From:** | Drinkard, Andrea |
| **To:** | Keith, Jennie |
| **Cc:** | Atkinson, Emily |
| **Subject:** | RE: ETHICS REVIEW: Invitation to Speak at the Indiana Energy Conference - Janet McCabe |
| **Date:** | Tuesday, September 07, 2021 2:20:11 PM |

Understood and thanks so much! We will pass this along to Janet for her awareness. You are correct in your assumption that she is not planning to stay beyond her remarks, but good to know that she could if she wanted to.

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Tuesday, September 07, 2021 2:18 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: ETHICS REVIEW: Invitation to Speak at the Indiana Energy Conference - Janet McCabe

Hi Andrea,

There are no ethics concerns here. Since she's local, here are a few things:

1. There is a registration fee charged, but it appears that it's waived for speakers. No gift since she is a presenter.
2. She could accept the lunch if she wanted to stay for the half-day program. Since she has free attendance on the day she is speaking (e.g. waived registration that's not a gift), she may also stay for the entirety of the conference, including lunch. Given that her session is early in the program, I don't think that you're considering this, however, I want to make sure you're aware of it.
3. No impartiality issues given that it takes place on Indiana University (granted it's a unique situation – appears to be a satellite campus of IU that's operated in partnership with Purdue University)

Thanks for the context surrounding her travel.

Jennie for OGC/Ethics

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Tuesday, September 07, 2021 1:36 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: ETHICS REVIEW: Invitation to Speak at the Indiana Energy Conference - Janet McCabe

Reupping this one, too. They have a executive planning meeting on September 9th, so I'd like to be able to respond today/tomorrow. Thanks!

---

**From:** Drinkard, Andrea

**Sent:** Tuesday, August 31, 2021 8:54 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** ETHICS REVIEW: Invitation to Speak at the Indiana Energy Conference - Janet McCabe

Hi Jennie,

Just looking for a quick ethics review on this one. Please note that Janet would travel home for the weekend using personal funds and would return to DC on Tuesday after the event using personal funds as well. She would be in her alternate work location just as she is now while she's home.

Please let me know if you have any questions or need additional info.

Thanks!

-Andrea-

---

**From:** Kay Squires <KSquires@lewis-kappes.com>
**Sent:** Tuesday, August 24, 2021 3:48 PM
**To:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: Invitation to Speak at the Indiana Energy Conference - Janet McCabe

Hi Emily and Andrea,
Attached please find the completed Event Form, together with a Program Agenda and Conference Sponsor List. We would be so honored to have Janet participate at this year's Indiana Energy Conference, especially with her ties to Indiana. Please let me know if you have any questions or if you need anything else. Thanks for your help.

Kay

---

**From:** Atkinson, Emily [mailto:Atkinson.Emily@epa.gov]
**Sent:** Friday, August 20, 2021 4:48 PM
**To:** Kay Squires <KSquires@lewis-kappes.com>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: Invitation to Speak at the Indiana Energy Conference - Janet McCabe

Hi Kay,

Thank you for reaching out about this event. Before we can determine if Janet can participate, please fill out and return a completed event form.

Emily

Emily Atkinson
Special Assistant

Office of the Deputy Administrator
U.S. Environmental Protection Agency
Cell: 202-805-1220

---

**From:** Kay Squires <KSquires@lewis-kappes.com>
**Sent:** Thursday, August 19, 2021 5:01 PM
**To:** Atkinson, Emily Atkinson.Emily@epa.gov; Drinkard, Andrea Drinkard.Andrea@epa.gov
**Subject:** RE: Invitation to Speak at the Indiana Energy Conference - Janet McCabe

Hi Emily & Andrea,
Checking back with you on emails below. I was hoping to give a status report to the Conference Planning Committee next Monday, on our invitation for Janet to speak at the conference. Sure hope it works out! Let me know what I can do to help.

Thank you!
Kay

---

**From:** Kay Squires
**Sent:** Thursday, August 12, 2021 1:45 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: Invitation to Speak at the Indiana Energy Conference - Janet McCabe

Thanks for your quick reply, Janet! And your willingness to consider our invitation. Emily & Andrea, I look forward to working with you in hopes it will work out. Thanks in advance to all!

---

**From:** McCabe, Janet [mailto:McCabe.Janet@epa.gov]
**Sent:** Thursday, August 12, 2021 1:39 PM
**To:** Kay Squires <KSquires@lewis-kappes.com>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: Invitation to Speak at the Indiana Energy Conference - Janet McCabe

Hi Kay—of course I remember you, and it's great to hear from you. I'm so honored to be invited, and am including Emily and Andrea from my office to help us consider this request. They can help gather the info that'll help us make a decision.

janet

---

**From:** Kay Squires <KSquires@lewis-kappes.com>
**Sent:** Thursday, August 12, 2021 1:23 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Subject:** Invitation to Speak at the Indiana Energy Conference - Janet McCabe

Hi Janet,

I don't know if you remember me, but I am the coordinator of the Indiana Energy Conference which takes places every year at the IUPUI Hines Hall Auditorium. Attendees include IURC, OUCC, utilities, legislators, academia, large users of energy, among other policy and regulatory individuals in the energy field. We are excited to be planning an in-person program this year, following last year's virtual event, and it will take place on **Tuesday, October 19, 2021 from 9:00 am to 2:00 pm.**

Having returned to the EPA, we would be so honored if you would be a presenter at this year's event. You know Indiana's energy concerns so intimately, and I am certain that attendees would love to hear from you as the newly appointed EP Deputy Administrator. I am thinking there is so much ripe for discussion covering "policies and infrastructure considerations' but I would be open to whatever topics you feel are best to address at this time, in your vast experience and in your role at the EPA.

As a refresher, this conference is typically attended in-person by 150+ people in the energy community, but I honestly do not know what to expect in the "post-COVID' current environment. The conference sponsors are hopeful that attendees will find it encouraging by offering a hybrid event – i.e. in-person attendance with an option to attend virtually. CLE and professional credits will be applied for, and have historically been approved.

Thanks for your consideration. Looking forward to hearing back from you.

Kay Squires
Conference Coordinator

website | map

Kay Squires

Administrative Director

**LEWIS KAPPES**
One American Square, Suite 2500
Indianapolis, IN 46282
P: 317.639.1210
F: 317.639.4882
E: KSquires@lewis-kappes.com

CONFIDENTIALITY NOTICE: This email, attachments and metadata are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute or take action in reliance on this message. If you have received this message in error, please notify us immediately by return email and promptly delete this message and its attachments from your computer system. We do not waive attorney-client or work product privilege by the transmission of this message. Visit our firm at www.lewiskappes.com

| | |
|---|---|
| **From:** | Drinkard, Andrea |
| **To:** | Keith, Jennie; Atkinson, Emily |
| **Subject:** | RE: ETHICS REVIEW: Keynote Invitation Deputy Administrator Janet McCabe - Aspen-Nicholas Water Forum (Oct 2021) |
| **Date:** | Wednesday, September 29, 2021 2:47:48 PM |

Thank you and understood on Radhika. Thank you for flagging that that applies to our correspondence as well. If you remember, let us know where you land on Radhika. Or let Radhika know that she should let us know if she can engage with us on this event.

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Wednesday, September 29, 2021 2:46 PM
**To:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: ETHICS REVIEW: Keynote Invitation Deputy Administrator Janet McCabe - Aspen-Nicholas Water Forum (Oct 2021)

Hi Emily,

There are no ethics concerns for the Deputy Administrator to accept this speaking request. (b) (5) [redacted]

Thanks!
Jennie for OGC/Ethics

---

**From:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Sent:** Wednesday, September 29, 2021 12:59 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** ETHICS REVIEW: Keynote Invitation Deputy Administrator Janet McCabe - Aspen-Nicholas Water Forum (Oct 2021)

Circling back on this request. Thanks!

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Friday, September 24, 2021 1:04 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** ETHICS REVIEW: Keynote Invitation Deputy Administrator Janet McCabe - Aspen-Nicholas Water Forum (Oct 2021)

Hi Jennie,

Just wanted to get a quick ethics check on the Aspen-Nicholas Water Forum for Janet. She would

participate virtually and would deliver keynote remarks. Let me know if you have additional questions. I'd like to get back to them early next week since we have some scheduling conflicts that we need to work out.

Thanks!

---

**From:** Catherine Pollack <Catherine.Pollack@aspeninstitute.org>
**Sent:** Thursday, September 23, 2021 3:31 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Cc:** Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>; Levy, Maxwell <Levy.Maxwell@epa.gov>; Fox, Radhika <Fox.Radhika@epa.gov>; Cortez Russell, Loni <Russell.Loni@epa.gov>; Kate Jaffee <Kate.Jaffee@aspeninstitute.org>; Beatrijs Kuijpers <Beatrijs.Kuijpers@aspeninstitute.org>; Greg Gershuny <Greg.Gershuny@aspeninstitute.org>; Martin Doyle <martin.doyle@duke.edu>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: Keynote Invitation Deputy Administrator Janet McCabe - Aspen-Nicholas Water Forum (Oct 2021)

Hi Andrea,

Many thanks for taking our invitation under review, we are so appreciative of your time and consideration, and are very hopeful that Deputy Administrator McCabe will be able to join us. I have attached the completed form, as well as a very simplified draft agenda, which we will be happy to expand upon if helpful to you in processing our request, or following confirmation in a speaker briefing call.

Please do not hesitate to be in touch with any questions or concerns. Look forward to hearing from you, and wishing you all the best in the meantime.

Sincerely,
Kitty

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Thursday, September 23, 2021 2:06 PM
**To:** Fox, Radhika <Fox.Radhika@epa.gov>; Catherine Pollack <Catherine.Pollack@aspeninstitute.org>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Cc:** Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>; Levy, Maxwell <Levy.Maxwell@epa.gov>; Cortez Russell, Loni <Russell.Loni@epa.gov>; Kate Jaffee <Kate.Jaffee@aspeninstitute.org>; Beatrijs Kuijpers <Beatrijs.Kuijpers@aspeninstitute.org>; Greg Gershuny <Greg.Gershuny@aspeninstitute.org>; Martin Doyle <martin.doyle@duke.edu>
**Subject:** RE: Keynote Invitation Deputy Administrator Janet McCabe - Aspen-Nicholas Water Forum (Oct 2021)

Hi Kitty, and thank you, Radhika, for connecting us!

Yes, we are putting your request through our review process and we will be in touch shortly. In the

meantime, if you could fill out the attached event form that will give us all the details we'd need to complete our review.

Thanks so much and looking forward to working with you on this event!

-Andrea-

Andrea Drinkard
Senior Advisor to the Deputy Administrator
U.S. Environmental Protection Agency
Desk: 202.564.1601
Cell: 202.236.7765

---

**From:** Fox, Radhika <Fox.Radhika@epa.gov>
**Sent:** Wednesday, September 22, 2021 11:25 AM
**To:** Catherine Pollack <Catherine.Pollack@aspeninstitute.org>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Cc:** Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>; Levy, Maxwell <Levy.Maxwell@epa.gov>; Cortez Russell, Loni <Russell.Loni@epa.gov>; Kate Jaffee <Kate.Jaffee@aspeninstitute.org>; Beatrijs Kuijpers <Beatrijs.Kuijpers@aspeninstitute.org>; Greg Gershuny <Greg.Gershuny@aspeninstitute.org>; Martin Doyle <martin.doyle@duke.edu>
**Subject:** FW: Keynote Invitation Deputy Administrator Janet McCabe - Aspen-Nicholas Water Forum (Oct 2021)

Hi Kitty: I had shared the original invite with Andrea Drinkard (Senior Advisor) and Emily Atkinson (Special Assistant) in the Deputy Administrator's office and they are considering the request. They will be in touch.

My best,
Radhika

Radhika Fox
Assistant Administrator for Water
U.S. Environmental Protection Agency
Fox.Radhika@epa.gov

---

**From:** Catherine Pollack
**Sent:** Wednesday, September 22, 2021 10:27 AM
**To:** Radhika Fox <RFox@uswateralliance.org>
**Cc:** Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>; Levy, Maxwell <Levy.Maxwell@epa.gov>; Cortez Russell, Loni <Russell.Loni@epa.gov>; Kate Jaffee

<Kate.Jaffee@aspeninstitute.org>; Beatrijs Kuijpers <Beatrijs.Kuijpers@aspeninstitute.org>; Greg Gershuny <Greg.Gershuny@aspeninstitute.org>; Martin Doyle <martin.doyle@duke.edu>
**Subject:** Keynote Invitation Deputy Administrator Janet McCabe - Aspen-Nicholas Water Forum (Oct 2021)

Hi Radhika and Rosemary,

Many thanks to you both for your offer to extend an invitation to Deputy Administrator Janet McCabe. I wanted to follow up with a formal invitation (below) to the Deputy Administrator to keynote our annual Aspen-Nicholas Water Forum. I also wanted to follow up with you, Radhika, to confirm your availability to join us for the Water Sub-Cabinet panel from 2:15-3:15 PM ET on Tuesday, October 19th – we have confirmed Gloria Montaño Greene, and hope to confirm the rest of your fellow panelists by the end of the week. Many thanks again to you both for your participation and help in coordination – it is greatly appreciated!

> On behalf of the Aspen Institute Energy & Environment program, we are delighted to invite Deputy Administrator Janet McCabe to offer a keynote address at our annual Aspen-Nicholas Water Forum focused on Water Affordability and Equity. The Forum will be convened virtually on Tuesday, October 19th, Wednesday October 20th, and Thursday October 21st from 1:00-4:00 PM EST. We have tentatively scheduled Deputy Administrator McCabe's potential keynote session from 1:00-2:00 PM EST on Tuesday, October 19th, but we would be happy to accommodate her timing if another time works better during the forum. Should she be able to join us, we can also offer staff support to help develop talking points, graphics, or other information to reduce the prep that might be needed, as well as share additional information on other panelists and keynote speakers as we nail down those details.
>
> For some context, each year the Aspen Institute and Duke University's Nicholas Institute hosts a Water Forum. This forum brings together approximately 60 of the nation's leading water thinkers, innovators, and decision-makers ranging from community organizers to investors to local, state, and federal elected officials. The forum has focused on topics ranging from big data to groundwater over the last decade. In 2020, we spent the year hosting relatively intimate discussions focused on water affordability and equity. In 2021, we shifted to a larger online gathering where we cap off our 18 month focus on this critical topic, in partnership with the US Water Alliance and EPIC.
>
> For additional context, concurrently to the Forum, through the Fall we will also be conducting a roundtable series, that will be convening a smaller, policy-focused group. This group will aim to develop a shared set of guiding principles and a policy agenda that together outline what affordable and equitable water access looks like and the specific practices, legislation, regulations, or executive orders necessary to advance this vision, specifically as they apply to state legislators, state agencies, and governors. The larger Forum will offer a first opportunity for feedback on the principles and policy agenda in development in the roundtables, and which will be widely released in the winter of 2021.

Please let us know of any questions or concerns that we might be able to answer. We look forward to hearing from you and appreciate your time and consideration.

Sincerely,
Kitty Pollack

| | |
|---|---|
| **From:** | Keith, Jennie |
| **To:** | Drinkard, Andrea |
| **Cc:** | Atkinson, Emily |
| **Subject:** | RE: ETHICS REVIEW: MASS-A&WMA invitation to workshop |
| **Date:** | Friday, September 10, 2021 9:59:00 AM |

Hi Andrea,

This additional information makes me more comfortable clearing it from an ethics perspective. There are no ethics concerns with her participation as long as 1) there are additional speakers; OR 2) if there are no other speakers, and there is a registration fee for non-members (i.e., the public), then that fee is nominal.

Does this help?
Jennie for OGC/Ethics

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Thursday, September 09, 2021 3:25 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: ETHICS REVIEW: MASS-A&WMA invitation to workshop

Hi Jennie,

I have some updates for you. Let me know if you need additional information.

**On cost:** The event is free to anyone who is a member of A&WMA. It will be advertised among our membership.

**On previous year's events:** These workshops are drastically different every year depending on the speakers, member interest, resources, and since we are a volunteer organization it also somewhat depends on how much time folks have to pull something together. Attached are a few agendas from previous fall workshops that according to the organizers show quite a bit of variability. They noted that the length of this years event is different due to the pandemic. I don't believe they held an event last year.

**A quick update from them on additional speakers:** This event is a short event workshop, really just looking to have Janet, NJDEP, and possibly someone from VA DEQ or Maryland DEQ also talk for a short time (total workshop time probably less than 90 minutes for all speakers). We are still working on getting the other speakers.

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Tuesday, September 07, 2021 4:16 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>

**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: ETHICS REVIEW: MASS-A&WMA invitation to workshop

Thanks, Andrea. Yes, I'd like to see an agenda from a prior year and also understand the registration pricing scheme. Thanks! Jennie

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Tuesday, September 07, 2021 2:08 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: ETHICS REVIEW: MASS-A&WMA invitation to workshop

These are good questions. A couple of updates that were not reflected here, but I have since learned. First, there will be a second speaker from NJ DEP. This was one of my questions as well since I thought it would be odd for her to be the only speaker. I think once we declined that full hour they realized they needed to add someone else. With this new information does your concern still stand? If so, I can follow up on previous year's agendas and the fee.

Yes, she did speak to the national chapter. This is a local chapter. Mid Atlantic and the Souther chapter will also be invited. For my perspective, I worry a little that we will just become an A&WMA road show going to all the chapter events. For future years, I will recommend she do the national chapter and minimize regional events if at all possible.

Let me know what additional info you may need. Thank you for flagging the issues!

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Tuesday, September 07, 2021 1:58 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: ETHICS REVIEW: MASS-A&WMA invitation to workshop

Hey Andrea,

I've become a bit more sensitive now in the virtual world, when our principal is the sole feature of an event and there is a registration fee to attend the workshop (making sure that the host is not profiting from selling access to government officials). The organizer says this is an annual workshop. Would you have the organizer provide a past example of what an annual workshop looks like? And how much does the organization charge for registration? At this point it appears that Janet would be the only agenda item (she's not part of a larger half-day/full-day workshop) – is that correct? This may be okay as structured (maybe the registration fee is nominal . . .) Also, didn't she speak to the chapter section earlier this year? Would her presentation be any different than what she presented on earlier?

Thanks!
Jennie for OGC/Ethics

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Tuesday, September 07, 2021 1:38 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** ETHICS REVIEW: MASS-A&WMA invitation to workshop

Hi Jennie,

I believe you have already opined on this general circumstance, but I wanted to confirm that this one was ok too. Thanks so much!

PS: I think this is the last one for now ☺

---

**From:** Blando, James D. <jblando@odu.edu>
**Sent:** Monday, July 12, 2021 11:11 AM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Joann Held (b) (6) [redacted] >; roya.mortazavi@mail.mcgill.ca; Yevgen Nazarenko (b) (6) [redacted] >; Laura Miner <lminer@fourses.com>
**Subject:** RE: MASS-A&WMA invitation to workshop

Dear Andrea,

Thank you so much for your prior Email, please see the attached form. The planning for the workshop is still in development so many items are not quite finalized. However, at this point we are still pretty flexible and willing to accommodate Janet's schedule as needed.

Thank you for considering our invitation. I have also copied the other board members of the MASS section above too. Please let me know if you need any other information and what the next steps would be, thank you,

Jim Blando

James Blando, Ph.D.
Associate Professor
Old Dominion University
School of Community and Environmental Health
4608 Hampton Blvd., Room 3108
Norfolk, VA 23529
(757)683-4073
jblando@odu.edu

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Thursday, July 1, 2021 1:38 PM
**To:** Blando, James D. <jblando@odu.edu>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** FW: question about MASS-A&WMA

> **EXTERNAL to ODU:** This email is not from an ODU account. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Jim,

Janet passed along your request. I'm hoping that you'll be able to fill out the attached form so that we can review the request in our shop. If you don't have all the details, as I note you say that the dates are flexible, that's totally fine, just include what you have nailed down so far.

Thanks so much and I look forward to hearing from you.

-Andrea-

Andrea Drinkard
Special Assistant to the Deputy Adminsitrator
U.S. Environmental Protection Agency
Desk: 202.564.1601
Cell: 202.236.7765

---

**From:** (b) (6) [redacted]
**Sent:** Wednesday, June 30, 2021 1:42 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Subject:** FW: question about MASS-A&WMA

---

**From:** Blando, James D. <jblando@odu.edu>
**Sent:** Wednesday, June 30, 2021 12:49 PM
**To:** (b) (6) [redacted]
**Subject:** question about MASS-A&WMA

Janet,

Hi, I really enjoyed your presentation at the A&WMA ACE conference this past June.

We just had a board meeting for the Mid-Atlantic States section and several board members were very interested in EPA updates and we all wondered if you might be willing to give a

presentation/update/discussion at a Section event sometime in the Fall (e.g. October) where we would livestream you into the meeting (similar to ACE). Do you think that might be something of interest to you? We are completely flexible with regards to the presentation topics/timing, etc.

Thank you for considering our invitation,

Jim

James D. Blando, Ph.D.
Old Dominion University
College of Health Sciences
School of Community and Environmental Health
4608 Hampton Blvd.
Norfolk, VA 23529
(757)683-4073
Email: jblando@odu.edu

| | |
|---|---|
| **From:** | Drinkard, Andrea |
| **To:** | Keith, Jennie |
| **Cc:** | Atkinson, Emily |
| **Subject:** | RE: ETHICS REVIEW: Midwest Climate Summit -- Summer Event |
| **Date:** | Thursday, July 01, 2021 1:30:07 PM |

Confirming that Janet has in fact resigned her position on the steering committee. I asked the group to remove her from the website. Thanks!

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Tuesday, June 29, 2021 12:23 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: ETHICS REVIEW: Midwest Climate Summit -- Summer Event

Hi there,

I don't see any ethics issues despite Janet's service in 2020 on an advisory steering committee for the group. By the way, I found her listed still on the steering committee – I believe that will need to be taken off, my guess is she no longer serves on the committee, correct (and this assumption forms the basis my ethics advice)?

Thanks!
Jennie for OGC/Ethics

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Friday, June 25, 2021 4:05 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** ETHICS REVIEW: Midwest Climate Summit -- Summer Event

Hi Jennie,

Just checking in on this one. The full chain is below and the event form is attached. Please let me know if there are any issues. We need to confirm by next Wednesday. Thank you and happy Friday!

---

**From:** McIntyre, Marcia <marcia.mcintyre@wustl.edu>
**Sent:** Tuesday, June 22, 2021 5:34 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; McCabe, Janet <McCabe.Janet@epa.gov>; Valko, Phil <valko@wustl.edu>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: Midwest Climate Summit -- Summer Event

Hi Andrea,

Attached is the completed event form. Please let me know if you have any questions or if you need anything additional from us.

We look forward to hearing back from you!

Kind regards,

**Marcia McIntyre**
Conference Coordinator Midwest Climate Summit | Washington University in St. Louis
314.210.2904 | marcia.mcintyre@wustl.edu

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Monday, June 21, 2021 9:37 AM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>; Valko, Phil <valko@wustl.edu>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; McIntyre, Marcia <marcia.mcintyre@wustl.edu>
**Subject:** RE: Midwest Climate Summit -- Summer Event

Good morning, Phil, and nice to meet you!

Please find attached the event form template. In the meantime, we'll review the information you sent along and get you a response ASAP. Thanks so much for thinking of us and we will be in touch.

-Andrea-

Andrea Drinkard
Special Assistant to the Deputy Administrator
U.S. Environmental Protection Agency
Desk: 202.564.1601
Cell: 202.236.7765

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Monday, June 21, 2021 8:23 AM
**To:** Valko, Phil <valko@wustl.edu>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; McIntyre, Marcia <marcia.mcintyre@wustl.edu>
**Subject:** RE: Midwest Climate Summit -- Summer Event

Sounds good Phil. We'll be in touch this week.

Janet

---

**From:** Valko, Phil <valko@wustl.edu>
**Sent:** Friday, June 18, 2021 2:40 PM

**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; McIntyre, Marcia <marcia.mcintyre@wustl.edu>
**Subject:** RE: Midwest Climate Summit -- Summer Event

Hi Janet,

I'm so glad the email found you!

We are planning for a virtual event. Below is a draft event overview. Ideally, we would like to look to the week of July 19. Emily and Andrea, we would be happy to fill out the event invitation form when you pass it along. I hope to confirm a DOE speaker in the next day or so and will then follow-up with all speakers to canvas for a day/time.

All the Best,
-Phil

# NEW FEDERAL CLIMATE STRATEGY & ROLE OF THE MIDWEST

## *July 2021 Event*

OVERVIEW

Virtual event with 3-4 speaker panelists focused on the Biden administration's climate strategy and specific implications for the Midwest. The event will provide an opportunity for leaders from key departments in the new administration to share their vision with climate leaders in the Midwest. The event will also continue to build momentum for more coordinated climate work in the Midwest and highlight the strength of existing sub-national actors in the Midwest.

OBJECTIVES

- Provide an opportunity for the Midwest climate community to hear about new federal priorities and specific implications, opportunities, and challenges in the Midwest
- Build longer-term relationships between federal leaders and Midwest Climate Collaborate (MCC) partners with a goal of more two-way engagement
- Engage a broader set of Midwest climate leaders / organizations
- Serve as bridge and momentum builder between

DATE Targeting Week of July 19. We will work with the speakers' schedules.

FORMAT Virtual panel discussion with audience Q&A, details to be refined with confirmed speakers.

DURATION 1.0 – 1.5 hours

SPEAKERS (proposed)

- White House -- Sonia Aggarwal, Senior Advisor for Climate Policy and Innovation (confirmed pending scheduling)
- EPA -- Janet McCabe, Deputy Administrator (invited)
- DOE -- Potential contact: Shara Mohtadi
- DOT – Andrew Wishnia, Deputy Assistant Secretary for Climate Policy (confirmed pending scheduling)

Phil Valko
Assistant Vice Chancellor for Sustainability
Washington University in St. Louis
valko@wustl.edu
sustainability.wustl.edu
O: 314-935-3883, C: (b) (6) [redacted]

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Thursday, June 17, 2021 9:03 PM
**To:** Valko, Phil <valko@wustl.edu>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: Midwest Climate Summit -- Summer Event

Hi Phil—yes, this is my EPA email address. I'm glad you found me. I don't know how often they update the employee directory—I suppose I can find out!

The event you're talking about sounds interesting. It will be virtual, I assume?
I'd definitely be interested in participating if the calendar and other stars align. We have a process here for getting details of invitations so we can consider them thoughtfully. I'm copying Emily and Andrea in my office, who can help you with the form.

Great to hear from you, and I hope you and Marcia are well.

Janet

---

**From:** Valko, Phil <valko@wustl.edu>
**Sent:** Thursday, June 17, 2021 8:35 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Subject:** Midwest Climate Summit -- Summer Event

Hi Janet,

Congratulations on your confirmation! I hope you're settling in well to what I can only imagine is a

professional ultra marathon.

Marcia and I have been in touch with Sonia Aggarwal in the White House about hosting an event in July on the *New Federal Climate Strategy & Role of the Midwest* in partnership with the Midwest Climate Summit. We would love to have you and/or another rep from the EPA involved.

I am happy to share details, but first wanted to make sure that this is actually your email. I couldn't find it in the EPA directory, so I'm following the EPA email address logic and hoping it finds you. ☺

All the Best,
-Phil

Phil Valko
Assistant Vice Chancellor for Sustainability
Washington University in St. Louis
valko@wustl.edu
sustainability.wustl.edu
O: 314-935-3883, C: (b) (6) [redacted]

| | |
|---|---|
| **From:** | Drinkard, Andrea |
| **To:** | Keith, Jennie |
| **Cc:** | Atkinson, Emily |
| **Subject:** | RE: ETHICS REVIEW: NASEO Board Invitation - November 30 or December 1 |
| **Date:** | Wednesday, November 24, 2021 8:40:42 AM |

Thanks!

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Wednesday, November 24, 2021 8:33 AM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: ETHICS REVIEW: NASEO Board Invitation - November 30 or December 1

Morning Andrea,

There are no ethics concerns with this request. The NASEO is not a federally registered lobbyist, FYI.

Thanks!
Jennie for OGC/Ethics

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Monday, November 22, 2021 2:58 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** ETHICS REVIEW: NASEO Board Invitation - November 30 or December 1

Hi Jennie, I'm hoping you can give this a quick scan. I'd like to be able to confirm Janet this week.
Thanks!

---

**From:** David Terry <dterry@naseo.org>
**Sent:** Monday, November 22, 2021 9:59 AM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; McCabe, Janet <McCabe.Janet@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Shemika Spencer <SSpencer@naseo.org>; Tracey Kohler <tkohler@naseo.org>
**Subject:** Re: NASEO Board Invitation - November 30 or December 1

Andrea, Emily,

Attached is the completed event form. Please let me know if you have any questions.

Thank you,
David

David Terry
Executive Director
National Association of State Energy Officials
1300 North 17th Street, Suite 1275
Arlington, VA 22209
703-395-1076

---

**From:** "Drinkard, Andrea" <Drinkard.Andrea@epa.gov>
**Date:** Monday, November 22, 2021 at 9:07 AM
**To:** "McCabe, Janet" <McCabe.Janet@epa.gov>, David Terry <dterry@naseo.org>
**Cc:** "Atkinson, Emily" <Atkinson.Emily@epa.gov>
**Subject:** RE: NASEO Board Invitation - November 30 or December 1

Thanks, Janet! And hi, David!

If you could fill out the attached event form and send it back to me and Emily we can get this into our process and we will be in touch ASAP.

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Monday, November 22, 2021 8:01 AM
**To:** David Terry <dterry@naseo.org>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: NASEO Board Invitation - November 30 or December 1

Hi David—thanks for this really nice invitation.
I don't know if this has already made its way to Emily and Andrea, who help with requests of this sort, but I'm, making sure that it is now.

I hope you are doing well—such a busy time!—and can enjoy a bit of downtime over the fall holiday.

Janet

---

**From:** David Terry <dterry@naseo.org>
**Sent:** Friday, November 19, 2021 9:30 AM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Subject:** NASEO Board Invitation - November 30 or December 1

**Janet,**

We invite you to offer remarks at NASEO's Board of Directors meeting (virtual), and to discuss with the states some of EPA's priorities in areas such as the results of COP26, clean school

buses, carbon utilization, and environmental/climate loan funds. The Board includes governors' energy directors from 18 states representing our 56 State and Territory members. The virtual meeting will be held on the afternoons of November 30 and December 1. Ideally, we would like to schedule your remarks for the afternoon of December 1, but we can accommodate your schedule at most times either day.

Thank you for considering, and please let me know if you or your staff have any questions.

Best regards,
David

David Terry
Executive Director
National Association of State Energy Officials
1300 North 17th Street, Suite 1275
Arlington, VA 22209
703-395-1076

| | |
|---|---|
| **From:** | Drinkard, Andrea |
| **To:** | Keith, Jennie; Fugh, Justina |
| **Cc:** | Atkinson, Emily |
| **Subject:** | RE: ETHICS REVIEW: Proposed Bloomington, Indiana, event next week (Thursday, 5/13) to announce BF assessment grant to City; Proposed deletions of three SFund sites |
| **Date:** | Thursday, May 06, 2021 4:59:43 PM |

Great, thanks so much!

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Thursday, May 06, 2021 4:53 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: ETHICS REVIEW: Proposed Bloomington, Indiana, event next week (Thursday, 5/13) to announce BF assessment grant to City; Proposed deletions of three SFund sites

Hi there,

Thanks for your patience. There are no ethics concerns with this EPA event. Should something material change – i.e., in-person location changed to a site on Indiana University, adding a speaker from Indiana University, etc – please follow up for review. Otherwise, you're good to go.

Thanks!
Jennie for OGC/Ethics

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Thursday, May 06, 2021 12:49 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: ETHICS REVIEW: Proposed Bloomington, Indiana, event next week (Thursday, 5/13) to announce BF assessment grant to City; Proposed deletions of three SFund sites

All good. Thank you!! Jennie, I hope (b) (6) [redacted]

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Thursday, May 06, 2021 12:48 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: ETHICS REVIEW: Proposed Bloomington, Indiana, event next week (Thursday, 5/13) to announce BF assessment grant to City; Proposed deletions of three SFund sites

(b) (6) [redacted] and I was slammed on nominee issues. But, yes, I expect we can get back to you today. Just not right now.

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Thursday, May 06, 2021 12:39 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: ETHICS REVIEW: Proposed Bloomington, Indiana, event next week (Thursday, 5/13) to announce BF assessment grant to City; Proposed deletions of three SFund sites

Apologies for neglecting to note this last night, but if there's any way we could get a response from you all today/tomorrow that would be great. If you guys are swamped, please let me know. Thanks!

---

**From:** Drinkard, Andrea
**Sent:** Wednesday, May 05, 2021 6:43 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** ETHICS REVIEW: Proposed Bloomington, Indiana, event next week (Thursday, 5/13) to announce BF assessment grant to City; Proposed deletions of three SFund sites

Hi Jennie and Justina,

I wanted to do a quick recusal check in on the event outlined below. And might as well do an ethics check while we're at it.

Please let us know your thoughts and whether you need additional information.

We will discuss with Janet in the morning.

Begin forwarded message:

> **From:** "Rowan, Anne" <rowan.anne@epa.gov>
> **Date:** May 5, 2021 at 5:39:56 PM EDT
> **To:** "Drinkard, Andrea" <Drinkard.Andrea@epa.gov>
> **Cc:** "Kelley, Jeff" <kelley.jeff@epa.gov>, "Grantham, Nancy" <Grantham.Nancy@epa.gov>, "Linduska, Rachel" <Linduska.Rachel@epa.gov>, "Beckmann, Ronna Erin" <beckmann.ronna@epa.gov>, "Didier, Matthew" <Didier.Matthew@epa.gov>, "Gillespie, Taylor" <Gillespie.Taylor@epa.gov>
> **Subject: Proposed Bloomington, Indiana, event next week (Thursday, 5/13) to announce BF assessment grant to City; Proposed deletions of three SFund sites**
>
> Hi Andrea, Region 5 is working with the City and Indiana DEM to plan a May 13 event (most likely virtual but potentially in-person). The attachment details the proposed 'run of show'. We've checked and none of the three Bloomington Superfund sites proposed

for NPL deletions (Lemon Lane, Bennet Stone Quarry and Neil's Landfill) are affiliated with Indiana University in any way. While the City (not IU) is the brownfields grant recipient, the university will benefit from the grant since much of the assessment work will take place on -or near- campus.

Please let us know if Janet McCabe will be able to participate in the event. Thanks very much.

***Background on Brownfield Assessment Grant, $300,000***

The City of Bloomington will use the funding for a community-wide program to update its brownfields inventory, prioritize sites and conduct up-to-12 Phase I and up-to-10 Phase II environmental site assessments. Grant funds will also be used to develop up-to-10 cleanup plans and to support community outreach activities. Assessment activities will focus on the city's College Avenue/Walnut Street Corridor, one of the primary residential and employment centers for Bloomington. Priority sites include a 24-acre abandoned hospital, a 5.4-acre scrap and recycling yard, a gas company maintenance garage, a former automobile manufacturing plant, an auto junkyard and a former lumber yard.

| | |
|---|---|
| **From:** | Drinkard, Andrea |
| **To:** | Keith, Jennie |
| **Cc:** | Atkinson, Emily |
| **Subject:** | RE: ETHICS REVIEW: September 29 webinar -- FW: Revitalization in African American Neighborhoods, webinar |
| **Date:** | Monday, September 20, 2021 1:40:36 PM |

Thank you! And I was pretty sure that was the case. I never would have thought of bar rules in this case, but I agree I don't think there's anything that she would say here that's not already public. I'm editing them a bit, but only adding Administration messaging and high level points.

Thanks for the quick review and confirmation!

-Andrea-

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Monday, September 20, 2021 1:35 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: ETHICS REVIEW: September 29 webinar -- FW: Revitalization in African American Neighborhoods, webinar

Hi Andrea,

Her involvement in the site took place before her EPA tenure during the Obama Administration. There are no federal ethics issues, here. I read the talking points sketch, and they didn't raise any concerns for me either. If Janet is concerned that her own bar rules apply, then we can help facilitate on that point (we generally don't advise on bar rule obligations, but we do coordinate on issues of consent when the non-federal entity will consent to the sharing of confidential communications . . .). It seems very unlikely here, but just raising for awareness, in case Janet thinks there are any bar rule implications here.

Thanks!
Jennie for OGC/Ethics

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Monday, September 20, 2021 1:01 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** ETHICS REVIEW: September 29 webinar -- FW: Revitalization in African American Neighborhoods, webinar

Hi Jennie,

I wanted to check in with you on this one. Janet will be recording a video for the event. I wanted to flag that the brownfields site that they will be discussing is one that Janet was involved in in her previous capacity at Improving Kids Environment Inc. This work was done prior to her last stint at

EPA quite some time ago, but wanted to make sure there weren't any conflicts here.

We are recording the video this week.

Thanks!

---

**From:** Brooks, Becky <Brooks.Becky@epa.gov>
**Sent:** Wednesday, September 15, 2021 2:44 PM
**To:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** September 29 webinar -- FW: Revitalization in African American Neighborhoods, webinar

Hi – I am following up on the email below to see if Janet is available on September 29 at 2:00pm to participate in this webinar. Attached is the most current run-of-show and potential talking points that I was provided. Please let me know if Janet is confirmed to participate, and, if so, for how long. I believe Carlton was going to get back to Janet directly regarding her question about the audience. Thanks. Becky

*Becky Brooks*
*Special Assistant*
*Office of Land and Emergency Management*
*U.S. Environmental Protection Agency*
*Cell ph. 202-281-9653*
*Office ph. 202-566-2762*

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Tuesday, September 7, 2021 10:22 AM
**To:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** FW: Revitalization in African American Neighborhoods, webinar

I would love to do this, Carlton---thank you (and Region v) so much for asking. Schedule permitting of course. Chris Herrell is an old friend (and neighbor). Copying Emily and Andrea for logistics etc.

Who will the audience be?

Janet

---

**From:** Waterhouse, Carlton <Waterhouse.Carlton@epa.gov>
**Sent:** Tuesday, September 7, 2021 10:10 AM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Subject:** Revitalization in African American Neighborhoods, webinar

Hi Janet,

On behalf of the Brownfields Program I'd like to share an invitation for you to provide 10 minute opening remarks at a September 29 Webinar. The webinar is one in a series on approaches to Revitalization in African American Neighborhoods, specifically learning from past successes and understanding the various roles of leadership in achieving real results. This webinar will focus on the Smart Growth Redevelopment District, encompassing portions of the King Park and Martindale-Brightwood neighborhoods in Indianapolis.

The Region 5 Brownfields program specifically asked for you to provide remarks given your connection to the neighborhood and experience working in the community. They would be interested in hearing stories of your experiences to kick off the panel. Attached are draft talking points, understanding that your own thoughts will be the best.

Presenters at the panel will include Chris Harrell, Steven Meyer, the Director of RenewIndy, and Barato Britt, ED of the Edna Martin Christian Center. More detail can be found in the Webinar Outline attached to this email.

I'm happy to connect your staff to the team who can answer any other question you might have.

Carlton Waterhouse, J.D., Ph.D.
Deputy Assistant Administrator
Office of Land and Emergency Management
United States Environmental Protection Agency
Waterhouse.carlton@epa.gov

| | |
|---|---|
| **From:** | Keith, Jennie |
| **To:** | Drinkard, Andrea |
| **Cc:** | Atkinson, Emily |
| **Subject:** | RE: ETHICS REVIEW:: Natl Alliance of Forest Owners letter to Regan |
| **Date:** | Tuesday, July 13, 2021 12:16:10 AM |

There are no issues, Andrea. For your awareness, NAFO is a federally registered lobbyist, so no gifts (can't tell if this is virtual or not – and if in-person, and there is courtesy gift, no gift!). Thanks! Jennie for OGC/Ethics

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Monday, July 12, 2021 1:21 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** ETHICS REVIEW:: Natl Alliance of Forest Owners letter to Regan

Hi Jennie,

Janet will be taking this meeting. It is an opportunity for NAFO to brief us on a project that they are working on it is not an event, but I wanted to flag nonetheless. Please let us know if there are any issues.

We're working to schedule the meeting on July 20th.

Thanks!

---

**From:** scheduling <scheduling@epa.gov>
**Sent:** Tuesday, July 06, 2021 2:53 PM
**To:** Kim, Eunjung <Kim.Eun@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
**Cc:** Lance, Kathleen <Lance.Kathleen@epa.gov>; Levy, Maxwell <Levy.Maxwell@epa.gov>; Lucey, John <Lucey.John.D@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: Natl Alliance of Forest Owners letter to Regan

Thanks Eunjung! I am looping in Andrea and Emily here for further discussion before we circle back with the group.

---

**From:** Kim, Eunjung <Kim.Eun@epa.gov>
**Sent:** Friday, July 2, 2021 4:01 PM
**To:** scheduling <scheduling@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
**Cc:** Lance, Kathleen <Lance.Kathleen@epa.gov>; Levy, Maxwell <Levy.Maxwell@epa.gov>; Lucey, John <Lucey.John.D@epa.gov>
**Subject:** RE: Natl Alliance of Forest Owners letter to Regan

Hey Ashley,

OAR recommends that the Administrator accepts this meeting request. But if he is unable to, this should be deferred to Deputy Administrator McCabe or OAR/Joe given that they are familiar with the issues. OAR would like to ensure that there is some level of EPA participation at this meeting, given that NAFO wants to share analysis that we would find very useful.

Please let me know if you have any questions.

Have a great weekend!

Eunjung Kim
Special Assistant
Office of Air and Radiation
Environmental Protection Agency
(202) 815-7252

---

**From:** scheduling <scheduling@epa.gov>
**Sent:** Friday, July 2, 2021 10:23 AM
**To:** Kim, Eunjung <Kim.Eun@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
**Cc:** Lance, Kathleen <Lance.Kathleen@epa.gov>; Levy, Maxwell <Levy.Maxwell@epa.gov>; Lucey, John <Lucey.John.D@epa.gov>
**Subject:** RE: Natl Alliance of Forest Owners letter to Regan

Also looping John Lucey in here as well!

---

**From:** scheduling
**Sent:** Thursday, July 1, 2021 5:42 PM
**To:** Kim, Eunjung <Kim.Eun@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
**Cc:** Lance, Kathleen <Lance.Kathleen@epa.gov>; Levy, Maxwell <Levy.Maxwell@epa.gov>
**Subject:** FW: Natl Alliance of Forest Owners letter to Regan

Hi there –

Could you please provide a rec for this invitation?

Thanks!

---

**From:** Tara Billingsley <tbillingsley@massiepartners.com>
**Sent:** Monday, June 28, 2021 10:56 AM
**To:** scheduling <scheduling@epa.gov>
**Subject:** RE: Natl Alliance of Forest Owners letter to Regan

Hi Dan:

I hope you're well!

I wanted to re-up the National Alliance of Forest Owners (NAFO) notional meeting request we discussed back in February. We had previously discussed turning this into a more concrete meeting request in the summer time frame, which is what we are now doing.

Both the Administration and NAFO are working to get the right tools in place to leverage forests as a natural climate solution. It has become clear that aligning on best practices in data collection and interpretation is a critical first step. Toward that end, NAFO has used EPA and USDA data to create a visual story of forest carbon. This data visualization provides context for how forests generally, and private working forests in particular, fit into the broader carbon picture.

NAFO's Executive Committee, made up of member company CEOs, is convening on July 12. We invite Administrator Regan to join NAFO for this meeting (virtually), so that NAFO might share with Administrator Regan the carbon data visualization work that NAFO has been undertaking.

Thank you for your consideration of this request.

Best,
Tara
(202) 380-7356

---

**From:** Tara Billingsley
**Sent:** Thursday, February 18, 2021 2:24 PM
**To:** utech.dan@epa.gov
**Subject:** Natl Alliance of Forest Owners letter to Regan

Hi Dan,

Attached please find a letter of congratulations from NAFO to your in-coming boss, which includes a meeting request (for post-confirmation, of course!).

NAFO is looking forward to working with you all, and we will plan to follow up on the meeting request at some reasonable post-confirmation time.

Thanks so much.

**Tara Billingsley**
Partner
Massie Partners
(202) 380-7356
tbillingsley@massiepartners.com

| | |
|---|---|
| **From:** | McCabe, Janet |
| **To:** | Keith, Jennie |
| **Cc:** | Drinkard, Andrea |
| **Subject:** | RE: Indiana Energy Conference |
| **Date:** | Tuesday, October 26, 2021 11:13:04 PM |

---

Thanks, Jennie. I appreciate your looking at this, and the clear answer.

Janet

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Tuesday, October 26, 2021 3:35 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: Indiana Energy Conference

Good afternoon, Janet,

Thank you for your patience, as I am now circling back to you on this.

You may submit to your bar the request for CLE credits as provided for your talk. CLE credits are a gift, however, one that is acceptable pursuant to 5 CFR 2635.204(c)(2) (the gift exception for discounts and similar benefits). The donor is not a federally registered lobbyist. You are all cleared!

Thank you, Janet!
Jennie for OGC/Ethics

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Monday, October 18, 2021 2:08 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: Indiana Energy Conference

If past is precedent, I would fill out a form with my bar number and the amount of time I claim (the time of my talk, indicating that I was a speaker, which increases the credit). I don't plan to stay for the rest of the conference, so wouldn't claim those hours.

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Monday, October 18, 2021 2:02 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: Indiana Energy Conference

Thanks, Janet.

Here's what I found on the agenda:

**CLE, CEM, CPA, and CPE CREDIT**

*The Indiana Commission on Continuing Legal Education has approved the 2021 Indiana Energy Conference for 4.3 hours of CLE credit for participating attorneys. The Indiana Energy Conference is also an approved organization by the Indiana Professional Licensing Agency for Accountants and Engineers who are interested in receiving these credits.*

There is no separate policy for speakers, then? You would be applying for credit per the statement above?

Thanks!
Jennie for OGC/Ethics

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Monday, October 18, 2021 1:54 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: Indiana Energy Conference

It was noted on the agenda, which I'll send to you.

FWIW, I'm pretty sure I've been ok'd to get credit for CLE when I was at EPA before.

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Monday, October 18, 2021 1:25 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: Indiana Energy Conference

Hi Janet, What a great question! It's not often that this question comes up, so I always have to review our past history with this issue – it definitely implicates ethics rules, either as a gift (CLE credit has tangible value!) or under the criminal statute 18 USC 209 (aka, only the government can pay you for doing your government job, e.g., you can't get compensated with CLE credits for doing your government job). I'm pretty sure this fits under a gift exception, but I have to open the vault so-to-speak. Do you have any document/policy from the conference that I can review to make sure it fits the gift exception I'm thinking that this fits under? I reviewed the website, but haven't found information on CLE credit, so any information you can provide will be helpful.

Always, I am so impressed. Thank you!
Jennie for OGC/Ethics

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Sunday, October 17, 2021 2:58 PM

**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** Indiana Energy Conference

Hi Jennie—as you know, I am speaking at the Indiana Energy Conference this week. I just noticed that they are approved for CLE credit, which is always welcome! Is there any concern on your end with me putting in for credit as a speaker at this conference to the Indiana CLE Commission?

Thanks,
Janet

Janet G. McCabe
Deputy Administrator
U.S. Environmental Protection Agency
WJC-N Room 3406, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-4711
Email: mccabe.janet@epa.gov

**From:** Fugh, Justina
**To:** McCabe, Janet
**Subject:** RE: Inquiry re being a reference
**Date:** Tuesday, August 31, 2021 10:14:00 PM

---

Oh, no bother at all. I'm having a staycation! Glad to help out!

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Tuesday, August 31, 2021 10:14 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Re: Inquiry re being a reference

Thanks, Justina. I fear I am bugging you on vacation.

He knows me through EPA, but I don't think he is applying for federal jobs. Sounds like I can go with option one. Thank you.

Janet

Sent from my iPad

On Aug 31, 2021, at 10:11 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi Janet,
If the individual is applying for a federal job or you know him through your EPA work, then he may use your EPA position and title. But if he's applying for a non-federal job, or knows you through non-EPA work, then you can't permit him to use your EPA position and title solely. What typically happens, though, is that the individual wants to list you but may not be attentive to tailoring your contact information depending on the recipient of the job application.

So here's what I suggest:

| | |
|---|---|
| Knows you through EPA | Janet G. McCabe<br>Deputy Administrator<br>US Environmental Protection Agency |
| Knows you through IU | Janet G. McCabe<br>Formerly professor of practice, McKinney School of Law and Director, Environmental Resilience Institute, Indiana University<br>(now Deputy Administrator, US Environmental Protection Agency) |

Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

-----Original Message-----
From: McCabe, Janet <McCabe.Janet@epa.gov>
Sent: Tuesday, August 31, 2021 9:44 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Inquiry re being a reference

Hi Justina—I hope all is well with you. I haven't bugged you for a while it seems—all good. I just want to double check—can someone list me as a reference when he applies for jobs? Can he list me with my EPA address, or should he list me without my title and with my personal contact info? I just want to make sure I'm doing this right.

Thanks,
Janet

Sent from my iPad

| | |
|---|---|
| **From:** | McCabe, Janet |
| **To:** | Keith, Jennie |
| **Cc:** | Drinkard, Andrea; Atkinson, Emily |
| **Subject:** | RE: invitation to Earth Charter Indiana board meeting--McCabe |
| **Date:** | Friday, May 21, 2021 5:16:30 PM |

Ok, got it. this will be the lowest of low key things, Jennie. Only board members, no gifts of any kind, not a fundraiser. I will be sure to say a few words of gratitude for their congrats and good work protecting the environment in Indiana.

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Friday, May 21, 2021 2:02 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: invitation to Earth Charter Indiana board meeting--McCabe

Hi Janet,

I did a sanity check with Justina just to be sure.

We recommend that you do this as part of official duty. Since you are on duty 24/7, it harder for you to separate official duty with personal capacity.

In this case, we advise that you make some remarks so that this becomes a speaking engagement for you.

As this is virtual only, we expect that there are no gifts (including awards, even a plaque saying you're the "best public servant" – unless we clear first), it's not a fundraiser (board meeting only), and you should advise the organization that you want to clear any communications that reference your participation in the board meeting (I don't know if they expect to publicize something, but again, we want to clear those to make sure they are not inappropriately leveraging your appearance into something like a fundraising opportunity, etc.).

The closest I can recall on advising on these sorts of matters were for in-person events in our pre-pandemic world. Oftentimes, a former employer or close colleague wanted to throw a reception to honor the incoming PAS (presidentially-appointed, senate-confirmed) appointee. If the person had already entered government service, then these "receptions" would be prohibited gifts and not permissible. However, before entering government service, these receptions are permissible since the ethics rules don't apply until you're a government employee. These became less rare after the "Ethics Pledge" frameworks appeared because oftentimes, the "former employer" was a federally registered lobbyist.

Does this help?
Jennie for OGC/Ethics

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>

**Sent:** Tuesday, May 18, 2021 8:29 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** invitation to Earth Charter Indiana board meeting--McCabe

Hi Jennie—

I got a note from a friend here in Indianapolis I wanted to run by you. In addition to being a very longtime friend, she is the Chair of the Board of a local environmental advocacy group—Earth Charter Indiana. Years ago (before going to EPA the first time), I was on their board.

She has invited me to their (virtual) Board meeting next Monday evening as a former board member so folks can congratulate me on joining EPA. I'd appreciate your advice on whether I can accept. Please let me know if you have other questions.

Thanks,
Janet

Janet G. McCabe
Deputy Administrator
U.S. Environmental Protection Agency
WJC-N Room 3406, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-4711
Email: mccabe.janet@epa.gov

| | |
|---|---|
| **From:** | McCabe, Janet |
| **To:** | Keith, Jennie; Drinkard, Andrea; Fugh, Justina |
| **Cc:** | Atkinson, Emily |
| **Subject:** | RE: Janet McCabe recusal statement for review.docx |
| **Date:** | Monday, June 14, 2021 5:33:26 PM |

Hi Jennie—

I have not been active in this group since last summer, but I need to make sure that I've sent a formal resignation communication. If I missed doing that for some reason, I will do so immediately.

I only joined this committee last year, so have participated in only one round of scholarship decisions (last summer). My participation amounted to reviewing applications and weighing in with my recommendations on which should be awarded.

Janet

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Monday, June 14, 2021 12:36 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; McCabe, Janet <McCabe.Janet@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: Janet McCabe recusal statement for review.docx

Hi there,

I reviewed our shared documents in our ethics network drive, and since Justina is off today, would you answer a couple questions that I'm not able to find answers to in our shared drive?

When did Janet resign as an "active participant" from the **Mid-Atlantic States Section of the Air & Waste Management Association** (under which, Janet participated on the Air Pollution Educational and Research Grant Scholarship Program)? How long did Janet serve in that role? And I'm assuming Janet was a participant in the committee that selected the recipients of the grant?

Janet's participation does not trigger ethics requirements under the impartiality rules because the Mid-Atlantic State Section is a separate legal entity from the A&WMA. However, regardless, I will provide ethics counseling once I have the details about Janet's role in the scholarship program.

Thanks!
Jennie for OGC/Ethics

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Monday, June 14, 2021 8:45 AM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>

**Subject:** RE: Janet McCabe recusal statement for review.docx

Adding Jennie. Just wanted to note that Jennie cleared you speaking at AWMA on Friday, so I wanted to make sure she was looped on your last question in case it 1) answers it or 2) changes anything. Thanks!

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Sunday, June 13, 2021 9:52 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** Janet McCabe recusal statement for review.docx

Hi Justina—thanks for this draft. It looks pretty fine, and I've added a few comments to your questions.
To make sure I understand—I cannot have anything to do with any particular matters I was involved in while working at ELPC. But I am not precluded from talking to ELPC staff about other matters, right? If someone from there calls me to ask about something going on now that I did not work on while I was there, or if someone from ELPC attends a meeting about a particular issue I did not work on? And the issue with the scholarship review committee of the mid-atlantic section of AWMA—that doesn't preclude me from speaking at AWMA general conferences, right?

JAnet

| | |
|---|---|
| **From:** | McCabe, Janet |
| **To:** | Fugh, Justina |
| **Cc:** | Drinkard, Andrea; Atkinson, Emily; Griffo, Shannon; Keith, Jennie |
| **Subject:** | RE: Janet McCabe recusal statement for review.docx |
| **Date:** | Tuesday, June 15, 2021 7:37:00 PM |

Great, thank you for the clarity, Justina. I will send back the signed recusal memo.

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Tuesday, June 15, 2021 3:08 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Subject:** RE: Janet McCabe recusal statement for review.docx

Hi Janet,
Attached is a pdf version of your updated recusal statement for digital signature or, if you prefer, a Word version for an actual signature. The previous version I sent incorrectly indicated that you had an impartiality issue with two entities you served in an advisory capacity only. Since you have not been active, you do not have any "covered relationship" with them any longer. You asked if you need to formally resign, and you do not because you did not hold any fiduciary role. Simply no longer showing up is sufficient. You may proceed with speaking with AWMA members, staff and at their general conferences.

Please note, however, that you are not free to interact with ELPC. Because we consider ELPC to be your former employer/former client, you are subject to the full Biden pledge restrictions. You CANNOT interact as part of your official duties with ELPC itself, including any of its staff. Unlike your obligations under the post-employment statute, ELPC is completely off limits to you for two years. You cannot give a speech to them, take their calls, meet with their employees.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Sunday, June 13, 2021 9:52 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** Janet McCabe recusal statement for review.docx

Hi Justina—thanks for this draft. It looks pretty fine, and I've added a few comments to your questions.
To make sure I understand—I cannot have anything to do with any particular matters I was involved in while working at ELPC. But I am not precluded from talking to ELPC staff about other matters, right? If someone from there calls me to ask about something going on now that I did not work on while I was there, or if someone from ELPC attends a meeting about a particular issue I did not work on? And the issue with the scholarship review committee of the mid-atlantic section of AWMA—that doesn't preclude me from speaking at AWMA general conferences, right?

JAnet

**From:** McCabe, Janet
**To:** Keith, Jennie
**Subject:** RE: Janet McCabe recusal statement for review.docx
**Date:** Tuesday, June 15, 2021 7:46:24 PM

---

Thanks, jennie.

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Tuesday, June 15, 2021 2:32 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
**Subject:** RE: Janet McCabe recusal statement for review.docx

Hi Janet,

This email confirms you have no ethics issues with you're A&WMA speaking engagement today.

In fact, upon further review of your recusal document (among our ethics colleagues), OGC/Ethics will remove the language regarding the one-year cooling-off period with the Mid-Atlantic States Section of the A&WMA because the one-year cooling-off period does not apply to organizations for which you are an active participant only (vs. resigning from fiduciary positions). Since you have not participated on the scholarship review committee since summer 2020, you have no ethics obligations.

You are free and clear to participate in today's speaking engagement with A&WMA.

Thanks!
Jennie for OGC/Ethics

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Monday, June 14, 2021 5:33 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: Janet McCabe recusal statement for review.docx

Hi Jennie—

I have not been active in this group since last summer, but I need to make sure that I've sent a formal resignation communication. If I missed doing that for some reason, I will do so immediately.

I only joined this committee last year, so have participated in only one round of scholarship decisions (last summer). My participation amounted to reviewing applications and weighing in with my recommendations on which should be awarded.

Janet

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Monday, June 14, 2021 12:36 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; McCabe, Janet <McCabe.Janet@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: Janet McCabe recusal statement for review.docx

Hi there,

I reviewed our shared documents in our ethics network drive, and since Justina is off today, would you answer a couple questions that I'm not able to find answers to in our shared drive?

When did Janet resign as an "active participant" from the **Mid-Atlantic States Section of the Air & Waste Management Association** (under which, Janet participated on the Air Pollution Educational and Research Grant Scholarship Program)? How long did Janet serve in that role? And I'm assuming Janet was a participant in the committee that selected the recipients of the grant?

Janet's participation does not trigger ethics requirements under the impartiality rules because the Mid-Atlantic State Section is a separate legal entity from the A&WMA. However, regardless, I will provide ethics counseling once I have the details about Janet's role in the scholarship program.

Thanks!
Jennie for OGC/Ethics

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Monday, June 14, 2021 8:45 AM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Subject:** RE: Janet McCabe recusal statement for review.docx

Adding Jennie. Just wanted to note that Jennie cleared you speaking at AWMA on Friday, so I wanted to make sure she was looped on your last question in case it 1) answers it or 2) changes anything. Thanks!

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Sunday, June 13, 2021 9:52 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** Janet McCabe recusal statement for review.docx

Hi Justina—thanks for this draft. It looks pretty fine, and I've added a few comments to your questions.
To make sure I understand—I cannot have anything to do with any particular matters I was involved in while working at ELPC. But I am not precluded from talking to ELPC staff about other matters, right? If someone from there calls me to ask about something going on now that I did not work on while I was there, or if someone from ELPC attends a meeting about a particular issue I did not work on? And the issue with the scholarship review committee of the mid-atlantic section of AWMA—that doesn't preclude me from speaking at AWMA general conferences, right?

JAnet

**From:** Fugh, Justina
**To:** Janet McCabe
**Subject:** RE: (b) (6) [redacted]
**Date:** Monday, January 25, 2021 10:09:00 PM

---

Thanks. I'll add that.

-----Original Message-----
From: Janet McCabe (b) (6) [redacted]
Sent: Monday, January 25, 2021 7:00 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: (b) (6) [redacted]

(b) (6) [redacted]

Sent from my iPhone

| | |
|---|---|
| **From:** | Fugh, Justina |
| **To:** | Greg Gershuny |
| **Cc:** | Drinkard, Andrea; Catherine Pollack; Enobakhare, Rosemary; Levy, Maxwell; Cortez Russell, Loni; Kate Jaffee; Beatrijs Kuijpers; Martin Doyle; Atkinson, Emily |
| **Subject:** | Re: Keynote Invitation Deputy Administrator Janet McCabe - Aspen-Nicholas Water Forum (Oct 2021) |
| **Date:** | Saturday, October 02, 2021 1:44:06 PM |

Hello,
To be clear, we will not permit Ms. McCabe's participation nor Radhika Fox. I will be happy to discuss further. Would you like to talk today? If so, please provide a number for me to call.
Justina

Sent from my iPhone

> On Oct 2, 2021, at 12:46 PM, Greg Gershuny <Greg.Gershuny@aspeninstitute.org> wrote:
>
> Thanks for letting us know Andrea.
>
> Ms. Fugh, would it be possible to chat to find out the issue? I don't believe the deputy administrator has any previous contacts with our organization that would preclude her from speaking and the forum should be considered a WAG. Let me know if you have a moment to chat.
>
> Best,
>
> Greg Gershuny
> Executive Director
> Energy and Environment Program
> The Aspen Institute
>
>> On Oct 2, 2021, at 9:07 AM, Drinkard, Andrea <Drinkard.Andrea@epa.gov> wrote:
>>
>> Hi Kitty,
>>
>> Thank you for the follow up. Unfortunately, upon further review, our ethics team has determined that Deputy Administrator McCabe cannot participate in the event. If you have any follow up questions, I am including Justina Fugh, the Director of our Ethics Office, on this email.
>>
>> Thanks again and we hope you have a great event.

Andrea

On Oct 1, 2021, at 2:29 PM, Catherine Pollack <Catherine.Pollack@aspeninstitute.org> wrote:

Hi Andrea,

We are thrilled to hear that, and many thanks to you and your team for your help in coordination. Would Janet be available and amendable to offering her remarks on the second day of the Forum, Wednesday, October 20th within the same window? Otherwise, I think our team would be very excited to be able to share her recorded remarks with Forum participants as well. Look forward to hearing from you and many thanks again!

Sincerely,
Kitty

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Friday, October 1, 2021 1:30 PM
**To:** Catherine Pollack <Catherine.Pollack@aspeninstitute.org>
**Cc:** Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>; Levy, Maxwell <Levy.Maxwell@epa.gov>; Cortez Russell, Loni <Russell.Loni@epa.gov>; Kate Jaffee <Kate.Jaffee@aspeninstitute.org>; Beatrijs Kuijpers <Beatrijs.Kuijpers@aspeninstitute.org>; Greg Gershuny <Greg.Gershuny@aspeninstitute.org>; Martin Doyle <martin.doyle@duke.edu>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: Keynote Invitation Deputy Administrator Janet McCabe - Aspen-Nicholas Water Forum (Oct 2021)

Hi Kitty,

Thank you so much for the invite, Deputy Administrator McCabe is please to accept. Unfortunately it looks like her calendar cannot accommodate the timing on the 19th and we were hoping that since the event is virtual that we'd be able to record Janet's remarks in advance. Please let me know if this would be possible and, if so, when you would

need the video recording by.

-Andrea-

Andrea Drinkard
Senior Advisor to the Deputy Administrator
U.S. Environmental Protection Agency
Desk: 202.564.1601
Cell: 202.236.7765

---

**From:** Catherine Pollack <Catherine.Pollack@aspeninstitute.org>
**Sent:** Monday, September 27, 2021 3:43 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Cc:** Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>; Levy, Maxwell <Levy.Maxwell@epa.gov>; Fox, Radhika <Fox.Radhika@epa.gov>; Cortez Russell, Loni <Russell.Loni@epa.gov>; Kate Jaffee <Kate.Jaffee@aspeninstitute.org>; Beatrijs Kuijpers <Beatrijs.Kuijpers@aspeninstitute.org>; Greg Gershuny <Greg.Gershuny@aspeninstitute.org>; Martin Doyle <martin.doyle@duke.edu>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: Keynote Invitation Deputy Administrator Janet McCabe - Aspen-Nicholas Water Forum (Oct 2021)

Thank you so much, Andrea! Look forward to hearing from you, and hope you are having a great start to the week.

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Thursday, September 23, 2021 5:40 PM
**To:** Catherine Pollack <Catherine.Pollack@aspeninstitute.org>
**Cc:** Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>; Levy, Maxwell <Levy.Maxwell@epa.gov>; Fox, Radhika <Fox.Radhika@epa.gov>; Cortez Russell, Loni <Russell.Loni@epa.gov>; Kate Jaffee <Kate.Jaffee@aspeninstitute.org>; Beatrijs Kuijpers <Beatrijs.Kuijpers@aspeninstitute.org>; Greg Gershuny <Greg.Gershuny@aspeninstitute.org>; Martin Doyle <martin.doyle@duke.edu>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: Keynote Invitation Deputy Administrator Janet

McCabe - Aspen-Nicholas Water Forum (Oct 2021)

Hi Kitty,

Thanks so much for the quick turn around on the form. We'll be in touch as soon as possible!

---

**From:** Catherine Pollack <Catherine.Pollack@aspeninstitute.org>
**Sent:** Thursday, September 23, 2021 3:31 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Cc:** Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>; Levy, Maxwell <Levy.Maxwell@epa.gov>; Fox, Radhika <Fox.Radhika@epa.gov>; Cortez Russell, Loni <Russell.Loni@epa.gov>; Kate Jaffee <Kate.Jaffee@aspeninstitute.org>; Beatrijs Kuijpers <Beatrijs.Kuijpers@aspeninstitute.org>; Greg Gershuny <Greg.Gershuny@aspeninstitute.org>; Martin Doyle <martin.doyle@duke.edu>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: Keynote Invitation Deputy Administrator Janet McCabe - Aspen-Nicholas Water Forum (Oct 2021)

Hi Andrea,

Many thanks for taking our invitation under review, we are so appreciative of your time and consideration, and are very hopeful that Deputy Administrator McCabe will be able to join us. I have attached the completed form, as well as a very simplified draft agenda, which we will be happy to expand upon if helpful to you in processing our request, or following confirmation in a speaker briefing call.

Please do not hesitate to be in touch with any questions or concerns. Look forward to hearing from you, and wishing you all the best in the meantime.

Sincerely,
Kitty

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Thursday, September 23, 2021 2:06 PM
**To:** Fox, Radhika <Fox.Radhika@epa.gov>; Catherine Pollack <Catherine.Pollack@aspeninstitute.org>; Atkinson, Emily

<Atkinson.Emily@epa.gov>
**Cc:** Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>; Levy, Maxwell <Levy.Maxwell@epa.gov>; Cortez Russell, Loni <Russell.Loni@epa.gov>; Kate Jaffee <Kate.Jaffee@aspeninstitute.org>; Beatrijs Kuijpers <Beatrijs.Kuijpers@aspeninstitute.org>; Greg Gershuny <Greg.Gershuny@aspeninstitute.org>; Martin Doyle <martin.doyle@duke.edu>
**Subject:** RE: Keynote Invitation Deputy Administrator Janet McCabe - Aspen-Nicholas Water Forum (Oct 2021)

Hi Kitty, and thank you, Radhika, for connecting us!

Yes, we are putting your request through our review process and we will be in touch shortly. In the meantime, if you could fill out the attached event form that will give us all the details we'd need to complete our review.

Thanks so much and looking forward to working with you on this event!

-Andrea-

Andrea Drinkard
Senior Advisor to the Deputy Administrator
U.S. Environmental Protection Agency
Desk: 202.564.1601
Cell: 202.236.7765

---

**From:** Fox, Radhika <Fox.Radhika@epa.gov>
**Sent:** Wednesday, September 22, 2021 11:25 AM
**To:** Catherine Pollack <Catherine.Pollack@aspeninstitute.org>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Cc:** Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>; Levy, Maxwell <Levy.Maxwell@epa.gov>; Cortez Russell, Loni <Russell.Loni@epa.gov>; Kate Jaffee <Kate.Jaffee@aspeninstitute.org>; Beatrijs Kuijpers <Beatrijs.Kuijpers@aspeninstitute.org>; Greg Gershuny <Greg.Gershuny@aspeninstitute.org>; Martin Doyle

<martin.doyle@duke.edu>
**Subject:** FW: Keynote Invitation Deputy Administrator Janet McCabe - Aspen-Nicholas Water Forum (Oct 2021)

Hi Kitty: I had shared the original invite with Andrea Drinkard (Senior Advisor) and Emily Atkinson (Special Assistant) in the Deputy Administrator's office and they are considering the request. They will be in touch.

My best,
Radhika

Radhika Fox
Assistant Administrator for Water
U.S. Environmental Protection Agency
Fox.Radhika@epa.gov

---

**From:** Catherine Pollack
**Sent:** Wednesday, September 22, 2021 10:27 AM
**To:** Radhika Fox <RFox@uswateralliance.org>
**Cc:** Enobakhare, Rosemary <Enobakhare.Rosemary@epa.gov>; Levy, Maxwell <Levy.Maxwell@epa.gov>; Cortez Russell, Loni <Russell.Loni@epa.gov>; Kate Jaffee <Kate.Jaffee@aspeninstitute.org>; Beatrijs Kuijpers <Beatrijs.Kuijpers@aspeninstitute.org>; Greg Gershuny <Greg.Gershuny@aspeninstitute.org>; Martin Doyle <martin.doyle@duke.edu>
**Subject:** Keynote Invitation Deputy Administrator Janet McCabe - Aspen-Nicholas Water Forum (Oct 2021)

Hi Radhika and Rosemary,

Many thanks to you both for your offer to extend an invitation to Deputy Administrator Janet McCabe. I wanted to follow up with a formal invitation (below) to the Deputy Administrator to keynote our annual Aspen-Nicholas Water Forum. I also wanted to follow up with you, Radhika, to confirm your availability to join us for the Water Sub-Cabinet panel from 2:15-3:15 PM ET on Tuesday, October 19th – we have confirmed Gloria Montaño Greene, and hope to confirm the rest of your fellow panelists by the end of the week. Many thanks again to you both for your participation

and help in coordination – it is greatly appreciated!

On behalf of the Aspen Institute Energy & Environment program, we are delighted to invite Deputy Administrator Janet McCabe to offer a keynote address at our annual Aspen-Nicholas Water Forum focused on Water Affordability and Equity. The Forum will be convened virtually on Tuesday, October 19th, Wednesday October 20th, and Thursday October 21st from 1:00-4:00 PM EST. We have tentatively scheduled Deputy Administrator McCabe's potential keynote session from 1:00-2:00 PM EST on Tuesday, October 19th, but we would be happy to accommodate her timing if another time works better during the forum. Should she be able to join us, we can also offer staff support to help develop talking points, graphics, or other information to reduce the prep that might be needed, as well as share additional information on other panelists and keynote speakers as we nail down those details.

For some context, each year the Aspen Institute and Duke University's Nicholas Institute hosts a Water Forum. This forum brings together approximately 60 of the nation's leading water thinkers, innovators, and decision-makers ranging from community organizers to investors to local, state, and federal elected officials. The forum has focused on topics ranging from big data to groundwater over the last decade. In 2020, we spent the year hosting relatively intimate discussions focused on water affordability and equity. In 2021, we shifted to a larger online gathering where we cap off our 18 month focus on this critical topic, in partnership with the US Water Alliance and EPIC.

For additional context, concurrently to the Forum, through the Fall we will also be conducting a roundtable series, that will be convening a smaller, policy-focused group. This group will aim to develop a shared set of guiding principles and a policy agenda that together outline what affordable and equitable water access looks like and the specific practices, legislation, regulations, or executive

orders necessary to advance this vision, specifically as they apply to state legislators, state agencies, and governors. The larger Forum will offer a first opportunity for feedback on the principles and policy agenda in development in the roundtables, and which will be widely released in the winter of 2021.

Please let us know of any questions or concerns that we might be able to answer. We look forward to hearing from you and appreciate your time and consideration.

Sincerely,
Kitty Pollack

| | |
|---|---|
| **From:** | Willett, Mary Rebecca |
| **To:** | Fugh, Justina |
| **Subject:** | Re: March 3rd Guest Speaker Request == for Janet McCabe |
| **Date:** | Tuesday, January 04, 2022 11:51:41 AM |

---

Justina,

Thank you for the response and guidelines as they relate to Janet's new position.

Mary R. Willett
IU/SPEA

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Tuesday, January 4, 2022 1:06 AM
**To:** Willett, Mary Rebecca <mrwillet@iu.edu>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** [External] March 3rd Guest Speaker Request == for Janet McCabe

This message was sent from a non-IU address. Please exercise caution when clicking links or opening attachments from external sources.

Dear Ms. Willett,
My name is Justina Fugh, and I'm the director of the EPA Ethics Office. Your request for our Deputy Administrator, Janet McCabe, to speak at your class was forwarded to me for response. I regret to inform you that we cannot allow Ms. McCabe to accept your very kind invitation at this time. The reason is that, as a political appointee, Ms. McCabe is subject to certain federal ethics restrictions, and she has memorialized her restrictions in the attached recusal statement. As you can see, for one year, she is recused from participation in her official capacity in any specific party matter in which Indiana University is a party or represents a party.

Please note that her recusal ends after April 29, 2022. You may, if you wish, make a renewed request of her after that date. If you do so, then please send your request to Andrea Drinkard and Emily Atkinson, copied here. They serve as Ms. McCabe's special assistants. If you have any questions about the terms of Ms. McCabe's recusal, then please contact me directly.
Happy New Year,
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Willett, Mary Rebecca <mrwillet@iu.edu>
**Sent:** Tuesday, December 14, 2021 11:57 AM
**To:** McCabe, Janet G <jgmccabe@iu.edu>; McCabe, Janet <McCabe.Janet@epa.gov>
**Subject:** March 3rd Guest Speaker Request

Janet,

You kindly were a guest speaker for Gwen White's and my IU/SPEA E543 Environmental Management graduate class two summers ago. I also teach E363 Environmental Management for undergraduates. I wanted to ask whether you would be available/willing to do a Zoom Guest Speaker spot for my spring semester class on Thursday March 3, 2022 from 5-6 pm. We are back in the classroom and I would Zoom you in for an hour to answer questions for the students (which I would solicit and provide to you beforehand).

Your schedule is probably slammed but I thought I would ask.

Mary R. Willett
IU/SPEA Adjunct Instructor

| | |
|---|---|
| **From:** | Drinkard, Andrea |
| **To:** | Fugh, Justina |
| **Cc:** | Atkinson, Emily; Keith, Jennie |
| **Subject:** | RE: March 3rd Guest Speaker Request |
| **Date:** | Tuesday, January 04, 2022 8:14:19 AM |

Lol, I swear I'm usually not that delinquent. I really don't know how I kept missing the emails!! I assure you it was not on purpose ☺

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Tuesday, January 04, 2022 12:50 AM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Subject:** RE: March 3rd Guest Speaker Request

Hi Andrea,
Yes, we'll decline. I'll do that now and cc you. See how happy we are when our beloved employees successfully complete their ethics training before the end of the year?
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Monday, January 3, 2022 8:50 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Subject:** Fwd: March 3rd Guest Speaker Request

Hey there!

I hope you had a great holiday. Janet flip this one to me to handle. I assume this will be a polite decline, but let me know if there's any specific language you'd like to use or whether you'd like to be the messenger. Either is fine with me, just wanted to make sure we did it right.

Thanks!

Begin forwarded message:

> **From:** "McCabe, Janet" <McCabe.Janet@epa.gov>
> **Date:** January 3, 2022 at 7:26:52 PM EST
> **To:** "Drinkard, Andrea" <Drinkard.Andrea@epa.gov>, "Atkinson, Emily"

<Atkinson.Emily@epa.gov>
**Subject: FW: March 3rd Guest Speaker Request**

Did I already send you this request? I can't remember……it's from IU, so I need to dish it off to Andrea to handle.

Thanks,
Janet

---

**From:** Willett, Mary Rebecca <mrwillet@iu.edu>
**Sent:** Tuesday, December 14, 2021 11:57 AM
**To:** McCabe, Janet G <jgmccabe@iu.edu>; McCabe, Janet <McCabe.Janet@epa.gov>
**Subject:** March 3rd Guest Speaker Request

Janet,

You kindly were a guest speaker for Gwen White's and my IU/SPEA E543 Environmental Management graduate class two summers ago. I also teach E363 Environmental Management for undergraduates. I wanted to ask whether you would be available/willing to do a Zoom Guest Speaker spot for my spring semester class on Thursday March 3, 2022 from 5-6 pm. We are back in the classroom and I would Zoom you in for an hour to answer questions for the students (which I would solicit and provide to you beforehand).

Your schedule is probably slammed but I thought I would ask.

Mary R. Willett
IU/SPEA Adjunct Instructor

**From:** Fugh, Justina
**To:** McCabe, Janet
**Subject:** RE: need for 278-T
**Date:** Monday, June 21, 2021 9:40:00 PM

---

Hi Janet,
Those purchases do NOT need to be reported on a periodic basis but will need to be reported next year when you file your incumbent report. You may wait until then or you may fill out the 278T in INTEGRITY now so that, later, you simply upload that information into your next report.

No clue about why the ethics sharepoint site was inaccessible to you. I was able to access it just fine myself. Weird!
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Monday, June 21, 2021 9:19 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** need for 278-T

Hi Justina—

(b) (6) [redacted]
I think these are exempted from needing to file a 278-T, but wanted to confirm to make sure.

Thanks.

By the way—I was not able to get onto the EPA Ethics Sharepoint site today—the hourglass just kept spinning). It may be operator error on my part, but I thought I'd mention it in case something's not right with the site.

Janet

Janet G. McCabe
Deputy Administrator

U.S. Environmental Protection Agency
WJC-N Room 3406, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-4711
Email: mccabe.janet@epa.gov

| | |
|---|---|
| **From:** | McCabe, Janet |
| **To:** | Atkinson, Emily; Fugh, Justina; Keith, Jennie |
| **Cc:** | Drinkard, Andrea |
| **Subject:** | RE: Onboarding Travel Entitlements |
| **Date:** | Wednesday, May 05, 2021 4:27:39 PM |

Many thanks.

---

**From:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Sent:** Wednesday, May 5, 2021 3:30 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** McCabe, Janet <McCabe.Janet@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: Onboarding Travel Entitlements

Thank you both for reviewing.

+ Janet and Andrea

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Wednesday, May 05, 2021 3:24 PM
**To:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Cc:** Keith, Jennie <Keith.Jennie@epa.gov>
**Subject:** RE: Onboarding Travel Entitlements

Hi Emily,
Thanks for talking with Jennie and me just now. I am writing to confirm that OGC/Ethics understands and agrees with the determination by the travel office that EPA cannot pay for this travel of Janet's to DC. Even though the purpose of her trip is consistent with EPA business, the determinative factor is her duty station. Because she has already been sworn in, her duty station is Washington, DC, so we can't support using appropriated dollars to pay for her travel from her home. So, yes, we agree with you both and the travel office that she will have to use personal funds to pay for this trip from her home and will have to make all of the arrangements herself. When she arrives at EPA's doorstep, then you and other EPA staff can assist by scheduling her PIV card, photograph and other appointments.
Cheers,
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Sent:** Wednesday, May 05, 2021 1:46 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Subject:** RE: Onboarding Travel Entitlements

Hi Jennie – circling back on this. Is it possible to have an answer back from your office today? Emily

---

**From:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Sent:** Tuesday, May 04, 2021 11:12 AM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Subject:** FW: Onboarding Travel Entitlements

---

**From:** Jenkins, Juanita <jenkins.juanita@epa.gov>
**Sent:** Tuesday, May 04, 2021 9:51 AM
**To:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** FW: Onboarding Travel Entitlements

*Juanita R. Jenkins*
Travel Coordinator
Office of the Administrator
U.S. Environmental Protection Agency
Jenkins.juanita@epa.gov
202-566-2045

---

**From:** Nelson, Khary <nelson.khary@epa.gov>
**Sent:** Tuesday, May 4, 2021 9:49 AM
**To:** Jenkins, Juanita <jenkins.juanita@epa.gov>
**Subject:** RE: Onboarding Travel Entitlements

If her duty station is DC, then unfortunately we cannot pay her TDY to travel to her duty station. This would include travel for the purpose of obtaining the PIV card.

Thanks,
Khary

---

**From:** Jenkins, Juanita <jenkins.juanita@epa.gov>
**Sent:** Tuesday, May 4, 2021 8:57 AM
**To:** Nelson, Khary <nelson.khary@epa.gov>
**Subject:** Onboarding Travel Entitlements

Hi Khary, Hope you are having a good day.

Question for you – Janet McCabe was just sworn in. Can onboarding of a new employee be considered official travel if they travel from their HOR to official duty location and return? Also for consideration in your response, some of the onboarding requirements are unique to the position and cannot be accomplished at an office near the HOR. Is travel reimbursement authorized?

Please advise. Thanks

*Juanita R. Jenkins*
Travel Coordinator
Office of the Administrator
U.S. Environmental Protection Agency
Jenkins.juanita@epa.gov
202-566-2045

| | |
|---|---|
| **From:** | McCabe, Janet |
| **To:** | Fugh, Justina; Keith, Jennie |
| **Cc:** | Atkinson, Emily; Drinkard, Andrea |
| **Subject:** | RE: Q re reference |
| **Date:** | Wednesday, July 07, 2021 7:07:10 AM |

Wonderful—thank you!

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Tuesday, July 6, 2021 10:41 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: Q re reference

Hi Janet,
On this set of facts, we have no ethics concerns. You may be listed as a reference on her application without qualm, and she may even mention your current EPA position. The reason is that there is an exception for character references for people whom you either know through your federal work or, as in this case, you know through non-federal work but who is applying for a federal position. *See* 5 CFR 2635.702(b). If the student asks, you may also provide a written letter of reference for her that uses your EPA title.
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Tuesday, July 06, 2021 8:26 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** Q re reference

Hello you two. I feel good that I haven't had to consult you in a little bit here , but I got a question from a former student that I wanted to run by you. She is planning to apply (b) (6) [redacted] She asked if she could list me as a reference. I told her about the generic letter approach and said I would be glad to do that assuming you guys were OK with it, but through usajobs what they ask for is for you to list references. Even if she lists me as her former law professor, it is likely that people reviewing the applications my recognize my name. What is your advice?
Thanks,
Janet

Janet G. McCabe
Deputy Administrator
U.S. Environmental Protection Agency
WJC-N Room 3406, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-4711
Email: mccabe.janet@epa.gov

**From:** McCabe, Janet
**To:** Fugh, Justina
**Subject:** RE: question re ethics letter
**Date:** Tuesday, May 25, 2021 12:45:35 PM

---

Thank you, Justina. That's great.

Janet

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Tuesday, May 25, 2021 12:45 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Subject:** Re: question re ethics letter

Hi Janet,
(b) (6) [redacted] so am relying using my phone. Yes, ETFs are considered like diversified mutual funds, but we need to look out for sector funds, meaning funds that concentrate in a single sector, country or state.
Justina

Sent from my iPhone

On May 24, 2021, at 10:33 PM, McCabe, Janet <McCabe.Janet@epa.gov> wrote:

Hi Justina—

I haven't had to bug you for a while, which is good news….

We were talking to our financial adviser today, who asked about language in my ethics letter (see below). The question is whether EFT funds are included in the list of funds exempted from the prior approval requirement below:

"If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the regulatory exemption for diversified mutual funds and unit investment trusts at 5 C.F.R. § 2640.201(a), or obligations of the United States."

Can you clarify please? Thanks.

Janet

Janet G. McCabe
Deputy Administrator
U.S. Environmental Protection Agency
WJC-N Room 3406, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-4711
Email: mccabe.janet@epa.gov

**From:** McCabe, Janet
**To:** Fugh, Justina; Keith, Jennie
**Cc:** Drinkard, Andrea; Atkinson, Emily
**Subject:** RE: question re request re law student internship
**Date:** Tuesday, June 01, 2021 6:16:20 PM

---

Thanks, Justina. I had come to the same conclusion, but it is good to have you confirm it. I (b) (6) [redacted]. The concerns are the same either way.

Janet

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Tuesday, June 1, 2021 6:07 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: question re request re law student internship

Hi Janet,

(b) (6) [redacted] Janet, so I have to advise against using your own personal cachet to connect him with any particular organization. Even if you were to provide some possible NGOs for him to contact in Indiana, you could do so in your personal capacity only but you have no way of knowing how the helicopter mom is going to characterize your suggestions or assistance. If you provide a certain level of assistance to this person then you'll have to continue to do the same for everyone else, which is not sustainable.

I suggest that you limit your response to saying that you encourage environmental law as a profession and wish him the best in his search. If the mom thinks that her son may be interested in learning more about summer clerk positions at EPA, then you can refer her to Legal Careers at EPA. And a very simple google search of "indiana environmental groups" yielded this list. I don't see that you need to be any more helpful than sharing those two pieces of information for someone you don't even know. That way, you will avoid any concerns about preferential treatment or open yourself up to some implied endorsement.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Tuesday, May 25, 2021 11:36 AM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: question re request re law student internship

I am happy to provide you with interesting things to discuss…occasionally…and look forward to Justina's advice.

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Tuesday, May 25, 2021 11:19 AM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: question re request re law student internship

Morning Janet,

I'm adding Justina to this – she and I had enjoyed discussing this and the ethics parameters involved. She would like to respond with her personal flourish.

Thanks!
Jennie for OGC/Ethics

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Friday, May 21, 2021 9:57 AM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** question re request re law student internship

Hi Jennie—

I received an email this week to my epa email and my now defunct IU email address from a woman in Indiana who was asking whether I could provide any help to her law student son who is looking for a legal internship in Indiana. Apparently, I spoke to a class he was in when he was an undergrad at Purdue, and he remembered me. She was not asking about opportunities at EPA.

My question is whether I can, via my personal email and not in my official capacity, pass her inquiry on to environmental organizations I know in Indiana that might be interested or have suggestions for where he can inquire about opportunities.

Thanks for your advice on this, and please let me know if you have other questions.

Janet

Janet G. McCabe
Deputy Administrator
U.S. Environmental Protection Agency
WJC-N Room 3406, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-4711
Email: mccabe.janet@epa.gov

| | |
|---|---|
| **From:** | Keith, Jennie |
| **To:** | Drinkard, Andrea |
| **Cc:** | Atkinson, Emily |
| **Subject:** | RE: QUICK ETHICS REVIEW: OneCape Summit |
| **Date:** | Monday, August 02, 2021 3:21:00 PM |
| **Attachments:** | image001.png<br>image003.png |

---

Hi Andrea, no ethics issues here! Especially done virtually, but if you decide to do in-person, waived registration fee is fine, and even food on the day that Janet is speaking.

Thanks!
Jennie for OGC/Ethics

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Monday, August 02, 2021 3:17 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** QUICK ETHICS REVIEW: OneCape Summit

Hi Jennie,

Just wanted to get your thumbs up on this one. We are doing it virtually (maybe even pre-recorded). The event is on August 23rd. Thanks so much!

---

**From:** Erin Perry <eperry@capecodcommission.org>
**Sent:** Monday, August 02, 2021 3:11 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: OneCape Summit

Good afternoon Andrea and Emily,

Please see the attached completed event form. Thanks again for your consideration of our request. Andrea – I look forward to talking with you tomorrow morning. The number below is the best line to reach me, but if you'd prefer a Teams meeting please let me know and I can send one.

Please don't hesitate to reach out if you need additional information or have questions about anything we included in the form. I am copying Danielle Donahue from our office. She handles all of the logistics for OneCape and can also answer questions you might have.

Thank you!

Erin Perry
Deputy Director
Cape Cod Commission
508-744-1236

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Friday, July 30, 2021 1:17 PM

**To:** Erin Perry <eperry@capecodcommission.org>
**Subject:** RE: OneCape Summit

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Erin,

I think a quick call would be great. I could do Monday after 2pm or Tuesday AM. Let me know what works best for you.

Thanks!

-Andrea-

---

**From:** Erin Perry <eperry@capecodcommission.org>
**Sent:** Friday, July 30, 2021 12:45 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: OneCape Summit

Hi Andrea,

No worries at all – thank you for sending this along to me again. We appreciate you considering this event and working it into schedules. I am happy to discuss the options for providing remarks. We also have flexibility to accommodate remarks on either the 23rd or the 24th if one fits better with travel schedules. We are working through the form you shared and should be able to get that back to you first thing next week, if not sooner. Would it make sense to schedule a quick call to discuss early next week? Please let me know if there is a time that works best for you.

Thank you!

Erin Perry
Deputy Director
Cape Cod Commission
508-744-1236

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Thursday, July 29, 2021 4:45 PM
**To:** Erin Perry <eperry@capecodcommission.org>
**Subject:** RE: OneCape Summit

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Erin,

I think I may have typed your email address incorrectly yesterday (I missed an "m" in commission!!). I'm attaching the email I sent to you! I'm so sorry about that. In summary of my previous email, we're looking to see if Deputy Administrator McCabe can participate and do so virtually with pre-recorded remarks. I'd be happy to chat with you about the specifics if that would be easiest.

Thanks again for the invite and my apologies for my unfortunate typo!

-Andrea-

---

**From:** Erin Perry <eperry@capecodcommission.org>
**Sent:** Thursday, July 29, 2021 4:42 PM
**To:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** OneCape Summit

Good afternoon Andrea,

I am reaching out to follow up on the OneCape Summit speaking invitation we sent to Administrator Regan. The Summit is on August 23rd and 24th at the Wequassett Resort in Harwich, MA. I recently spoke with Doug Gutro from Region 1 who indicated the request was under consideration. We appreciate your consideration and would be honored to have the Administrator join us as a keynote speaker.

I am more than happy to answer any questions you might have. Please don't hesitate to reach out at any time.

Sincerely,
Erin Perry

Erin Perry
Deputy Director
Cape Cod Commission
508-744-1236
eperry@capecodcommission.org

| | |
|---|---|
| **From:** | McCabe, Janet |
| **To:** | Keith, Jennie; Atkinson, Emily |
| **Cc:** | Drinkard, Andrea; Fugh, Justina |
| **Subject:** | RE: Richmond Event Gift |
| **Date:** | Monday, December 20, 2021 10:30:15 AM |

---

Thanks—this is great—I don't need anything more….

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Monday, December 20, 2021 9:23 AM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: Richmond Event Gift

Morning Janet,

Yes, we do return gifts. The Administrator's Office has a whole process for managing tangible gifts received, done by Brian Hope. He'll take a look at the gifts, apply gift exceptions if they're acceptable, return the ones for which are not acceptable. I don't know how often he returns gifts, but we certainly do that. I know at the end of Lisa Jackson's tenure, there were a lot of parting gifts given to her that we had to return. Adding Justina, in case she has any other thoughts.

Thanks!
Jennie for OGC/Ethics

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Sunday, December 19, 2021 6:26 PM
**To:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: Richmond Event Gift

Yes, thank you.
Jennie—do we return gifts very often?

---

**From:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Sent:** Thursday, December 16, 2021 4:27 PM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: Richmond Event Gift

Thanks for letting us know Jennie.

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Thursday, December 16, 2021 4:00 PM
**To:** Atkinson, Emily <Atkinson.Emily@epa.gov>

**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** RE: Richmond Event Gift

Hi ladies!

FYI, earlier today I went and retrieved the gift for the Administrator. Janet was not in the office, but it was a blue gift bag with presents wrapped in tissue paper.

I will be turning them in to Brian Hope for disposition (returning to sender, as they are not acceptable under the individual gift exceptions; it's also not a gift given to the Agency).

Thanks!
Jennie for OGC/Ethics

---

**From:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Sent:** Thursday, December 16, 2021 8:07 AM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Subject:** Richmond Event Gift
**Importance:** High

Hi Jennie,

Janet says the gift she brought back for the Administrator is under her desk in her office, in case you come by when she is not there.

Emily Atkinson
Special Assistant
Office of the Deputy Administrator
U.S. Environmental Protection Agency
Room 3412D, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-1850
Email: atkinson.emily@epa.gov

| | |
|---|---|
| **From:** | Fugh, Justina |
| **To:** | McCabe, Janet |
| **Subject:** | RE: tenure process recommendation |
| **Date:** | Tuesday, July 13, 2021 2:43:00 PM |

Hi Janet,
Sure, you may do this in your personal capacity. Please refrain from using your EPA signature block or EPA letterhead.
Cheers,
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Tuesday, July 13, 2021 7:52 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** tenure process recommendation

Hi Justina—I received, on my personal email, a request from the person overseeing the tenure consideration process for a professor I worked with at IU asking if I would provide a letter as part of the tenure process. May I do that in my personal capacity? Thanks!

Janet

Janet G. McCabe
Deputy Administrator
U.S. Environmental Protection Agency
WJC-N Room 3406, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-4711
Email: mccabe.janet@epa.gov

| | |
|---|---|
| **From:** | Fugh, Justina |
| **To:** | Drinkard, Andrea; McCabe, Janet; Keith, Jennie |
| **Cc:** | Atkinson, Emily |
| **Subject:** | RE: textbook contribution question |
| **Date:** | Friday, August 06, 2021 2:01:00 PM |

Any career employee will be subject to the outside activity rules at 5 CFR 2635.803 and EPA's supplemental rules at 5 CFR 6401.103. They should consult with their own deputy ethics officials.

---

**From:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>
**Sent:** Friday, August 6, 2021 1:54 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: textbook contribution question

Also if you wouldn't mind opining on whether there are any ethics issues for EPA career employees, like Jenna, to participate in this effort. I got the impression that it was more than just Janet and Jenna. The asks that went to career employees were completely separate from, and not related to, Janet's ask. At least to my knowledge.

Thanks!

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Friday, August 06, 2021 1:04 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** textbook contribution question

Hi Justina and Jennie, I have a question for you about a project I honestly forgot I had said yes to quite a while ago, way before I was nominated and rejoined EPA. A professor at Indiana University , whom I've known for many many years including way before I worked at IU, recently retired from IU, is writing a textbook on environmental management geared towards students interested in the public sector. He asked me whether I would be willing to provide on the order of a page worth of observations on what public environmental officials look for in staff environmental managers. What skills are the most valuable for good candidates for these positions and to be successful in them. In the past I've spoken to his class as many times generally around this sort of topic. As I said, I agreed to do this months and months ago and had forgotten about it until I was reminded buy a note from Jenna Larkin, who evidently was also invited to contribute to this project. So my question for you is whether it's OK for me to contribute a short piece for Professor Lame to include in his textbook. Please let me know what other information you need. I of course would not work on this on "worktime" , but I realize with respect to my position the concept of work time is fluid.

Thanks,
Janet

Janet G. McCabe
Deputy Administrator
U.S. Environmental Protection Agency
WJC-N Room 3406, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-4711
Email: mccabe.janet@epa.gov

| | |
|---|---|
| **From:** | McCabe, Janet |
| **To:** | Fugh, Justina; Keith, Jennie |
| **Cc:** | Drinkard, Andrea; Atkinson, Emily |
| **Subject:** | RE: textbook contribution question |
| **Date:** | Friday, August 06, 2021 3:59:58 PM |

Not to worry. And, just to let you know—I just said no to something else without even bothering you, because I knew what your answer would be!

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Friday, August 6, 2021 3:48 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: textbook contribution question

Sorry for the bad news, Janet.

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Friday, August 6, 2021 3:36 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: textbook contribution question

Thanks, Justina. Got it.

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Friday, August 6, 2021 2:00 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** RE: textbook contribution question

Janet,
As the Alternate Designated Agency Ethics Official, I may opine on your writing a letter of reference for one person, but the question of whether a PAS appointee may engage in any type of outside activity is addressed by the White House Counsel's Office. (b) (5) [redacted]
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Friday, August 6, 2021 1:04 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Atkinson, Emily <Atkinson.Emily@epa.gov>
**Subject:** textbook contribution question

Hi Justina and Jennie, I have a question for you about a project I honestly forgot I had said yes to quite a while ago, way before I was nominated and rejoined EPA. A professor at Indiana University , whom I've known for many many years including way before I worked at IU, recently retired from IU, is writing a textbook on environmental management geared towards students interested in the public sector. He asked me whether I would be willing to provide on the order of a page worth of observations on what public environmental officials look for in staff environmental managers. What skills are the most valuable for good candidates for these positions and to be successful in them. In the past I've spoken to his class as many times generally around this sort of topic. As I said, I agreed to do this months and months ago and had forgotten about it until I was reminded buy a note from Jenna Larkin, who evidently was also invited to contribute to this project. So my question for you is whether it's OK for me to contribute a short piece for Professor Lame to include in his textbook. Please let me know what other information you need. I of course would not work on this on "worktime" , but I realize with respect to my position the concept of work time is fluid.

Thanks,
Janet

Janet G. McCabe
Deputy Administrator
U.S. Environmental Protection Agency
WJC-N Room 3406, 1200 Pennsylvania Avenue NW
Washington, DC 20460
Voice: 202-564-4711
Email: mccabe.janet@epa.gov

| | |
|---|---|
| **From:** | Drinkard, Andrea |
| **To:** | Carpenter, Wesley; Keith, Jennie |
| **Cc:** | Atkinson, Emily; Shimkin, Martha; Holden, Allison; McCluney, Lance |
| **Subject:** | RE: TOMORROW: Gift Exchange between Janet McCabe and Virginia Governor |
| **Date:** | Tuesday, December 14, 2021 10:41:44 AM |

Thanks, team! This sounds like a great resolution.

---

**From:** Carpenter, Wesley <Carpenter.Wesley@epa.gov>
**Sent:** Tuesday, December 14, 2021 10:38 AM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Shimkin, Martha <Shimkin.Martha@epa.gov>; Holden, Allison <Holden.Allison@epa.gov>; McCluney, Lance <McCluney.Lance@epa.gov>
**Subject:** RE: TOMORROW: Gift Exchange between Janet McCabe and Virginia Governor

Thanks, Jennie. Lance McCluney and I have discussed the subject matter with Martha to see if the gifts can be returned to the vendor and repurchased with Representation Funds using a Government Purchase Card. Lance and Martha are working out the details at this time. We will keep everyone updated on the situation.

Wes

---

**From:** Keith, Jennie <Keith.Jennie@epa.gov>
**Sent:** Tuesday, December 14, 2021 10:29 AM
**To:** Carpenter, Wesley <Carpenter.Wesley@epa.gov>
**Cc:** Atkinson, Emily <Atkinson.Emily@epa.gov>; Drinkard, Andrea <Drinkard.Andrea@epa.gov>; Shimkin, Martha <Shimkin.Martha@epa.gov>; Holden, Allison <Holden.Allison@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Subject:** TOMORROW: Gift Exchange between Janet McCabe and Virginia Governor

Morning Wes,

Thank you for discussing this morning the gift exchange happening tomorrow in Richmond, VA between Janet McCabe and Ralph Northam. The outgoing chair of the Chesapeake Executive Council is the Virginia Governor and the incoming chair is the EPA Administrator. During the transition, there is a gift exchange between the outgoing and incoming chairs. Because of the number of members on the Council, this happens once every 10 years for EPA, and the event is happening in-person – so, we're all a bit rusty. As you know, Janet is traveling in the Administrator's place.

This circumstance seems to fit for the use of the Representation Funds. And so, OGC/Ethics turns this over to you, Wes, to pick up.

(b) (5) [redacted]

(b) (5) [redacted]

[redacted]

[redacted] When Janet returns to the office, please leave it at Janet's reception desk in the bay. Jennie will be in the office on Thursday and can come by to retrieve it and evaluate what the options there are for acceptance.

I have cc'd Allison Holden, appropriations rep fund advisor in OGC, for her awareness.

I hope this is helpful.

Thanks!
Jennie for OGC/Ethics

Jennie Keith | Ethics Officer | Office of General Counsel | US EPA | Mail Code 2311A | Room 4312 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-3412 | fax 202-564-1772

**From:** (b) (6) [redacted]
**To:** Fugh, Justina
**Subject:** RE: Your most recent note
**Date:** Friday, February 05, 2021 7:54:44 AM

---

Good. Agreed on all points.

-----Original Message-----
From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, February 4, 2021 11:53 PM
To: (b) (6) [redacted]
Subject: RE: Your most recent note

Ha! Sorry to be tardy in responding, but all is fine. I checked in with OGE, and we all agree that the activities below aren't reportable on the 278 since you serve in an advisory, non-fiduciary role only. But it's good for you to mention them all to me because I will have to think about them from an impartiality standpoint.
Cheers,
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

-----Original Message-----
From: (b) (6) [redacted]
Sent: Thursday, February 04, 2021 3:51 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: Your most recent note

Yes I got it thanks.

Now, please do not hate me. I got an email today that reminded me of another activity I'm involved in that I totally spaced (because it's minimal). In November 2019, I joined a committee that reviews applications for scholarships given by the Air Pollution Educational and Research Grant Scholarship Program, sponsored by the Midatlantic Section of the Air and Waste Management Association. No pay, not a board position, my only responsibilities are to review applications that come in from grad students interested in the scholarship once a year. So I don't think this would qualify as a "position"--it's like my work on the Indpls Womens Chorus revenue development committee. But I did want to mention it. And I would plan to drop off if confirmed.

Janet
-----Original Message-----
From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, February 4, 2021 10:23 AM
To: (b) (6) [redacted]
Subject: RE: Your most recent note

I re-sent it.

-----Original Message-----
From: Janet McCabe (b) (6) [redacted]
Sent: Thursday, February 04, 2021 7:49 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>

Subject: Your most recent note

Could you please resend it?  I was easing it on my phone and must have touched something, because I can’t find it now.
Sheesh,  thanks.

Sent from my iPhone

**From:** Janet McCabe
**To:** Fugh, Justina
**Subject:** [SPAM-Sender] Re: here is the note again (it's long, sorry!)
**Date:** Thursday, February 04, 2021 3:12:16 PM

Long is good.
The way to report the (b) (6) [redacted] looks fine to me.

Sent from my iPhone

On Feb 4, 2021, at 8:53 AM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

**From:** Fugh, Justina
**Sent:** Wednesday, February 03, 2021 11:23 PM
**To:** (b) (6) [redacted]
**Subject:** RE: last step to preclearance!

Hi Janet,

(b) (6) [redacted]

[redacted] (b) (5) (A), (b) (6) [redacted]

Moving to the EA, you will be subject to the impartiality restrictions as well as the Biden ethics pledge. Here's how the restrictions will work for you:

| FORMER EMPLOYER | BIDEN PLEDGE | IMPARTIALITY RULES |
|---|---|---|
| Indiana University – McKinney School of Law | Because IU is a state university, it is excluded from the additional restrictions under the Biden pledge. | For one year *from the date you leave IU*, you cannot work on any specific party matter with them unless you first obtain written authorization from an ethics official. You cannot, for example, accept an invitation to speak to them, cannot decide whether an IU professor serves as a representative on a FACA, cannot make any decisions or recommendations in any matter in which IU is a party or represents a party. |
| Indiana University - ERI | See above | See above |
| Indiana University – O'Neill School | See above | See above |
| Environmental Law and Policy Center | You served as an employee, officer or director, so ELPC will be off limits to you for two years *from the date of appointment* (not when you leave IU). *See* Executive Order 13,989, section 1, paragraph 2. You will not be permitted to work as part of official duty on any particular matter in which ELPC is a party or represents a party, which means: not participating in any lawsuit in which ELPC is a party or intervenor; not reviewing any *amicus* brief they filed; not reviewing any comment on a rulemaking they files; and not accepting any invitation to speak to ELPC. As made clear under the pledge at Section 2, paragraph (j), you cannot attend any meeting at which ELPC is present or have any communication with ELPC unless the subject matter is a matter of general applicability and the meeting is "open to all interested parties," which means at least four others representing diverse interests. You will need a waiver from the White House to engage with ELPC before the two year period ends. | Superseded by the Biden pledge restrictions |

| | | |
|---|---|---|
| | Did you provide consulting or legal services to any clients of the ELPC in the past two years? If so, they will also be on your recusal list for two years going forward, just like ELPC. | |
| Duke Energy Indiana Advisory Council | If you served in a fiduciary role, then the same concerns under the pledge as for the ELPC. If you served in an unpaid position as a member of the advisory board, then the same concern as for IU. | If fiduciary, then subject to the Biden pledge. If non-fiduciary, then subject to the impartiality rules. |

Hope this helps,

Justina

Justina Fugh | Director, Ethics Office | Off ce of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Wash ngton, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** (b) (6) [redacted]
**Sent:** Wednesday, February 03, 2021 9:27 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc** (b) (6) [redacted]
**Subject:** RE: last step to preclearance!

Justina—sorry it took me until now to get back to you, but I wanted to check everything on the 278 again and I need to note a few things.

**278**

Since we are now in February, (b) (6) [redacted].

(b) (6) [redacted] I'm sorry I missed that one before.

Everything else looks good. (b) (6) [redacted]

Let's hope this doesn't go another month, or I'll have to update everything again!

**Letter**

This looks fine.

The second paragraph on p. 2 says I have to recuse from "particular matters involving specific parties involving my former employer or former clients for a period of two years after I am appointed." Just to clarify, does that mean that I must recuse from any matter in which Environmental Law and Policy Center is a participant (e g. has signed on to a lawsuit or commented on a rule or any other involvement) until two years from August 2019 when I stopped working for ELPC? Can I not talk to anyone from ELPC about anything until two years has passed? With respect to IU, am I right that I could accept a speaking engagement there (I suspect I will be asked). I would recuse myself from any decisions about IU getting grants or contracts with EPA. Would I need to recuse myself if IU faculty or staff are candidates for FACAs (I don't know whether I'd be in the decision chain for these things anyway)? This is all fine with me, just making sure I think it through.

I think that's it.

Thanks again for all your help.

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Wednesday, February 3, 2021 4:47 PM
**To:** (b) (6) [redacted]
**Subject:** RE: last step to preclearance!

(b) (5) [redacted] ... something like this okay?

(b) (5) [redacted]

---

**From:** (b) (6) [redacted]
**Sent:** Wednesday, February 03, 2021 9:58 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: last step to preclearance!

I will plan to include it in my resignation letter to O'Neill just in case, so feel free to put it in the letter if you want.

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Wednesday, February 3, 2021 8:32 AM
**To:** Janet McCabe <(b) (6) [redacted]
**Subject:** Re: last step to preclearance!

I will flag it for OGE just to be sure.

Sent from my iPhone

> On Feb 2, 2021, at 11:09 PM, Janet McCabe <(b) (6) [redacted] wrote:
>
> Right—that's why I didn't think of it before.
>
> Sent from my iPhone
>
> > On Feb 2, 2021, at 10:12 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

(b) (6) [redacted]

**From:** (b) (6) [redacted]
**Sent:** Tuesday, February 02, 2021 10:10 PM
**To:** Fugh, Justina <Fugh Justina@epa.gov>
**Subject:** RE: last step to preclearance!

You DO work late!

Here's one thing I thought of when reading (b) (6), (b) (5) [redacted] ? Sorry I'm just thinking of this now.

Janet

---

**From:** Fugh, Justina <Fugh.Justina@epa gov>
**Sent:** Tuesday, February 2, 2021 10:05 PM
**To:** (b) (6) [redacted]
**Subject:** RE: last step to preclearance!

Yes, indeed: careful, thoughtful reading is in order!

---

**From:** (b) (6) [redacted]
**Sent:** Tuesday, February 02, 2021 10:05 PM
**To:** Fugh, Justina <Fugh Justina@epa.gov>
**Subject:** RE: last step to preclearance!

Hi Justina—thank you for all of this. I have read it over quickly, but want to read it more slowly in the light of day tomorrow, if that's all right. I assume I should go back into Integrity to do a final review of the financial disclosures? Be back to you soon.

Janet

---

**From:** Fugh, Justina <Fugh.Justina@epa gov>
**Sent:** Tuesday, February 2, 2021 9:24 PM
**To:** Janet McCabe <(b) (6) [redacted]
**Subject:** last step to preclearance!

Hi Janet,

We have finished the preliminary vetting of your documents so now I need you to put eyes on your ethics agreement and to review your nominee report personally. We need your affirmation that the report is accurate and that you have read the ethics agreement. Do not make any changes to the report or to the agreement. If you notice an error, then let me know but don't correct it yourself.

Your tasks:

1. Attached is your ethics agreement. Please read it and affirm that you will be able to meet its requirements. Don't sign it yet; again, this is an "eyes only" exercise; and
2. Set forth below are the material representations upon which EPA and OGE are relying. Please review them and let me know immediately if anything is incorrect but (and this is important) don't make any changes to the report itself. Just tell me what the error is.

- You have personally reviewed all entries in the current version of the financial disclosure report and have affirmed that they are correct;
- For Part 1 and Part 4, you provided information covering the entire reporting period of January 1, 2019, to the date of signing;
- For Part 2, Part 5, Part 6 and Part 8, you provided information covering the entire reporting period of January 1, 2020 to the date of signing;
- You have chosen to (b) (6) [redacted] If you want to remove it from the report, please let me know and we'll do so; and
- The ethics agreement correctly describes all items addressed in the agreement. Further, you understand the commitments that you are making to the Senate and will be able to fulfill these commitments within the stated timeframes.

After I hear back from you, we will enter the preclearance stage, and I will notify you that it's time to sign and date the documents (again, not now). After that happens, OGE will forward your materials to the White House and then onto the Senate Environment and Public Works Committee. Once a confirmation hearing is set, I may have to ask you to sign one more document, which is called the "5 day letter." In that letter, you will need to update your salary amount from what you have in the nominee report.

Finally, here are my proposed answers for your SEPW questionnaire:

**Potential conflicts of interest:**

1 Describe any financial or deferred compensation agreements or other continuing of interest: dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated

NONE

2 List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated

NONE

3 Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated

(b) (5) [redacted]

4 Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items

(b) (5) [redacted]

5 Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them For this purpose, you may utilize a statement by the relevant agency Ethics Officer

(b) (5) [redacted]

Cheers,

Justina

Just na Fugh | D rector, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

Mr. James Payne
Designated Agency Ethics Official and
Deputy General Counsel for Environmental Media and
Regional Law Offices
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Mr. Payne:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Deputy Administrator for the United States Environmental Protection Agency. It is my responsibility to understand and comply with commitments outlined in this agreement.

SECTION 1 – GENERAL COMMITMENTS

As required by the criminal conflicts of interest law at 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the particular matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me:

- Any spouse or minor child of mine;
- Any general partner of a partnership in which I am a limited or general partner;
- Any organization in which I serve as an officer, director, trustee, general partner, or employee; and
- Any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

In the event that an actual or potential conflict of interest arises during my appointment, I will consult with an agency ethics official and take the measures necessary to resolve the conflict, such as recusal from the particular matter or divestiture of an asset.

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the regulatory exemption for diversified mutual funds and unit investment trusts at 5 C.F.R. § 2640.201(a), or obligations of the United States.

I will receive a live ethics briefing from a member of the ethics office after my confirmation but not later than 15 days after my appointment pursuant to the ethics program regulation at 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will submit my Certification of Ethics Agreement Compliance which documents my compliance with this ethics agreement.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order No. 13989) and that I will be bound by it. Among other obligations, I will be required to recuse from particular matters involving specific parties involving my former employer or former clients for a period of two years after I am appointed, with the exception of states and local governments.

I will not modify this ethics agreement without your approval and the approval of the U.S. Office of Government Ethics pursuant to the ethics agreement requirements contained in the financial disclosure regulation at 5 C.F.R. § 2634.803(a)(4).

SECTION 2 – RETENTION OF POSITIONS AS TRUSTEE

I will retain my position as a trustee of Family Trust #1 and as trustee of my own revocable trust. I will not receive any fees for the services that I provide as a trustee during my appointment to the position of Deputy Administrator. I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of Family Trust #1 or my own trust, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

SECTION 3 – RESIGNATIONS

Upon confirmation, I will resign from the following positions with Indiana University:

- a professor of practice at the McKinney School of Law
- Director of the Environmental Resilience Institute
- O'Neill School of Public and Environmental Affairs Deans Council

Pursuant to the impartiality regulation at 5 C.F.R. § 2635.502, for a period of one year after my resignation, I will not participate personally and substantially in any particular matter involving specific parties in which I know Indiana University is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

SECTION 4 – SPOUSAL EMPLOYMENT

My spouse is employed by Indiana Legal Services, Inc. in a position for which he receives a fixed annual salary and a bonus tied to his performance. Pursuant to the impartiality regulation at 5 C.F.R. § 2635.502, for as long as my spouse continues to work for Indiana Legal Services, Inc., I will not participate personally and substantially in any particular matter

involving specific parties in which I know Indiana Legal Services, Inc. is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

SECTION 4 – PUBLIC POSTING

I have been advised that this ethics agreement and the Certification of Ethics Agreement Compliance will be posted publicly, consistent with the public information law at 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,

Janet G. McCabe

cc: Justina Fugh, Alternate Designated Agency Ethics Official, US EPA

| | |
|---|---|
| **From:** | Fugh, Justina |
| **To:** | McCabe, Janet |
| **Subject:** | RE: Biden Ethics Pledge for digital signature signed.pdf |
| **Date:** | Friday, April 30, 2021 2:37:00 PM |
| **Attachments:** | Ethics Agreement signed 2.5.21.docx |

Hi Janet,
On the ethics agreement certification, #4 is "If I have a managed account or use the services of an investment professional, I have notified the manager or professional of the limitations included in my ethics agreement. In addition, I am continuing to monitor purchases." I understand that you've indicated to her that you want to remain invested only in diversified mutual funds and that doing so will allow you to meet your financial ethics obligations. Attached is the document for you to send to her and then you can check off YES for this section.
Thanks!
Justina

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Friday, April 30, 2021 1:28 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: Biden Ethics Pledge for digital signature signed.pdf

For question 4, we actually do have a professional who advises us on our investments. She is aware of my financial ethics obligations, but I don't know if I have provided her exactly the right document(s) called for in this agreement. If you direct me to the right one, I will send it to her today.

Thanks, Justina.

Janet

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Friday, April 30, 2021 1:24 PM
**To:** McCabe, Janet <McCabe.Janet@epa.gov>
**Subject:** RE: Biden Ethics Pledge for digital signature signed.pdf

Thanks for the signed pledge! Now you can attack that ethics agreement certification!

---

**From:** McCabe, Janet <McCabe.Janet@epa.gov>
**Sent:** Friday, April 30, 2021 1:21 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Biden Ethics Pledge for digital signature signed.pdf

Here you go.

Janet

# ETHICS PLEDGE

I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. *Lobbyist Gift Ban*. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

2. *Revolving Door Ban — All Appointees Entering Government*. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

3. *Revolving Door Ban — Lobbyists and Registered Agents Entering Government*. If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 *et seq*., or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 *et seq*., within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

   (a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;

   (b) participate in the specific issue area in which that particular matter falls; or

   (c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.

4. *Revolving Door Ban — Appointees Leaving Government*. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.

5. *Revolving Door Ban — Senior and Very Senior Appointees Leaving Government*. If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections' implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.

6. *Revolving Door Ban — Appointees Leaving Government to Lobby*. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.

7. *Golden Parachute Ban*. I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.

8. *Employment Qualification Commitment*. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.

9. *Assent to Enforcement*. I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Personnel," issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.

McCabe, Janet Digitally signed by McCabe, Janet Date: 2021.04.30 13:19:42 -04'00'

Signature

April 30, 2021

Date

Name (Type or Print): Janet McCabe

**From:** Fugh, Justina
**To:** Janet McCabe
**Subject:** RE: Hello from EPA Ethics!
**Date:** Friday, January 22, 2021 10:04:00 AM

---

Hi Janet,
The questions in the email are from the 278 itself, so you can deal with those when you tackle the form. And don't worry about answering the detailed ones … we can do that orally when we talk on the phone next week. The Office of Government Ethics (OGE) will just want to know the answers, not see them in writing.
You may not remember the process of nomination (and there is no reason to spend any memory cells trying), but here's what I do for you:

- Finalize your nominee financial disclosure report and get OGE to pre-clear it
- Draft your ethics agreement and get OGE to pre-clear that too
- Provide you with language for the ethics questions of the SEPW questionnaire

Once your paperwork is precleared, OGE will send it to the White House, and then the President will issue his formal intent to nominate. I'll be notified to ask you to submit your nominee report and to sign the ethics agreement (you don't sign anything before then). I'll transmit your package formally to OGE to go to SEPW.
I've got to get a dog to the vet Monday morning but am free in the afternoon and am working all next week. Happy to talk anytime!
Cheers,
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Janet McCabe [redacted] (b) (6)
**Sent:** Friday, January 22, 2021 9:56 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Re: Hello from EPA Ethics!
Working on it. Do you want answers to your questions below before I do the detailed ones?
And could we schedule a time next week to talk on the phone about any 278 questions and other things?

Sent from my iPhone

> On Jan 22, 2021, at 8:52 AM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:
>
> Hi Janet –
> Glad we connected, and I'll use this email address to correspond with you.
> Cheers,
> Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Janet McCabe (b) (6) [redacted]
**Sent:** Thursday, January 21, 2021 11:34 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Re: Hello from EPA Ethics!

Hi Justina—it's so very nice to hear from you!! I'm using my (b) (6) [redacted] here—the one you used , reasonably, I set up just for the purpose of the integrity system, so I don't check it regularly for incoming notes. If you could use this address in the future, it will help me be more prompt in responding.
I will dig into your questions and the form tomorrow.
Again, so lovely to hear from you.

Sent from my iPhone

> On Jan 20, 2021, at 8:58 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:
>
> Hi Janet,
> How lovely to get your nominee report already! I've reviewed it and made some corrections such as providing the whole name of various funds and the stock ticker symbols. Of course, I have any number of pesky questions that are embedded in the form and, just to be sure you've addressed all of your assets, here are more questions:
>
> - For Part 1 and Part 4, did you provide information covering the entire reporting period of January 1, 2019 to January 20, 2021?
> - For Part 2, Part 5, Part 6, and Part 8, did you provide information covering the entire reporting period of January 1, 2020 to January 20, 2021?
> - (b) (6), (b) (5) [redacted]
> - [redacted]
> - [redacted]
> - [redacted]
> - [redacted]

(b) (6), (b) (5) [redacted]

I don't yet know who your designee is, but I'll be happy to chat with you and that person if you want to get your nominee report and your ethics agreement squared away. I can also help you answer the ethics questions for your SEPW questionnaire.

Welcome back!

justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Fugh, Justina
**To:** (b) (6) [redacted]
**Subject:** RE: it"s weird, but Integrity says the report is still with you
**Date:** Friday, February 05, 2021 6:08:00 PM

---

No, it was super useful for us to hear where you got stuck. We don't see the form from the user's perspective, so we didn't know that you got a "sign" button. Knowing more clearly what you see will allow us to guide the nominees in the future for what to do!

**From:** (b) (6) [redacted]
**Sent:** Friday, February 05, 2021 5:19 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: it's weird, but Integrity says the report is still with you
I was tempted to ask what the hardest question was, but I felt bad enough wasting your time on my incompetence!

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Friday, February 5, 2021 5:15 PM
**To:** (b) (6) [redacted]
**Subject:** RE: it's weird, but Integrity says the report is still with you
All fine! Monica says she was "blushing" when I brought up her Jeopardy! win, but I think it's just amazing!

**From:** [redacted]
**Sent:** Friday, February 05, 2021 5:12 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: it's weird, but Integrity says the report is still with you
So in the flurry of emails this afternoon, this is one I missed. D'oh! So sorry to put you and Monica to extra trouble.

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Friday, February 5, 2021 1:41 PM
**To:** (b) (6) [redacted]
**Subject:** it's weird, but Integrity says the report is still with you
Hi,
Can you try to go into the report again? Look at the left hand menu bar to the "submit report" words and click on that. Wait for that page to load then scroll down to the attestation paragraph. Click on the "acknowledgment" button and that will activate the button for submission.
Thanks,
Justina
Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** (b) (6) [redacted]
**Sent:** Friday, February 05, 2021 12:48 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>

**Subject:** RE: TIME TO SIGN!

I just went into Integrity and clicked SIGN. That seems to be all I needed to do. is that right? please let me know if there's anything else.

Thanks!

Janet

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>

**Sent:** Friday, February 5, 2021 10:26 AM

**To:** (b) (6) [redacted]

**Subject:** TIME TO SIGN!

Hi Janet,

You have been precleared and nominated already, so now you have to go into INTEGRITY to sign your nominee report. That will allow me to certify the report. Also, please sign the attached ethics agreement and send that to me via email. I've attached a pdf version for you to sign digitally and, in case that doesn't work for you, I've also attached a Word file.

Don't forget that I sent you language to insert into your SEPW questionnaire to address the ethics questions. Once your confirmation hearing date is set, I'll send you the "five day" letter for EPA and you to send to SEPW that updates your income from what's reported in the nominee report.

GOOD LUCK!

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Fugh, Justina
**To:** (b) (6) [redacted]
**Subject:** RE: last pesky questions (I hope)
**Date:** Monday, February 01, 2021 10:12:00 PM

---

Sorry about the (b) (6) [redacted]. I worried about that. I'll fix it!

**From:** (b) (6) [redacted]
**Sent:** Monday, February 01, 2021 10:02 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: last pesky questions (I hope)
My IU email address crept in to this exchange (my fault), so I am excising it here….
Above the yellow line in your note below, all good.
Below the yellow line, please see my answers in red. All good except for one big error.
Let me know if there are questions.

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Monday, February 1, 2021 9:20 PM
**To:** (b) (6) [redacted]
**Cc:** McCabe, Janet G <(b) (6) [redacted]
**Subject:** RE: last pesky questions (I hope)

Hi Janet,

So very close now!

- For your ethics agreement, (b) (6), (b) (5) [redacted]
- (b) (6), (b) (3) (A) [redacted]
- [redacted]
- [redacted]

[redacted]

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

(b) (6) [redacted]

Again, attached is the pdf of your latest version of your nominee report.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** (b) (6) [redacted]
**Sent:** Monday, February 01, 2021 8:38 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** McCabe, Janet G (b) (6) [redacted]
**Subject:** RE: last pesky questions (I hope)

(b) (5), (b) (6) [redacted]

- [redacted]

- [redacted]

Please let me know if these answers are what you need.

Janet

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Monday, February 1, 2021 2:51 PM
**To:** Janet McCabe (b) (6) [redacted]
**Subject:** last pesky questions (I hope)

Hi Janet,

We are really close to getting your nominee report and ethics agreement pre-cleared. I just need to confirm a few points with you:

- Is this statement for your ethics agreement correct?
  - (b) (5), (b) (6) [redacted]
- On your nominee report:

- (b) (6) [redacted]
- [redacted]
    - [redacted]
    - [redacted]
- [redacted].

I've attached a pdf of the most recent version of your nominee report for your review if you don't want to open INTEGRITY again.

Cheers,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** (b) (6) [redacted]
**To:** Fugh, Justina
**Subject:** RE: last step to preclearance!
**Date:** Wednesday, February 03, 2021 9:28:06 PM

---

Super helpful. We won't let it be a month, but nice to know it isn't instantaneous.

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Wednesday, February 3, 2021 9:25 PM
**To:** (b) (6) [redacted]
**Subject:** RE: last step to preclearance!

Hi Janet,

I suppose it doesn't have to be instantaneous but it oughtn't be leisurely either. What happens is that the nominee goes through confirmation, gets voted upon by the Senate, and then becomes the designee. There can be a period of time for the designee to disengage prior to being sworn in. I seem to recall that there were a couple of weeks (almost a month?) between Michelle DePass's confirmation and her swearing in as Assistant Administrator.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** (b) (6) [redacted]
**Sent:** Wednesday, February 03, 2021 5:11 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: last step to preclearance!

Oh here's a question I got asked by my ERI staff today.

When I commit to resign upon confirmation, is that instantaneous, or as of the end of that workday or some (presumably slightly) longer period?

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Wednesday, February 3, 2021 4:47 PM
**To** (b) (6) [redacted]
**Subject:** RE: last step to preclearance!

(b) (5) [redacted] something like this okay?

(b) (5) [redacted]

---

**From:** (b) (6) [redacted]
**Sent:** Wednesday, February 03, 2021 9:58 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: last step to preclearance!

I will plan to include it in my resignation letter to O'Neill just in case, so feel free to put it in the letter if you want.

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>

**Sent:** Wednesday, February 3, 2021 8:32 AM
**To:** Janet McCabe <(b) (6) [redacted]
**Subject:** Re: last step to preclearance!
I will flag it for OGE just to be sure.

Sent from my iPhone

> On Feb 2, 2021, at 11:09 PM, Janet McCabe (b) (6) [redacted] wrote:
>
> Right—that's why I didn't think of it before.
>
> Sent from my iPhone
>
> > On Feb 2, 2021, at 10:12 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:
> >
> > (b) (6) [redacted]
> >
> > **From:** (b) (6) [redacted]
> > **Sent:** Tuesday, February 02, 2021 10:10 PM
> > **To:** Fugh, Justina <Fugh.Justina@epa.gov>
> > **Subject:** RE: last step to preclearance!
> > You DO work late!
> > Here's one thing I thought of when reading (b) (6), (b) (5) [redacted] ? Sorry I'm just thinking of this now.
> > Janet
> >
> > **From:** Fugh, Justina <Fugh.Justina@epa.gov>
> > **Sent:** Tuesday, February 2, 2021 10:05 PM
> > **To:** (b) (6) [redacted]
> > **Subject:** RE: last step to preclearance!
> > Yes, indeed: careful, thoughtful reading is in order!
> >
> > **From:** (b) (6) [redacted]
> > **Sent:** Tuesday, February 02, 2021 10:05 PM
> > **To:** Fugh, Justina <Fugh.Justina@epa.gov>
> > **Subject:** RE: last step to preclearance!
> > Hi Justina—thank you for all of this. I have read it over quickly, but want to read it more slowly in the light of day tomorrow, if that's all right. I assume I should go back into Integrity to do a final review of the financial disclosures?

Be back to you soon.
Janet

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Tuesday, February 2, 2021 9:24 PM
**To:** Janet McCabe (b) (6) [redacted]
**Subject:** last step to preclearance!

Hi Janet,

We have finished the preliminary vetting of your documents so now I need you to put eyes on your ethics agreement and to review your nominee report personally. We need your affirmation that the report is accurate and that you have read the ethics agreement. Do not make any changes to the report or to the agreement. If you notice an error, then let me know but don't correct it yourself.

Your tasks:

1. Attached is your ethics agreement. Please read it and affirm that you will be able to meet its requirements. Don't sign it yet; again, this is an "eyes only" exercise; and
2. Set forth below are the material representations upon which EPA and OGE are relying. Please review them and let me know immediately if anything is incorrect but (and this is important) don't make any changes to the report itself. Just tell me what the error is.

- You have personally reviewed all entries in the current version of the financial disclosure report and have affirmed that they are correct;
- For Part 1 and Part 4, you provided information covering the entire reporting period of January 1, 2019, to the date of signing;
- For Part 2, Part 5, Part 6 and Part 8, you provided information covering the entire reporting period of January 1, 2020 to the date of signing;
- You have chosen to (b) (6) [redacted]. If you want to remove it from the report, please let me know and we'll do so; and
- The ethics agreement correctly describes all items addressed in the agreement. Further, you understand the commitments that you are making to the Senate and will be able to fulfill these commitments within the stated timeframes.

After I hear back from you, we will enter the preclearance stage, and I will notify you that it's time to sign and date the documents (again, not now). After that happens, OGE will forward your materials to the

White House and then onto the Senate Environment and Public Works Committee. Once a confirmation hearing is set, I may have to ask you to sign one more document, which is called the "5 day letter." In that letter, you will need to update your salary amount from what you have in the nominee report.

Finally, here are my proposed answers for your SEPW questionnaire:

**Potential conflicts of interest:**

1. Describe any financial or deferred compensation agreements or other continuing of interest: dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

NONE

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest, or the appearance of conflicts of interest, with the position to which you have been nominated.

NONE

3. Describe any business relationship, dealing or financial transaction (other than taxpaying) which you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest, or an appearance of conflict of interest, with the position to which you have been nominated.

(b) (5) [redacted]

4. Explain how you will resolve any potential conflict of interest, or appearance of a conflict of interest, that may be disclosed by your responses to the above items.

(b) (5) [redacted]

(b) (5) [redacted].

5. Explain how you will comply with conflict of interest laws and regulations applicable to the position for which you have been nominated. Attach a statement from the appropriate agency official indicating what those laws and regulations are and how you will comply with them. For this purpose, you may utilize a statement by the relevant agency Ethics Officer.

(b) (5) [redacted]

Cheers,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Fugh, Justina
**To:** (b) (6) [redacted]
**Subject:** RE: You need to start over (sorry!)
**Date:** Friday, February 05, 2021 4:16:00 PM

---

For the ethics agreement, just send me the last page with your signature. I'll put it together with the other pages (if you trust me). I'm talking to OGE now to see if we can solve the signature problem.

**From:** (b) (6) [redacted]
**Sent:** Friday, February 05, 2021 4:10 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: You need to start over (sorry!)

Here's where I am.

I can't figure out how to do the digital signature because it calls for a PIN or PW that I don't have and don't know how to get.

I have signed and scanned the letter but my scanner only does one page at a time, and I can't recombine the three pages into one document with the software I have. Shall I send you the three separate pages?

On Integrity, when I hit Send, the page below comes up. It does not seem to change no matter how long I look at it, and has nothing for me to click to move through to something else.

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Friday, February 5, 2021 3:11 PM
**To:** Janet McCabe <(b) (6) [redacted]
**Subject:** You need to start over (sorry!)

Hi Janet,

Unfortunately, the Office of Government Ethics will not accept the Word file with your pdf signature affixed. They insist on a digital signature or your actual signature on hard copy that is then scanned into a pdf. Also, I can't access your nominee report. It appears to still be pending

with you. Can you go into it again? Look at the left hand menu bar to the “submit report” words and click on that. Wait for that page to load then scroll down to the attestation paragraph. Click on the “acknowledgment” button and that will activate the button for submission.

Thanks,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Fugh, Justina

**Sent:** Friday, February 05, 2021 10:26 AM

**To:** Janet McCabe <(b) (6) [redacted]

**Subject:** TIME TO SIGN!

Hi Janet,

You have been precleared and nominated already, so now you have to go into INTEGRITY to sign your nominee report. That will allow me to certify the report. Also, please sign the attached ethics agreement and send that to me via email. I’ve attached a pdf version for you to sign digitally and, in case that doesn’t work for you, I’ve also attached a Word file.

Don’t forget that I sent you language to insert into your SEPW questionnaire to address the ethics questions. Once your confirmation hearing date is set, I’ll send you the “five day” letter for EPA and you to send to SEPW that updates your income from what’s reported in the nominee report.

GOOD LUCK!

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

# EPA Deputy Administrator Event Information Form

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

## Basic Background

| | |
|---|---|
| Event official title: | *Aspen-Nicholas Water Forum* |
| Event host(s)/organizer(s): | *Aspen Institute, Duke Nicholas School of the Environment, US Water Alliance, Environmental Innovation Policy Center* |
| Event date (flexible?): | *Tuesday, October 19th (preferred), but flexible to schedule the keynote address on Wednesday, October 20th or Thursday, October 21st* |
| Time, duration, and time zone of event: | *Tuesday, October 19th from 1:00-4:00pm EDT, Wednesday, October 20th from 1:00-4:00pm EDT, Thursday, October 21st from 1:00-4:00pm EDT* |
| **Deadline for acceptance:** | ***As soon as possible*** |
| Will you accept a surrogate? | *Yes* |
| Event location and physical address: | *Virtual* |
| Type of event: | *Virtual roundtable discussion* |
| Host(s) relationship to the EPA? | *Radhika Fox formerly co-chaired the Forum in her role at the U.S. Water Alliance* |
| Event sponsor(s): | *Spring Point, Xylem, Cynthia and George Mitchell Foundation, ESRI, Van Ness Feldman, Innovyze, Water Research Foundation* |

## Event Description and Role of the EPA Official

| | |
|---|---|
| Purpose of event: | *The purpose of the Aspen-Nicholas Water Forum focused on Water Affordability and Equity is to convene the nation's leading water thinkers to provide feedback on a set of guiding principles and a policy agenda that together outline what affordable and equitable water access looks like and the specific practices, legislation, regulations, or executive orders necessary to advance this vision, specifically as they apply to state legislators, state agencies, and governors.* |
| Brochure/website/invitation/ and/or other event materials: | *https://web.cvent.com/event/35b6dc65-3586-4ecd-ab48-7118d0a099a7/summary* |
| Run of show/agenda: | *Attached* |
| Timing for EPA official's role: | *1:00pm through 2:00pm EDT* |
| Role of the EPA official at the event: | *Keynote speaker* |
| Requested presentation topic (if speaking): | *Water affordability and equity* |
| Requested presentation format: | *Keynote speaker* |
| Name and title of person introducing EPA official: | *Gregory Gershuny, Executive Director, Aspen Institute Energy and Environment Program* |

# EPA Deputy Administrator Event Information Form

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

| | |
|---|---|
| Audience make up? | *The forum brings together approximately 60 of the nation's leading water thinkers, innovators, and decision makers ranging from community organizers, to investors to local, state and federal elected officials* |
| Event held weekly, monthly, annually? | *Annually* |

## Event Preparation

| | |
|---|---|
| Other EPA speakers? | *Radhika Fox, Principal Deputy Assistant Administrator for Water (to be confirmed)* |
| Does EPA need to submit materials prior to event? | *Brief biography, picture* |
| Expected prep and timing for prep calls or meetings: | *One hour* |
| Registration fee charged? How much? | *$150 – waived for speaker* |
| Describe entity hosting EPA official: | *Aspen Institute, 501(c)(3)* |
| Is the entity also a Federally Registered Lobbyist? | *No* |
| Are you giving a gift, award or anything else of value? Amount? | *No* |
| Are you providing a meal? Amount? | *No* |

## At the Event and Other Event Logistics

| | |
|---|---|
| Is there a private hold room available for the Administrator? | *No* |
| Open press/closed press? | *Closed* |
| Will you be issuing a press release? | *No* |
| Person to contact for media purposes: | *catherine.pollack@aspeninstitute.org* |

# EPA Deputy Administrator Event Information Form

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

| | |
|---|---|
| Dress code: | *Casual* |
| Room setup: | *Virtual Zoom meeting* |
| Notable/honorable guests attending (including elected officials): | *Details forthcoming upon confirmation* |
| Are you recording the event? Website URL for recording (if event is recorded and posted): | *Potentially, solely for notetaking purposes* |
| Security contact: | *N/A* |
| Directions to event (include relevant information about parking, the specific building, best entrance to use) | *N/A* |
| Where to meet contact: | *N/A* |

## Contact Information

| | |
|---|---|
| Your name and position: | *Catherine Pollack* |
| Phone (best & alternate): | *443-962-5152* |
| Email address: | *catherine.pollack@aspeninstitute.org* |
| Mailing address: | *Catherine Pollack, 2300 N St NW #700, Washington DC, 20037* |
| Are you the point-of-contact at the event? If not, contact details: | *Yes* |

*Please return this completed form to atkinson.emily@epa.gov and a copy to drinkard.andrea@epa.gov*

# EPA Deputy Administrator Event Information Form

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

## Basic Background

| | |
|---|---|
| Event official title: | *AISI Environment Committee Meeting* |
| Event host(s)/organizer(s): | *American Iron and Steel Institute (AISI)* |
| Event date (flexible?): | *Wednesday, June 2, 2021* |
| Time, duration, and time zone of event: | *1:00pm through 3:30pmEST* |
| **Deadline for acceptance:** | |
| Will you accept a surrogate? | |
| Event location and physical address: | *Virtual Meeting on MS Teams* |
| Type of event: | *Update on Environmental Policy for AISI environmental reps from U.S. steel companies* |
| Host(s) relationship to the EPA? | |
| Event sponsor(s): | *AISI* |

## Event Description and Role of the EPA Official

| | |
|---|---|
| Purpose of event: | *Update on Environmental Policy for AISI environmental reps from U.S. steel companies* |
| Brochure/website/invitation/ and/or other event materials: | *No materials* |
| Run of show/agenda: | *There is a series of speakers to run from 1pm to 3:30pm* |
| Timing for EPA official's role: | *Request is for 10 min overview of EPA's policy agenda (if the Deputy can do longer, 30 mins?, that would be great!) The request is for any time between 1:00-3:30pm EST on June 2.* |
| Role of the EPA official at the event: | *Request to have Deputy Administrator McCabe speak to our group* |
| Requested presentation topic (if speaking): | *Overview of EPA policy agenda.* |
| Requested presentation format: | *Brief presentation, no materials (slides or presentation materials) needed* |
| Name and title of person introducing EPA official: | *Paul Balserak, Vice President for Environment at AISI and/or Sean Alteri, Environmental Manager at Nucor Steel* |
| Audience make up? | *Approximately 30 environmental managers from steel producers in the United States.* |
| Event held weekly, monthly, annually? | *Three times a year* |

# EPA Deputy Administrator Event Information Form

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

## Event Preparation

| | |
|---|---|
| Other EPA speakers? | *Name and titles of EPA personnel*<br><br>*Possibly will have OAQPS staff person providing an overview of a New Source Performance Standard rule that addresses the steel industry.* |
| Does EPA need to submit materials prior to event? | *A brief bio would be helpful but not required* |
| Expected prep and timing for prep calls or meetings: | *NA* |
| Registration fee charged? How much? | *No* |
| Describe entity hosting EPA official: | *Steel industry trade association* |
| Is the entity also a Federally Registered Lobbyist? | *AISI does lobbying on behalf of the steel industry. Paul Balserak (VP at AISI, meeting contact) and also the participants at this meeting are NOT lobbyists, they are environmental managers at steel plants* |
| Are you giving a gift, award or anything else of value? Amount? | *No* |
| Are you providing a meal? Amount? | *No* |

## At the Event and Other Event Logistics

| | |
|---|---|
| Is there a private hold room available for the Administrator? | *NA* |
| Open press/closed press? | *CLOSED to the press* |
| Will you be issuing a press release? | *NO* |
| Person to contact for media purposes: | *NA* |
| Dress code: | *NA* |
| Room setup: | *Virtual meeting* |
| Notable/honorable guests attending (including elected officials): | *Highest ranking person would be the President and CEO of the American Iron and Steel Institute. No politicians any officials will be in attendance* |

# EPA Deputy Administrator Event Information Form

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

| | |
|---|---|
| Are you recording the event? Website URL for recording (if event is recorded and posted): | *No* |
| Security contact: | *NA* |
| Directions to event (include relevant information about parking, the specific building, best entrance to use) | *NA* |
| Where to meet contact: | *NA* |

## Contact Information

| | |
|---|---|
| Your name and position: | *Paul Balserak, Vice President, Environment, AISI* |
| Phone (best & alternate): | *703 969 1789* |
| Email address: | *pbalserak@steel.org* |
| Mailing address: | *25 Mass Ave, NW, Suite 800, Washington DC 20001* |
| Are you the point-of-contact at the event? If not, contact details: | *Yes* |

*Please return this completed form to atkinson.emily@epa.gov and a copy to drinkard.andrea@epa.gov*

# EPA Deputy Administrator Event Information Form

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

## Basic Background

| | |
|---|---|
| Event official title: | *State of the Coast 2021* |
| Event host(s)/organizer(s): | *The Water Institute of the Gulf, Louisiana Coastal Protection and Restoration Authority, Louisiana Sea Grant, Coalition to Restore Coastal Louisiana* |
| Event date (flexible?): | *Flexible – we would like to record on May 25, 2021* |
| Time, duration, and time zone of event: | *Flexible – we wish to air the recording during a virtual conference* |
| **Deadline for acceptance:** | |
| Will you accept a surrogate? | *No* |
| Event location and physical address: | *N/A virtual* |
| Type of event: | *Pre-recorded fireside chat with EPA Deputy Administrator and President/CEO of The Water Institute of the Gulf* |
| Host(s) relationship to the EPA? | *State of Louisiana* |
| Event sponsor(s): | *The Water Institute of the Gulf, Louisiana Coastal Protection and Restoration Authority, Louisiana Sea Grant, Coalition to Restore Coastal Louisiana* |

## Event Description and Role of the EPA Official

| | |
|---|---|
| Purpose of event: | *Educational conference for environmental practitioners* |
| Brochure/website/invitation/ and/or other event materials: | *https://www.stateofthecoast.org/* |
| Run of show/agenda: | *In development* |
| Timing for EPA official's role: | *Flexible – see above.* |
| Role of the EPA official at the event: | *Fireside chat participant* |
| Requested presentation topic (if speaking): | *Role of EPA as Chair of the Gulf Coast Ecosystem Restoration Council and EPA's mandate around environmental justice and stewardship* |
| Requested presentation format: | *Fireside chat* |
| Name and title of person introducing EPA official: | *Justin R. Ehrenwerth, President & CEO, The Water Institute of the Gulf* |
| Audience make up? | *2,000 scientists, landowners/managers, federal and state agency personnel, local officials, industry and business leaders, resource users, and interested citizens* |
| Event held weekly, monthly, annually? | *Biannually* |

# EPA Deputy Administrator Event Information Form

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

## Event Preparation

| | |
|---|---|
| Other EPA speakers? | *N/A* |
| Does EPA need to submit materials prior to event? | *No* |
| Expected prep and timing for prep calls or meetings: | *We recommend a 30-60 minute pre-brief which we could conduct day-of recording. We will share all questions in advance and would be happy to modify questions to ensure a productive dialogue.* |
| Registration fee charged? How much? | *No* |
| Describe entity hosting EPA official: | *501(c)(3) applied science organization based in Louisiana https://thewaterinstitute.org/* |
| Is the entity also a Federally Registered Lobbyist? | *No* |
| Are you giving a gift, award or anything else of value? Amount? | *No* |
| Are you providing a meal? Amount? | *No* |

## At the Event and Other Event Logistics

| | |
|---|---|
| Is there a private hold room available for the Administrator? | *N/A* |
| Open press/closed press? | *The conference is open but the recording and Deputy's engagement is limited to the fireside chat.* |
| Will you be issuing a press release? | *TBD* |
| Person to contact for media purposes: | *Justin Ehrenwerth* |
| Dress code: | *Business* |
| Room setup: | *We propose to film in the EPA studio* |
| Notable/honorable guests attending (including elected officials): | *Louisiana Governor John Bel Edwards, Marsha McNutt (National Academy of Science); Cedric Richmond (invited)* |

# EPA Deputy Administrator Event Information Form

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

| | |
|---|---|
| Are you recording the event? Website URL for recording (if event is recorded and posted): | *Yes: https://www.stateofthecoast.org/* |
| Security contact: | *N/A* |
| Directions to event (include relevant information about parking, the specific building, best entrance to use) | *N/A* |
| Where to meet contact: | *N/A* |

## Contact Information

| | |
|---|---|
| Your name and position: | *Ben Scaggs* |
| Phone (best & alternate): | *228-297-5770* |
| Email address: | *ben.scaggs@pathwyss.com*; (b) (6) [redacted] |
| Mailing address: | *1209 North Street, Jackson, Mississippi 39202* |
| Are you the point-of-contact at the event? If not, contact details: | *No; Justin Ehrenwerth, jehrenwerth@thewaterinstitute.org 412-389-1086* |

*Please return this completed form to atkinson.emily@epa.gov and a copy to drinkard.andrea@epa.gov*

# EPA ADMINISTRATOR EVENT INFORMATION FORM

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

## Basic Background

| | |
|---|---|
| Event official title: | 2021 Lancet Countdown U.S. Launch |
| Event host(s)/organizer(s): | *Harvard Global Health Institute, Lancet Countdown, American Public Health Association, Harvard C-CHANGE, and Climate Nexus* |
| Event date (flexible?): | *October 21, 2021 (not flexible)* |
| Time, duration, and time zone of event: | *12 pm to 1:30 pm EDT* |
| **Deadline for acceptance:** | ***October 15, 2021*** |
| Will you accept a surrogate? | *Potentially* |
| Event location and physical address: | *Virtual (Hopin) (Pre-recording is also a possibility)* |
| Type of event: | *Virtual briefing (live with pre-recorded segments)* |
| Host(s) relationship to the EPA? | *Public health and climate change organizations representing civil society and health professionals sharing EPA's commitment to protecting human health and the environment.* |
| Event sponsor(s): | *Harvard Global Health Institute, Lancet Countdown, American Public Health Association, Harvard C-CHANGE, and Climate Nexus (no fiscal sponsors)* |

## Event Description and Role of the EPA Official

| | |
|---|---|
| Purpose of event: | *The Lancet Countdown U.S. authors and American Public Health Association are hosting the 2021 Lancet Countdown U.S. launch event to celebrate the release of the Lancet Countdown: Tracking Progress on Health and Climate Change 2021 global report and U.S. Policy Brief.* |
| Brochure/website/invitation/ and/or other event materials: | *https://www.lancetcountdownus.org/2021-lancet-countdown-u-s-launch-event/* |
| Run of show/agenda: | *Draft agenda* |
| Timing for EPA official's role: | *12:03 pm to 12:08 pm EDT (time is flexible – can move the keynote to later in the schedule if necessary)* |
| Role of the EPA official at the event: | *Opening keynote speaker* |
| Requested presentation topic (if speaking): | *U.S. climate action for health and equity* |
| Requested presentation format: | *Keynote (live or pre-recorded)* |
| Name and title of person introducing EPA official: | *Renee N. Salas, MD, MPH, MS*<br>*Lead Author, 2021 Lancet Countdown on Health and Climate Change U.S. Brief*<br>*Yerby Fellow, Center for Climate, Health, and the Global Environment at Harvard T.H. Chan School of Public Health* |

# EPA ADMINISTRATOR EVENT INFORMATION FORM

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

| | |
|---|---|
| | *Affiliated Faculty, Harvard Global Health Institute* |
| Audience make up? | *300-400 expected for live event (w /additional views of event recording). Audience will include policy makers, media, medical and health professionals, researchers, students, and members of the interested public.* |
| Event held weekly, monthly, annually? | *Annual event* |

## Event Preparation

| | |
|---|---|
| Other EPA speakers? | *n/a* |
| Does EPA need to submit materials prior to event? | *Picture for website and short biography for introduction please.* |
| Expected prep and timing for prep calls or meetings: | *n/a* |
| Registration fee charged? How much? | *none* |
| Describe entity hosting EPA official: | *501c3s and academic institutions* |
| Is the entity also a Federally Registered Lobbyist? | *The American Public Health Association (one of the hosting organizations) has two Federally Registered Lobbyists on staff, but those individuals are not hosts.* |
| Are you giving a gift, award or anything else of value? Amount? | *Honorarium provided for speakers as requested.* |
| Are you providing a meal? Amount? | *No* |

## At the Event and Other Event Logistics

| | |
|---|---|
| Is there a private hold room available for the Administrator? | *Yes – all speakers will be placed in a virtual backstage upon joining the Hopin platform.* |
| Open press/closed press? | *The event is open to press.* |
| Will you be issuing a press release? | *We will issue a media advisory to reporters about the event highlighting event speakers, including Administrator Regan.* |
| Person to contact for media purposes: | *Liz Purchia, Communications Director, lizpurchia@hsph.harvard.edu, 315-794-6943.* |

# EPA ADMINISTRATOR EVENT INFORMATION FORM

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

| | |
|---|---|
| Dress code: | *Business* |
| Room setup: | *Computer microphone and camera* |
| Notable/honorable guests attending (including elected officials): | · *Dr. John Balbus, Interim Director, Office of Climate Change and Health Equity (confirmed)*<br>· *Renee N. Salas, MD, MPH, MS Lead Author 2021 Lancet Countdown U.S. Policy Brief (confirmed)*<br>· *Jeremy Hess, MD, MPH, Senior Author, 2021 Lancet Countdown U.S. Policy Brief (confirmed)*<br>· *Allison Crimmins, Director of the 5th National Climate Assessment, White House Office of Science and Technology Policy (confirmed)* |
| Are you recording the event? Website URL for recording (if event is recorded and posted): | *Yes. Recording will be posted after the event at https://www.lancetcountdownus.org/* |
| Security contact: | *n/a* |
| Directions to event (include relevant information about parking, the specific building, best entrance to use) | *virtual* |
| Where to meet contact: | *n/a* |

## Contact Information

| | |
|---|---|
| Your name and position: | *Paige Knappenberger, Lancet Countdown U.S. Author, Associate Director of Partnerships, Climate Nexus* |
| Phone (best & alternate): | *602-549-0344* |
| Email address: | *pknappenberger@climatenexus.org* |
| Mailing address: | *2912 Glenvale Drive Fairfax, VA 22031* |
| Are you the point-of-contact at the event? If not, contact details: | *Yes* |

*Please return this completed form to scheduling@epa.gov, and copy lance.kathleen@epa.gov*

CLIMATE LEADERSHIP CONFERENCE

presented by C2ES

The Climate Registry

March 16, 2021

Administrator Michael Regan
Environmental Protection Agency, Office of the Administrator
1200 Pennsylvania Avenue NW
Washington, DC 20460

**Re: Invitation to Speak at the 2021 Climate Leadership Exchange** *(virtual)*

Dear Administrator Regan,

On behalf of the CLC Steering Committee, we invite you to speak at the Climate Leadership Exchange on May 25th to address our audience of climate, energy, and sustainability professionals from diverse sectors across the country. Designed to sustain momentum and continue critical climate dialogue, we are excited to add this virtual event to our calendar as we look forward to hosting the 2021 conference and awards ceremony in New Orleans, October 13-15 (pushed out due to ongoing pandemic). In celebration of our 10th anniversary, these two events serve our community of climate leaders in their efforts to accelerate climate action throughout the coming year.

The Climate Leadership Conference (CLC) convenes sustainability thought leaders and decision-makers annually to address global climate change through policy, innovation, and business solutions. The first ever virtual Exchange will be an extension of this work with the intention of engaging our CLC audience in small-group discussions with opening and closing high level plenary presentations.

We invite you to participate as a keynote speaker, to the full audience, on what to expect from a Biden EPA (related to climate change):

> **Tuesday, May 25th** (ideally during the 2:30 – 3:30p ET plenary session)
>
> **time of day is flexible; if participation in the October conference is preferred, please let us know that too.*

For background on the Climate Leadership brand, our annual conference convenes around the prestigious Climate Leadership Awards and is produced by the Center for Climate and Energy Solutions (C2ES) and The Climate Registry (TCR). With the hope of a new, climate-friendly administration, we are even more enthused to support and

CLIMATE LEADERSHIP CONFERENCE

presented by C2ES

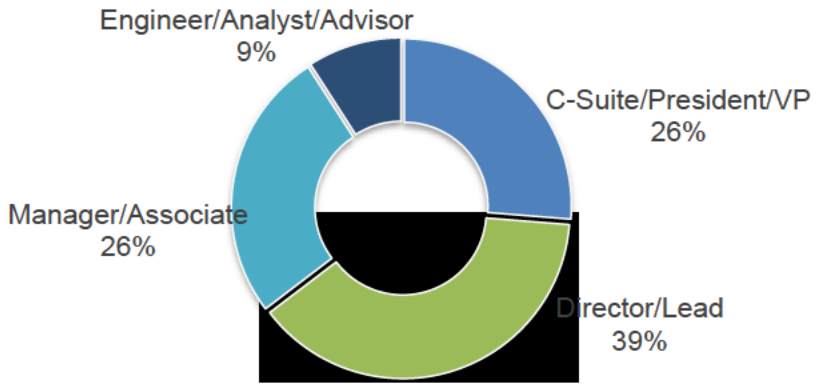
The Climate Registry

recognize climate action by businesses, organizations, states, local governments, and individuals to minimize the impact of our climate crisis.

Past speakers have included: Maryland Governor **Larry Hogan**, former EPA Administrator **Gina McCarthy,** UN Framework Convention on Climate Change Executive Secretary **Patricia Espinosa,** LafargeHolcim CEO for U.S. Cement, **Jamie Gentoso**, Exelon Corporation President and CEO **Chris Crane**, UPS Chief Sustainability Officer, **Suzanne Lindsay-Walker**, Denver Mayor **Michael Hancock,** Texas Tech University Professor and climate scientist, **Katharine Hayhoe**, Bank of America Global Environmental Executive **Alex Liftman**, veteran environmental leader **Carl Pope,** and former Colorado Governor **John Hickenlooper**, among many others.

The conference annually attracts influential sustainability professionals from the corporate (55%), government (20%), and nonprofit/academic (25%) sectors to hear, learn from, and engage with their peers addressing climate change in their work. Additional information about the conference, including who attends and our most recent program agenda (from 2020 event) can be found on the CLC website.

**Representative Audience**
**titles per 2020 event*




As a thought leader who we know will inspire new ideas and facilitate instrumental dialogue with the CLC audience, we look forward to your participation in the 2020 Climate Leadership Conference.

Thank you in advance for your consideration.

Best regards,

Bob Perciasepe

**Bob Perciasepe**
President
Center for Climate and Energy Solutions

Amy E. Holm

**Amy Holm**
Executive Director
The Climate Registry

RENAISSANCE WEEKEND®

RECEIVED
NOV - 3 2021
BY:

AMBASSADOR PHILIP LADER
LINDA LESOURD LADER
Co-Founders

October 27, 2021

Dear Dr. McCabe:

With encouraging public health projections, we hope you can join us, *with your Registration Fee waived,* at any of our upcoming Renaissance Weekends – invitation-only and non-partisan – in this, our 2022, 40th-anniversary year: New Year's in historic Charleston; Presidents' Day on Amelia Island, Florida; July 4th at Banff's parklands; Labor Day on Monterey Bay; or Autumn in Boston. . . . In recognition of your current work and significant contribution to the gathering's content and breadth, we would be pleased to waive the Registration Fee for you and your accompanying immediate family (including college-age or younger sons and daughters) at any 2021-22 Weekend. Lodging and the Meals-&-Meeting-Services Fee required by our host sites would be your responsibility.

We founded this tradition to help bridge some of our nation's many divides – professions, politics, race, religion, regions and generations – and to celebrate the transforming power of ideas and relationships. Consequently, significant ventures have been launched; public policies, personal practices and even careers influenced; long-held opinions modified. Enduring friendships, often unlikely, have been forged; several dozen marriages, too. Acts of kindness among "Renaissance friends" are seemingly endless.

Yet the fractiousness of American society is even more pervasive. That's why – after 145 Weekends – we continue on. For Renaissance's lectures, discussions and informal conversations, candor rules; commercialism is banned. Authoritative presentations; diverse perspectives; passionate, entirely off-the-record discussions. A culture which prompts "more light than heat." Civility. . . . "An island of sane discourse," in a prominent participant's view. "Rocks my brain, lifts my soul," some say.

*Who comes?* Experts, thought-leaders, distinguished professionals, rising stars, tomorrow's disrupters – across disciplines and generations. Innovators all. . . . *What's discussed?* Both critical issues of our time and ageless personal questions: "Saving the Planet," "Covid-19's Hidden Consequences," and "What Can Today's Washington Get Done?" "Is 'Crypto' Too Big to Fail?" "The Brain's Greatest Mysteries" and "Can Social Media Be Regulated?" "Creating an Economy that Works for All," "Redefining 'Work'" and "MeToo & BLM – What's Next?" "Hollywood's Tectonic Shifts" and "Charitable Gifts that Keep Giving." "The Overused Tranquilizer of 'Gradualism.'" "AI's Promise & Perils," "Where Your Money Should Be Now," and "The Alchemy of Romance."

Your being with us would add considerably to the gathering's breadth and fuel informed discussion. To learn more about Renaissance's objectives, history, and content – and to register – explore www.RenaissanceWeekend.org. For your personalized log-in details or assistance, or if you have any questions, don't hesitate to contact our team at Info@RenWkd.org. And please send us any changes in your USPS, e-mail and other contact details.

For Charleston and possibly into the new year, Covid-cautious practices (e.g., vaccination, masks, on-site testing and spacing) will limit capacity, so early registration is advised. Upon public health authorities' continuing advice, any Weekend will be cancelled if we are not comfortable with evolving conditions, and transfer of payment to a future Weekend or full refund will be made.

We invite your inquiry and would especially welcome your contribution to Renaissance's continuing conversation, legacy and spirit!

Philip Lader Linda Lader

POST OFFICE BOX 22049 ♦ CHARLESTON, SC 29413
INFO@RENWKD.ORG ♦ WWW.RENAISSANCEWEEKEND.ORG

USA PRESORTED FIRST-CLASS

****AUTO**ALL FOR AADC 202
1183 P1
Dr. Janet McCabe
Deputy Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1101A
Washington, DC 20460-0001

NOV 0 3 2021

FCL-57D6-419

*Ambassador and Mrs. Philip Lader*
*Post Office Box 22049*
*Charleston, South Carolina 29413*

# EPA DEPUTY ADMINISTRATOR MEETING INFORMATION FORM

***This form assists in planning participation in meetings. Please be complete to minimize need for follow up. This is not a meeting confirmation.***

## Meeting Logistics

| | |
|---|---|
| Requesting individual/organization: | Indiana Chapter of the Air & Waste Management Association. The Air & Waste Management Association (A&WMA) is a nonprofit, nonpartisan professional organization dedicated to providing our members and the public with timely and important information on environmental law, policy, and science.<br><br>Website: https://inawma.org/ |
| Contact information: | Will Gardner, Partner<br>Taft Stettinius & Hollister LLP<br>WGardner@taftlaw.com<br>Dir: 317.713.3562<br>Tel: 317.713.3500 \| Fax: 317.713.3699<br>One Indiana Square, Suite 3500<br>Indianapolis, Indiana 46204-2023 |
| Title of the meeting: | Winter Technical Meeting |
| Describe the proposed meeting topic/ agenda, provide available briefing materials: | The Winter Technical Meeting is the marquee event for the IN A&WMA. We typically have 70 to 80 people attend depending on space/availability. At this day-long event, speakers cover a variety of current environmental topics that impact our members, which include attorneys, government employees, EHS professionals, environmental consultants, and academics. We typically have approximately 10 local university students who attend. Historically, IDEM's senior management provides an overview of local environmental issues, and in prior years the Regional Administrator for U.S. EPA Region 5 has also spoken. We also have speakers from academia and private industry.<br><br>Ms. McCabe has previously been a speaker at prior Winter Technical Meetings.<br><br>We are still in the process of setting the final agenda for this year's WTM, but Ms. McCabe would be our keynote speaker, if she is able to attend. |
| Describe the action sought from the meeting and/or identify desired outcome(s): | To teach our members about significant federal policies that impact the environment, our communities, and regulated businesses. |
| Proposed meeting date and time (if date is flexible please indicate the range): | Meeting date is December 2, 2021. We are flexible as to the time Ms. McCabe would speak. Typically the event runs from either 9 or 10 AM EST to 4 PM EST. |

# EPA DEPUTY ADMINISTRATOR MEETING INFORMATION FORM

***This form assists in planning participation in meetings. Please be complete to minimize need for follow up. This is not a meeting confirmation.***

| | |
|---|---|
| Requested length of time: | 1 hour |
| Please explain any time sensitivity that impacts the date of the meeting, such as court-ordered or statutory deadline: | None |
| Proposed meeting location: | We are planning this as a hybrid event, with an option for both speakers and attendees to appear virtually or in person. The in person option is currently scheduled to take place at the offices of Dentons Greenbaum Doll, located at 10 W Market St Suite 2700, Indianapolis, IN 46204. |
| If the Administrator is unable to meet, is a surrogate desired? If yes, who specifically? | Yes, if Ms. McCabe is unable to attend, we would be interested in having an EPA speaker who can discuss EPA's environmental justice initiatives. |
| Are you planning to issue a press-statement on this meeting? | No |
| Will you be requesting photography from the meeting? | We typically take some photographs for our member newsletter, but this is entirely optional. |

## Meeting Participants

| | |
|---|---|
| Expected meeting participants: | Expected meeting participants include AWMA members, which include attorneys, government employees, EHS professionals, environmental consultants, and academics. We typically have approximately 10 local university students who attend.<br><br>IDEM senior leadership is planning to speak as well.<br><br>A full attendee list is not yet available since the meeting is not until December. |
| Are any expected meeting participants federally registered lobbyists or lobbying organizations? (If yes, please identify.) | No |
| Are any expected meeting participants a partisan political candidate, a | No |

| | |
|---|---|
| representative of a political party or a registered political action committee (PAC)? (If yes, please identify.) | |
| Do any expected meeting participants seek or currently have any business interests with the Agency such as permits, contracts, litigation, grants, etc.? (If yes, please identify.) | The event is open to all AWMA members as well as non-members (we typically have a handful of non-members attend). Some of the attendees are in various private industries and may have contacts with EPA regarding permits or other matters. However, such business matters are not the subject of and irrelevant to the meeting. |

## Background for the Meeting

| | |
|---|---|
| Will the meeting involve legislation, broad policy options, or other general matters that involve a large and diverse range of persons and interests? (If yes, please describe.) | Yes, we typically have a very diverse group of attendees as noted above. |
| Will the meeting involve regulations, rules, or other matters that impact a specific industry, sector of the economy, or group of persons? (If yes, please describe.) | We typically ask for regulatory updates from IDEM as part of the meeting, but the meeting is not targeted to any specific industry or sector of the economy. |
| Will the meeting involve a litigation matter, a permit, a grant, a contract, or any other matter that involves specific parties? (If yes, please identify the matter and list the specific parties.) | No |
| Any additional notes or information? | |

## Technology for Virtual Meetings

| | |
|---|---|
| Preferred Virtual Meeting Platform? | We will likely use Teams |
| Do you use Microsoft Teams? | Yes |
| Disclaimer for recording the meeting. | *(Statement to come from OPA and OGC)* |

# EPA DEPUTY ADMINISTRATOR MEETING INFORMATION FORM

***This form assists in planning participation in meetings. Please be complete to minimize need for follow up. This is not a meeting confirmation.***

*Please return this completed form to atkinson.emily@epa.gov with a copy to drinkard.andrea@epa.gov*

**Background Information**
**Invitation for Administrator Regan to speak at Climate Leadership Exchange May 25, 2021**

Bob Perciasepe, President of the Center for Climate and Energy Solutions (C2ES), and Amy Holm, Executive Director of The Climate Registry have invited Administrator Regan to speak at a virtual event, the Climate Leadership Exchange, on May 25th.

This event is part of the 10th annual Climate Leadership Conference (CLC), which is hosted by the Center for Climate and Energy Solutions (C2ES) and The Climate Registry. EPA has traditionally served as the event's headline sponsor (though EPA sponsorship was on hiatus 2018 – 2021) and this year, EPA will serve as the Government Sponsor. Over the years, EPA has helped to shape this highly esteemed conference and related awards program to elevate the discussion and sharing of best practices in organizational climate-related work.

Administrator Regan is invited to participate as a keynote speaker on what climate change activities to expect from the EPA during the Biden-Harris Administration. The audience will consist of influential climate, energy, and sustainability professionals from diverse sectors across the country (55% corporate, 20% government, and 25% nonprofit/academic). These events are designed to generate and sustain momentum on climate change, continue critical dialogue, and serve our community of climate leaders in their efforts to accelerate climate action throughout the coming year and beyond.

Another keynote speaker at this event will be Gwen Migita, Vice President, Social Impact, Sustainability, Diversity, Equity & Inclusion at Caesars Entertainment.

Several EPA senior officials spoke at the CLC in past years (e.g., Gina McCarthy, Janet McCabe, Bob Perciasepe). Administrator Regan also spoke at this conference in Denver in 2018 in a very well-received session entitled "States Stepping Up on Climate Action" with Ben Grumbles and others.

*You are invited to a virtual event:*

# WORKING TOGETHER FOR LASTING, COLLABORATIVE CHANGE

Co-hosted by the Partnership for Public Service and Freedman Consulting, LLC, in collaboration with the Council on Foundations

*Featuring*

A keynote conversation on collaboration with **U.S. Secretary of Transportation Pete Buttigieg & Ford Foundation President Darren Walker**

Cross-sector discussions on improving the impact of partnerships

## November 17, 2021
## 2:30-4:30 pm EDT

Invitation-Only Event
RSVP to lbladen@ourpublicservice.org

PARTNERSHIP FOR PUBLIC SERVICE

COUNCIL on FOUNDATIONS

FREEDMAN CONSULTING, LLC

# 2021 Aspen-Nicholas Virtual Water Forum

## Event Description:

The Aspen Institute's Energy and Environment Program (EEP) and the Nicholas Institute for Environmental Policy Solutions at Duke University, with thought partnership and support from the US Water Alliance and the Environmental Policy Innovation Center (EPIC), are convening the **2021 Aspen-Nicholas Water Forum**. The Forum provides space for critical water sector conversations by convening forward thinking leaders in different sectors of the industry to discuss the transformative changes needed in domestic water resource management.

The **2020 Aspen-Nicholas Water Forum** focused on building greater affordability and equity into water systems. In a year characterized by disruption, this vision and leadership were especially important, and the *culminating report* offers a summary of the challenges and opportunities emerging out of the many intersecting trends from the past decades and the crises of 2020. The global public health crisis, deepening political and social unrest, and increased intensity of natural disasters further revealed the deep, systemic fault lines in our society and exacerbated health and financial challenges across racial, geographic, and economic lines. Water utilities and systems were not immune to these significant impacts and the 2020 Forum report offers insights into the legacy of these disparities and potential pathways towards more resilient, affordable, and equitable water systems.

After the 2020 Aspen-Nicholas Water Forum, there was a clear sense that the potential policy levers to improve water affordability and equity lent itself to greater conversation and the **2021 Aspen-Nicholas Water Forum** will continue to build on this momentum, with more significant policy-specific objectives.

The virtual model of the 2020 Forum offered greater flexibility and broadened access to the forum by mitigating all the travel and financial barriers that might otherwise have limited the group convened, resulting in dynamic participation, expertise, and engagement with each session. **While we look forward to being back in Aspen in the coming years, in an effort to maintain this broad access and engagement in line with the theme of the 2021 Forum and ongoing COVID-19 uncertainty, this year's Forum will again be convened virtually.** The forum will include remarks from a high-level keynote speakers, as well as high-level panelists, and opportunities for discussion following each of the presentations.

*DRAFT AGENDA*

Tuesday, October 19, 1:00-4:00pm EST; Wednesday, October 20, 1:00-4:00pm EST; Thursday, October 21, 1:00-3:00PM EST

## Day 1: Tuesday, October 19th 1:00-4:00PM EST

12:30-1:00PM - Tech Check and Review Run of Show

1:00-1:05PM - Greg Gershuny to welcome participants, housekeeping, and give brief overview of Aspen Institute

1:05-1:15PM - Martin Doyle to give overview of Aspen-Nicholas Water Forum

1:10-1:15PM - US Water Alliance co-chair to give overview and reflection on this year's topic and theme

1:15-1:20PM - Introduction of Keynote Speaker

1:20-1:50PM - Remarks from Keynote Speaker

1:50-2:10PM - Audience Q&A for Keynote Speaker

2:10-2:15PM - Introduction of Panel

2:15-3:15PM - Panel Conversation: Water Sub-Cabinet

*Moderator: TBD*

- Tanya Trujillo, Assistant Secretary for Water and Science, Department of the Interior (To Be Confirmed)
- Radhika Fox, Principal Deputy Assistant Administrator for Water, EPA (To Be Confirmed)
- Gloria Montaño Greene, Deputy Under Secretary for Farm Production and Conservation, USDA
- Jaime Pinkham, Acting Assistant Secretary of the Army for Civil Works (To Be Confirmed)

3:15-3:45PM - Audience Q&A with Panel

3:45-4:00PM - Final Reflections and Closing Remarks

**Day 2: Wednesday, October 20th 1:00-4:00PM EST**

12:30-1:00PM - Tech Check and Review Run of Show

1:00-1:05PM - Greg Gershuny to welcome participants, housekeeping, and give brief overview of Aspen Institute

1:05-1:15PM - Martin Doyle to give overview of Aspen-Nicholas Water Forum

1:10-1:15PM - US Water Alliance co-chair to give overview and reflection on this year's topic and theme

1:15-1:20PM - Introduction of Keynote Speaker

1:20-1:50PM - Remarks from Keynote Speaker

1:50-2:10PM - Audience Q&A for Keynote Speaker

2:10-2:15PM - Introduction of Panel

2:15-3:15PM - Panel Conversation: Community Perspective

- Monica Lewis-Patrick
- Joaquin Esquivel
- Congressman Earl Blumenauer

3:15-3:45PM - Audience Q&A with Panel

3:45-4:00 PM - Final Reflections and Closing Remarks

**Day 3: Thursday, October 21st 1:00-3:00PM EST**

12:45-1:00PM - Tech Check & Review Run of Show

1:00-1:05PM - Welcome Back from Greg Gershuny

1:05-1:15PM - Martin Doyle and US Water Alliance Co-Chair give reflections from first two days and framing for conversation on Day 3

1:15-1:25PM - [Someone] give overview of Roundtable Series

1:25-1:40PM - Roundtable Participant(s) to give update on initial findings and discoveries from first roundtable for feedback from forum participants

1:40-2:30PM - Moderated conversation about important themes and considerations for creation of policy blueprint

2:30-2:50PM - Looking to the Future: Impact of Aspen-Nicholas Water Forum moving forward

- What topics, projects, directions should the forum take moving forward to have continued impact?

2:50-3:00PM - Final Reflections and Closing Remarks

-

# EPA Deputy Administrator Event Information Form

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

## Basic Background

| | |
|---|---|
| Event official title: | **31st Annual Business & Industry's Sustainability and Environmental Health & Safety Symposium** |
| Event host(s)/organizer(s): | **Manufacturers Education Council**<br>**Air & Waste Management Association – East Central Section**<br>Trinity Consultants<br>Benchmark ESG/Gensuite<br>Dickinson Wright<br>EHS Technology Group<br>Environmental Quality Management<br>Chambers of Commerce – **Ohio, Indiana, Kentucky, Greater Cincinnati**<br>31-person Symposium Planning Committee co-chaired by Procter & Gamble in Cincinnati and ND Papers in Dayton |
| Event date (flexible?): | Tuesday & Wednesday, March 29-30, 2022 |
| Time, duration, and time zone of event: | Start: 7:30 a.m. on Tuesday, March 29, 2022<br>End: 2 p.m. on Wednesday, March 30, 2022 |
| **Deadline for acceptance:** | Flexible … but first brochure will be available on Wednesday, January 19, 2022 |
| Will you accept a surrogate? | Yes, though **Janet McCabe has spoken at this annual Symposium several times** and is an outstanding speaker. Being from Mid-America, she would be very well received at this event. |
| Event location and physical address: | **Sharonville Convention Center, 11355 Chester Road, Cincinnati OH 45246 – Opening Keynote in Northern Lights Ballroom** |
| Type of event: | Educational conference. |
| Host(s) relationship to the EPA? | In the 31-year history, we've always had U.S. EPA speakers and for 2022 have confirmed both Commissioners from Indiana (IDEM) & Kentucky (DEP) and the Ohio EPA Director. |
| Event sponsor(s): | Listed in the event hosts and organizers above. |

## Event Description and Role of the EPA Official

| | |
|---|---|
| Purpose of event: | Business Continuing Education |
| Brochure/website/invitation/ and/or other event materials: | Attached is the draft agenda as of January 5, 2022. An e-mail was sent to Deputy Administrator McCabe inviting her on Tuesday, January 4, 2022 at 12:37 p.m. EST. Here's the conference website: https://mecseminars.com/environmental-and-safety/31st-annual-business-industrys-sustainability-and-environmental-health-safe |
| Run of show/agenda: | Attached is the draft agenda as of January 5, 2022. |

# EPA Deputy Administrator Event Information Form

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

| | |
|---|---|
| Timing for EPA official's role: | **Tuesday, March 29, 2022 – Opening Keynote from 8:55 a.m. to 9:30 a.m. and the speaking in Environmental Justice Breakout Session from 9:45 a.m. to 11 a.m.** |
| Role of the EPA official at the event: | Opening keynote and then panel presentation |
| Requested presentation topic (if speaking): | Opening keynote - Advancing Key U.S. EPA Priorities … Tackling the Climate Crisis, Delivering Environmental Justice, Cleaning up Toxic Waste, Investing in Water Infrastructure Projects, and Restoring Scientific Integrity/Rebuilding Core Functions at the EPA |
| Requested presentation format: | Keynote with PowerPoint Presentation |
| Name and title of person introducing EPA official: | **Member of Symposium Planning Committee** … possibly Kathy Wiedeman, Director, EHS, ND Paper, Dayton. Since Janet McCabe is from Indiana, deference will be given to planning committee members who personally have worked with her. |
| Audience make up? | **350 attendees** … EHS directors and managers, environmental & safety engineers, plant managers, sustainability leaders and manufacturing/engineering/facility vice presidents. |
| Event held weekly, monthly, annually? | Annually |

## Event Preparation

| | |
|---|---|
| Other EPA speakers? | Brian Rockensuess, *Commissioner;* Matthew Stuckey, *Assistant Commissioner of Air Quality* and Clark Mettler, *Assistant Commissioner, Office of Water Quality*, **Indiana Dept. of Environmental Management**; Tony Hatton, *Commissioner*; Carey Johnson, *Director, Division of Water* and Melissa Duff, *Director, Div. for Air Quality*, **Kentucky Department for Environmental Protection,** Frankfort; and Laurie Stevenson, *Director*, Bob Hodanbosi, *Chief* & Mike Hopkins, *Assistant Chief, Div. of Air Pollution Control,* and Tiffani Kavalec, *Chief, Division of Surface Water,* **Ohio EPA** |
| Does EPA need to submit materials prior to event? | If Janet McCabe is using a PowerPoint, it would be great to have it available by **Friday, March 18, 2022**. We would also like a detailed bio, particularly highlighting her work experience in Indiana. |
| Expected prep and timing for prep calls or meetings: | Zero calls or meetings. Two or three e-mails prior to the event. |
| Registration fee charged? How much? | All speakers are **complimentary for the entire Symposium**. Attendee fees vary from **$275 to $495** and includes food & beverages. |

# EPA Deputy Administrator Event Information Form

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

| | |
|---|---|
| Describe entity hosting EPA official: | Educational conference organizing firm. |
| Is the entity also a Federally Registered Lobbyist? | No |
| Are you giving a gift, award or anything else of value? Amount? | No. |
| Are you providing a meal? Amount? | The deputy administrator is welcomed to stay for the buffet luncheon to network with other EPA officials and attendees and the value is approx.. $40 |

## At the Event and Other Event Logistics

| | |
|---|---|
| Is there a private hold room available for the Administrator? | Yes, if so desired. Please let us know. |
| Open press/closed press? | Open to the press. |
| Will you be issuing a press release? | Social media posts. |
| Person to contact for media purposes: | Mark W. Uher, President, Manufacturers' Education Council – Mark@MECseminars.com, Office: 614-392-0413 and Mobile is (b) (6) [redacted] |
| Dress code: | Business Casual |
| Room setup: | Yes, there will be a podium on stage with a microphone and head table. There will also be a wireless lav mic if preferred. Northern Lights Ballroom will be set up with roundtables. |
| Notable/honorable guests attending (including elected officials): | Unknown at this time. |
| Are you recording the event? Website URL for recording (if event is recorded and posted): | **No**, the event will not be recorded. However, if the **pandemic** still exists, it will be a hybrid event, serving both in-person attendees and virtual attendees via the **Whova conference platform**. All speakers then will be recorded and their presentations will be available only to conference attendees including speakers until June 30, 2022 |
| Security contact: | Mark W. Uher, President, Manufacturers' Education Council – Mark@MECseminars.com, Office: 614-392-0413 and Mobile is (b) (6) [redacted]. We will have alert the Sharonville Convention Center staff … the center is City-owned. |
| Directions to event (include relevant information about parking, the specific building, best entrance to use) | **Directions and layout** – floor plan – to the Northern Lights Ballroom can be found here: https://sharonvilleconventioncenter.com/. |
| Where to meet contact: | At Symposium registration in the **Northern Lights Ballroom foyer** … see above website for location. |

# EPA Deputy Administrator Event Information Form

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

## Contact Information

| | |
|---|---|
| Your name and position: | Mark W. Uher, President, Manufacturers' Education Council |
| Phone (best & alternate): | Work: 614.392.0413<br>Mobile: (b) (6) [redacted] |
| Email address: | mark@MECseminars.com |
| Mailing address: | BlendonView Office Park<br>5050 Pine Creek Drive, Suite A<br>Westerville, OH 43081-4852 |
| Are you the point-of-contact at the event?<br>If not, contact details: | Yes. |

*Please return this completed form to atkinson.emily@epa.gov and a copy to drinkard.andrea@epa.gov*

## Sharonville Convention Center, 11355 Chester Road, Cincinnati, OH 45246

## Tuesday, March 29, 2022

**7:30 a.m.** **Exhibits Open, Breakfast and Registration Opens**
*Sponsored by* **Benchmark ESG**

**8:45 a.m.** **Welcome & Symposium Introductions**

**8:55 a.m.** **Advancing Key U.S. EPA Priorities … Tackling the Climate Crisis, Delivering Environmental Justice, Cleaning up Toxic Waste, Investing in Water Infrastructure Projects, and Restoring Scientific Integrity/Rebuilding Core Functions at the EPA**

Janet McCabe, *Deputy Administrator*, **U.S. EPA,** Washington, DC
(*Janet McCabe was sworn in as the 16th Deputy Administrator of the U.S. EPA on April 29, 2021. She returns to EPA after spending 7 years working as Acting Assistant Administrator and Principal Deputy to the Assistant Administrator in the Office of Air and Radiation under President Barack Obama. Prior to rejoining EPA, Janet McCabe was a Professor at the Indiana University McKinney School of Law and Director of the IU Environmental Resilience Institute.)*

---

**9:30 a.m.** **Break and Visit the Exhibits**

**9:45 a.m. to 11:00 a.m. Choice of 5 Concurrent & Interactive Workshops**

### A. Environmental Justice (EJ) Initiative and What It Means for Your Facility

Priceless insights into the cornerstone of President Biden's EPA, driving policy changes & enforcement actions. Recent federal and state developments and impact environmental permitting and enforcement. Demonstration of performing a high level EJ analysis using EPA EJSCREEN tool.

Janet McCabe, *Deputy Administrator*, **U.S. EPA**, Washington, DC; Farshid Kiani, *Senior Consultant,* **Trinity Consultants**, **Inc**., Westerville, OH and Anna M. Maiuri, *Member and Co-Chair, Environmental, Energy & Sustainability Practice Group,* **Dickinson Wright PLLC**, Troy, MI

### B. Practical Tips & Trends in RCRA Enforcement, Solid & Hazardous Waste Management, Disposal & Transportation

Practical tips on RCRA permitting, monitoring requirements, and reporting deadlines. How to distinguish between solid & hazardous waste. Generator status & implications and handling waste containers. Managing waste in satellite areas. Exemptions for recycling options, universal wastes and unique wastes.

Tim McDaniel, *EHS Manager*, **Navistar, Inc.**, Springfield, OH; Rajib Sinha, *Regional Initiatives Manager,* **Trihydro Corporation**, Cincinnati and Anita Decina, *Vice President, Operational, Safety & Environmental Excellence*, **Heritage-Crystal Clean, LLC**, Elgin, IL

**31st Annual Business & Industry's Sustainability & Environmental Health & Safety Symposium**
***Sharonville Convention Center, 11355 Chester Road, Cincinnati, OH 45246***

# Tuesday, March 29, 2022

**9:45 a.m. to 11:00 a.m. Choice of 5 Concurrent & Interactive Workshops Continued**

### C. Ohio: Storm Clouds Ahead ... Renewal of Ohio EPA Industrial Storm Water NPDES General Permit

Practice storm water management tips in light of the draft Ohio EPA Industrial Storm Water NPDES General Permit. Potential changes to storm water management. Future developments with the U.S. EPA Multi-Sector General Storm Water Permit

Timothy Ling, *Corporate Environmental Director* and Mickey J. Croxton, *Environmental Manager*, **Plaskolite, LLC,** Columbus, OH and J.D. Gibbs, *Partner*, **ERM, Inc.,** Columbus, OH

### D. Passionate About Safety … Influencing Employee Behavior for Safer Performance

How to understand the factors that influence the behaviors that employees choose and leverage that knowledge to encourage employees to make safer behavior choices

Keith D. Robinson, *Vice President – Safety*, **Civil & Environmental Consultants, Inc.,** Worthington, OH and *Past President*, **Central Ohio Chapter of the American Society of Safety Engineers**

### E. New to EHS/101 Basics … Environmental Basics from a Novice and Pros

Regulations for air, water, hazardous waste, underground storage tanks, community right to know and chemical reporting. Permitting, recordkeeping and reporting obligations for each regulation. Practical advice and sources of information for managing environmental compliance. Real world experiences from a novice and pros.

Sheri Bussard, *Environmental Engineer, Utilities*, **University of Cincinnati**; Hope Manning, *Vice President, Engineering & Consulting*, **Environmental Quality Management, Inc. (EQM)**, Cincinnati and Stephen Fischer, *Site Environmental Manager*, **Amazon**, Wilmington, OH

---

**11:00 a.m. Break and Visit the Exhibits**

**11:15 a.m. to 12:30 p.m. Choice of 5 Concurrent & Interactive Workshops**

### F. New & Emerging Issues … PFAS New & Emerging Issues … An Evolving Compliance Landscape: Addressing Per- and Polyfluoroalkyl Substances in a New Decade

Valuable insights on how states are identifying PFAS sources and how to respond to an agency request to sample PFAS. Responding to an agency request to sample for PFAS and actions to undertake prior to sampling. Technical considerations for PFAS sample collection. Responding to a detection of PFAS. Managing PFAS risks and liabilities. PFAS regulatory trends for wastewater, stormwater and NPDES permits

AnnMarie Sanford, *Member*, **Dickinson Wright PLLC**, Troy, MI and John Cuthbertson, *Associate Vice President, North America Industrial and Oil & Gas PFAS Lead,* **AECOM**, Grand Rapids, MI

### G. ISO 14001:2015.... Best Practices on Implementation of an Environmental Management System

Case study at an automotive parts manufacturer. Requirements of EMS Standard. Defining impacts, compliance obligations, objectives for improvement. Achieving competence and awareness of the organization. Developing emergency preparedness. Management review and continual improvement. Priceless tips for overcoming challenges and how to best engage top management.

Matthew Scroggins, *CSP, Environmental Health & Safety Manager*, **StandardAero**, Fairfield, OH and Gregory Hemker, *Principal*, **EHS Technology Group, LLC**, Dayton

**31st Annual Business & Industry's Sustainability & Environmental Health and Safety Symposium**

***Sharonville Convention Center, 11355 Chester Road, Cincinnati, OH 45246***

# Tuesday, March 29, 2022

**11:15 a.m. to 12:30 p.m. Choice of 5 Concurrent & Interactive Workshops Continued**

**H. Air Permitting & Compliance: Practical Tips and Best Practices … Calculating Emissions, Applying Best Available Technology and Permit Terms & Conditions**

How to conduct a facility-wide PTE emissions inventory and techniques for calculating air emissions. How to conduct de Minimis emission calculations. When to include fugitive emissions and condensable particulate emissions. Best Available Technology (BAT) … when to conduct a study and what should it contain. Particulate rule and synthetic minor strategies. GHG emission, landfill gas, storage tank and TRI calculations.

Gary Strassell, *Manager, Environmental, Health & Safety*, The **Shepherd Color Company**, Cincinnati; Ronald Hansen, Principal *Consultant/Owner* & Katie Milk, *Project Manager*, **GT Environmental**, Columbus, OH and Michael E. Hopkins, *Assistant Chief, Permitting*, **Ohio EPA, Division of Air Pollution Control,** Columbus, OH

**I. Passionate about Safety -- Keeping Your People Safe: Best Practices in Workplace Safety … Improving Safety Incident Investigations and Follow Up**

Case study on how GE Aviation is systematically changing how investigation and corrective actions are managed for safety incidents, driving a better process for implementing lessons learned. Identifying a list of corrective actions and breaking down the corrective actions into 4 steps … plan, do, check and act. Accomplishing corrective action follow up within their digital solution provided by Benchmark ESG. GE's culture shift.

Danton Campbell, *Global EHS & Facility Project Leader*, **GE Aviation**, Cincinnati and Mark Boehner, *Vice President*, **Benchmark Digital Partners**, Mason, OH

**J. New to EHS/101 … Air Permitting Basics**

Air permitting basics with a discussion of how defining an emission unit can play in the permitting of a facility. Example scenario of a facility expansion to discuss the process of permitting (determine where to start, what type of permit needed, any exemptions, how to calculate PTE, how to apply, differences between states).

Courtney Zimmer, *Environmental Health and Safety Specialist*, **Ball Metalpack**, Columbus, OH and Hope Manning, *Vice President, Engineering & Consulting*, **Environmental Quality Management, Inc. (EQM)**, Cincinnati

**12:30 p.m. to 1:45 p.m. Luncheon**

**12:30 p.m. Luncheon & Facilitated Roundtables in Exhibit Hall with Best Practices to Navigating the New Era of Environmental Health & Safety Compliance**

*Sponsored by* **Trinity Consultants**

**2:00 p.m. to 3:15 p.m. Choice of 5 Concurrent & Interactive Workshops**

**K. Corporate Sustainability Best Practices – Environmental Excellence**

Scott's Miracle-Gro's award-winning sustainability initiatives including educating associates on sustainability & diverting more than 118 tons of waste from landfills. Honda – East Liberty plant's comprehensive environmental stewardship program sending 98% of manufacturing waste materials to recycling/waste-to-energy facilities and reducing CO2 emissions.

Brian Winter, *Manager, EHS Center of Environmental Excellence* & Bennett Thayer, *CHMM, Environmental Manager,* **The Scott's Miracle – Gro Company**, Marysville, OH and Kailynn Cerny, *Green Factory/Environmental Leader*, **Honda Development and Manufacturing of America**, East Liberty, OH

# Tuesday, March 29, 2022

**2:00 p.m. to 3:15 p.m. Choice of 5 Concurrent & Interactive Workshops Continued**

## L. Ohio, Indiana & Kentucky … Water Quality Standards, Permitting & Compliance Challenges in a New Era of Water Management and Investment in Water Infrastructure Projects

Sharon R. Newlon, *Member and Environmental, Energy & Sustainability Practice Group Co-Chair,* **Dickinson Wright PLLC**, Detroit, MI; Tiffani Kavalec, *Chief, Division of Surface Water*, **Ohio EPA**; Carey Johnson, *Director*, **Kentucky Division of Water** and Martha Clark Mettler, *Assistant Commissioner, Office of Water Quality*, **Indiana DEM**

## M. U.S. EPA's Efforts to Strengthen Enforcement of Violations: Best Practices to Avoid Environmental Enforcement & Effectively Defend Enforcement Actions … Tips, Tools & Strategies

Valuable insights on best practices to avoid environmental enforcement. Managing the inspection, responding to information requests, a Notice of Violation (NOV) and/or citation. Role of consultant and inhouse EHS managers. Negotiating settlements considering applicable penalty policies. Use of supplemental environmental projects

Nate Orosz, *Senior Counsel, Global HS&E*, **The Procter & Gamble Co.,** Cincinnati and Andrew L. Kolesar, *Partner*, **Thompson Hine LLP**, Cincinnati

## N. Air Permitting & Compliance: Practical Tips and Best Practices … Staying Compliant with Ever-Changing Regulations

Priceless insights on adapting to change … recordkeeping, reporting, audits, inspections that you must 'juggle' to stay in compliance. Revisit your permits, terms & conditions. Air permitting and compliance best practices.

Maeve Mason, *Environmental Policy & Affairs Director*, **Duke Energy Corp**., Cincinnati; Amy Kesterman, *Permit Area Supervisor*, **Southwest Ohio Air Quality** Agency, Cincinnati and Julie Hall, *Senior Project Manager*, **Weaver Consultant Group**, Cincinnati

## O. New to EHS /101 Basics … Best Practices for Safety Professionals to Ensure Front-Line Supervisors Address Safety Issues Without Becoming Complacent, the Silent Killer in Today's Workplace

Mutually beneficial "give and take/win-win" relationship between safety professionals and front-line supervisors. Strategies to identify complacency in the workplace through reinvigorating workers' ability to recognize when they're becoming complacent.

Jonathon Zimmerman, *EHS Supply Chain Category Director*, **Kellogg Company**, Hamilton, OH and Eric Harper, *CSP, CHMM, Manager, Process Safety*, **EHS Technology Group**, Dayton

---

**3:15 p.m. Cookies, Snacks & Soda Break in the Exhibit Hall** *sponsored by* **Dickinson Wright PLLC**

DICKINSON WRIGHT PLLC

**31st Annual Business & Industry's Sustainability & Environmental Health and Safety Symposium**

***Sharonville Convention Center, 11355 Chester Road, Cincinnati, OH 45246***

# Tuesday, March 29, 2022

**3:30 p.m. to 4:45 p.m. Choice of 5 Concurrent & Interactive Workshops**

**P. Corporate Sustainability … Environmental & Business Benefits from Achieving ISO 14001 Certification: Best Practices and Lessons Learned**

GE Appliances', a Haier Company, journey in achieving certification – best practices, lessons learned and benefits. How digital solutions can be leveraged to help facilitate the certification process and sustain your achievements in your on-going EMS.

Kent Kelsch, *Associate Vice President*, **Benchmark Digital Partners**, Mason, OH and Jeremy Rowlette, *CSP, CHMM, EHS Management Systems Director*, **GE Appliances**. Louisville, KY

**Q. Best Practices & Emerging Trends … Environmental, Social & Governance (ESG) and Environmental Justice (EJ) Data Management**

Valuable insights on how manufacturers are facing increasing pressure to demonstrate and continuously improve ESG performance through reporting of validated and verifiable ESG data. Growing focus on EJ … do your employees and surrounding communities receive adequate and just protection from environmental and health hazards, including industrial orders? Emerging trends in ESG and EJ data management and reporting. Best practices for systems, tools, and design elements when defining processes for ESG and EJ data collection, validation, verification, and reporting.

Melissa Tominack, *Corporate Sustainability Manager*; **American Electric Power (AEP**), Columbus, OH; Meghan Foley, *Principal Consultant* & Jarod Gregory, *Senior Consultant*, **Trinity Consultants, Inc.,** Farrington Hills, MI & Covington, KY

**R. Air Permitting & Compliance … Be Prepared for Upcoming Deadlines for Maximum Achievable Control Technology (MACT) Risk and Technology Review (RTR)**

Valuable insights on MACT RTR significant rule changes. Best practices in implementation. Compliance and Emissions Data Reporting Interface (CEDRI) … how to register for and submit reports using CEDRI. How does CEDRI impact your state reporting requirements?

Tracie Sorvillo, *Environmental Health & Safety Manager*, **Sofidel America Corp.,** Circleville, OH and Amanda Jennings, *Managing Consultant*, **Trinity Consultants, Inc.,** Westerville, OH

**S. Best Practices in Safety Management … Strategies to Promote a Culture of Safety, Boost Productivity and Prevent Loss**

How to engage your current workforce and make safety a habit. How to cater to a new, younger workforce who may be risk tolerant. Effective training. Recordkeeping. Conducting site hazard identification audits and inspections. How to determine root causes to get down to the real hazards that may be plaguing your workplace. Best practices at promoting a culture of safety.

Zach Pucillo, *CSP, CHMM, Mid-Atlantic District Team Supervisor*, **KPA LLC**, Lafayette, IN

**T. Corporate Sustainability Best Practices – Environmental Excellence**

Procter & Gamble's 'Ambition 2030' including sustainability goals to reduce carbon emissions and boost water conservation. Kroger's sustainability goals including initiatives to divert waste from landfill and find water efficiency opportunities.

Katherine Brown, *Global Product Supply Water Sustainability Leader*, **The Procter & Gamble Co.** Cincinnati and Lisa Zwack, *Head of Sustainability*, **The Kroger Co**., Cincinnati

---

**4:45 p.m. Networking Reception in Exhibit Hall**
Sponsored by **Environmental Quality Management (EQM)**

**5:30 p.m. Adjournment for the Day**

EQM
AN ASRC INDUSTRIAL COMPANY

**31st Annual Business & Industry's Sustainability & Environmental Health and Safety Symposium**

***Sharonville Convention Center, 11355 Chester Road, Cincinnati, OH 45246***

# Wednesday, March 30, 2022

**7:00 a.m. Breakfast in Exhibit Hall**

**8:00 to 9:15 a.m. Choice of 4 Concurrent & Interactive Workshops**

## AA. Passionate About Safety … Compelling Safety Training that Yields Results

Different adult learning styles and activities to keep training fun & attendees engaged. How to determine the appropriate leaning tools for your company. Best practices in optimal attendee engagement & involvement. Plethora of ideas to improve your safety training.

Brad Weber, *Operations Manager, Workforce Management Services*, **Sheakley, Inc**., Cincinnati and *President*, **Southwest Chapter of the American Society of Safety Engineers**

## BB. Ohio: Major Air Permitting, Regulatory & Compliance Developments

Impact on Ohio plants and facilities of the Biden/Harris' air quality priorities, air toxics, and Ohio's NAAQS attainment status, air & Title V permitting & compliance, enforcement trends.

Sherry Hesselbein, *Assistant General Counsel*, **Marathon Petroleum Corporation**, Findlay, OH; Kirk P. Lowery, *Northeast Regional Director* & DJ Wheeler, *Managing Consultant*, **Trinity Consultants, Inc.,** Westerville, OH and Robert F. Hodanbosi, *Chief*, **Ohio EPA, Division of Air Pollution Control**, Columbus, OH

## CC. Clean Water Best Management Practices … Storm Water Permitting; Spill Prevention, Control, and Countermeasure (SPCC) and Stormwater Pollution Prevention Plan (SWPPP) Compliance

Priceless insights on clean water permitting including stormwater permitting in light of USEPA's renewed Storm Water NPDES Multi-Sector General Permit. General Permit. Deep dive on requirements, inspections, and the elusive "sufficient freeboard" requirement under the Spill Prevention, Control, and Countermeasure (SPCC) program. Unifying the SPCC plan and SWPPP in an Integrated Contingency Plan to increase your compliance efficiency. Practical tips for best management practices and compliance.

Kayla Garber, *EHS Manager*, **Kellogg's Corp**., Zanesville, OH; Chris Kahn, *Member*, **Frost Brown Todd**, Cincinnati; and Stephanie Miller, *Senior Consultant* and Anita Evenson, *Senior Consultant*, **Trinity Consultants, Inc.,** Westerville, OH and Covington, KY

## DD. Leading-Edge Practices: Pivoting from EHS to ESG to Meet Expectations of Suppliers, Employees & Shareholders for a Business Commitment to a More Transparent, Equitable & Low-Carbon Economy

While EHS has traditionally focused on lowering risk and maintaining compliance with regulations, due to the demands of the financial community and other stakeholders, EHS is expanding its footprint into Environmental, Social, and Governance (ESG). Why the change is important and how to make it happen within your organization. Scope of considerations for determining different ESG. How to follow a systematic process for making the transition from an EHS to an ESG-focused management approach. Benefits of addressing psychosocial risks, diversity, equity and inclusion (DEI) and the future of work itself. How to get buy-in from your company leadership and entire workforce for making the pivot from EHS to ESG.

Greg Duncan, *EHS & Sustainability Expert*, **VelocityEHS**, Chicago

---

**9:15 a.m. Break in the Exhibit Hall**

**31st Annual Business & Industry's Sustainability & Environmental Health and Safety Symposium**

***Sharonville Convention Center, 11355 Chester Road, Cincinnati, OH 45246***

# Wednesday, March 30, 2022

**9:30 a.m. Ohio, Indiana & Kentucky … Environmental Priorities & Initiatives; Air, Water & RCRA Permitting Success & Challenges; and Impact of Key U.S. EPA Priorities Mean for Mid-America Facilities, Plants and Manufacturers**

Laurie A. Stevenson
*Director*
**Ohio EPA**
Columbus, OH

Brian Rockensuess
*Commissioner*
**Indiana Dept. of Environmental Management**
Indianapolis

Tony Hatton
*Commissioner*
**Kentucky Dept. for Environmental Protection**
Frankfort, KY

**11:00 a.m. Break in Exhibit Hall**

**11:15 a.m. to 12:30 p.m. Choice of 4 Concurrent & Interactive Workshops**

**EE. Audits, a Vehicle for Change … Implementing a Successful EHS Auditing Program with a Process Approach**

Audits -- exceedingly effective tool to measure performance and drive improvement and change in EHS compliance. Steps necessary to get the most out of the audit, and the actions to take following an audit to drive improvement in compliance and performance. Using the audit principles of ISO 19011 and how to conduct a process audit. Mock audit of a facility in a process audit format. How to integrate an environmental, safety and energy audit.

Tony DeMarco, *Vice President of Consulting Services*, **BCA Environmental Consultants, LLC**, South Bend, IN

**FF. 52nd Anniversary of the Clean Air Act of 1970 and 32nd Anniversary of the Clean Air Act Amendments of 1990 … What's on the Horizon for Business in America's Heartland?**

*Moderator*: Kirk P. Lowery, *Principal Consultant – Northeast Regional Director*, **Trinity Consultants, Inc**., Westerville, OH. *Panelists*: Brian Rockensuess, Commissioner & Matthew Stuckey, *Assistant Commissioner of Air Quality*, **Indiana Dept. of Environmental Management**; Tony Hatton, *Commissioner* & Melissa Duff, *Director, Div. for Air Quality,* **Kentucky Department for Environmental Pr**otection, Frankfort; and Laurie Stevenson, Director & Bob Hodanbosi, *Chief, Div. of Air Pollution Control*, **Ohio EPA**

# Wednesday, March 30, 2022

**11:15 a.m. to 12:30 p.m. Choice of 4 Concurrent & Interactive Workshops Continued**

**GG. Best Practices: Emergency and Portable Internal Combustion Engine (ICE) Environmental Compliance Management**

National requirements for emergency and portable internal combustion engines. How to permit an emergency stationary engine in Ohio, Kentucky, and Indiana. New Source Performance Standards (NSPS) and National Emissions Standards for Hazardous Air Pollutants (NESHAP) requirements. Potential air permitting implications, and compliance best practices for these commonly overlooked emissions units. Engine terminology in federal regulations. Insights on how to effectively permit an emergency stationary engine in Ohio, Kentucky, and Indiana. How to assess the compliance of currently operating engines at your facility for federal and state air permit requirements.

Elisabeth Martin, *Senior Consultant*, **Trinity Consultants, Inc.,** Covington, KY and Robin B. Thomerson, *Partner*, **Dentons Bingham Greenebaum LLP**, Lexington, KY

**HH. Workplace Safety Best Practices … OSHA's Increase Enforcement of Standards' Updated COVID-19 Guidelines; Preventing and Avoiding OSHA Citations and Expert Tips on How to Navigate Informal Conferences**

Major OSHA developments including enforcement actions and COVID-19 guidelines. Top 10 most frequently cited standards following worksite inspections. Tips for inspection readiness. What to do if/when an OSHA inspector arrives. Minimizing the chance of citations. Valuable tips for successfully navigating informal conferences.

Joe Clark, Vice *President Corporate Quality & Risk Control & Chief Quality Officer*, **Bridgestone APM**, Upper Sandusky; William Wahoff, *Member/Partner*, **Steptoe & Johnson PLLC**, Columbus, OH; Gaye Johnson, *Assistant Area Director*, **Occupational Safety and Health Administration (OSHA)**, Cincinnati

**12:45 p.m. to 2 p.m. Closing Luncheon sponsored by EHS Technology Group**

**12:45 p.m. Closing Luncheon**
*Sponsored by* **EHS Technology Group**

**1:10 p.m. Corporate Sustainability Best Practices … Cummins Inc., a Leader in Climate Action: Priceless Insights on Being Named for the 16th Consecutive Year to the S&P Dow Jones Sustainability Index, Cummins Power Women, Cummins Advocating for Racial Equity (CARE) and Cummins Water Works**

Brian Mormino, *Executive Director*
*Worldwide Environmental Strategy & Compliance*
**Cummins, Inc.**
Columbus, IN

**2:00 p.m. Symposium Adjournment**

THE WATER INSTITUTE
OF THE GULF™

May 12, 2021

The Honorable Janet McCabe
Deputy Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

**Re: Invitation to Provide Keynote Remarks at the Louisiana State of the Coast Conference**

Dear Deputy Administrator McCabe:

On behalf of our partner organizations, I write to request your participation in the **2021 Louisiana State of the Coast (SOC) Conference**. The SOC Conference is the largest statewide conference of its kind, providing an interdisciplinary forum to exchange timely and relevant information on the dynamic conditions of Louisiana's coastal communities, environment, and economy. Together with our partners at the Coalition to Restore Coastal Louisiana, Coastal Protection and Restoration Authority of Louisiana, and Louisiana Sea Grant, we have sponsored this important forum every two years since 2010.

Due to COVID-19 restrictions, SOC 2021 will consist of three days of virtual presentations (June 2 to June 4) by leading experts in concurrent sessions, keynote presentations, poster sessions, and networking opportunities. More than 1,200 scientists, landowners/managers, federal and state agency personnel, local officials, industry and business leaders, resource users, and interested citizens attended the fifth iteration of this biennial conference in 2018.

In recognition of EPA's role as Chair of the Gulf Coast Ecosystem Restoration Council as well as the Agency's role as a driving force for environmental justice **we are pleased to invite you to participate in a plenary "fireside chat" discussion.** We know your perspective would be of great interest to the scientists, policymakers, and community and business leaders who will come together for the conference to collaborate around innovative and sustainable solutions for Louisiana's coastal communities.

We appreciate your consideration of this request and would be honored by your participation in the program.

Sincerely,

Justin R. Ehrenwerth
President and CEO

1110 River Road S. Suite 200
Baton Rouge, LA 70825
www.thewaterinstitute.org | (225) 448-2813

# EPA DEPUTY ADMINISTRATOR EVENT INFORMATION FORM

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. <u>This is not a confirmation of attendance</u>.***

## Basic Background

| | |
|---|---|
| Event official title: | PSR Virtual Gala |
| Event host(s)/organizer(s): | *List all hosts organizing the event. Note if this is an EPA hosted or co-hosted event.* |
| Event date (flexible?): | Thursday, Nov. 18, 2021 (not flexible) |
| Time, duration, and time zone of event: | *E.g., 12:00pm through 3:00pmEST* 6pm - 7:30 EST |
| **Deadline for acceptance:** | November 5, 2021 |
| Will you accept a surrogate? | yes |
| Event location and physical address: | *E.g., ABC Convention Center, 123 Boulevard Way, Baltimore, MD, 56789* n/a virtual |
| Type of event: | *Reception; Conference; Meeting; Recorded/Streaming audio or video, etc.* virtual / recorded |
| Host(s) relationship to the EPA? | none |
| Event sponsor(s): | Lumix, LLC, Creative Print |

## Event Description and Role of the EPA Official

| | |
|---|---|
| Purpose of event: | Fundraiser |
| Brochure/website/invitation/ and/or other event materials: | *List here or provide separately in response* www.psr.org/gala |
| Run of show/agenda: | *Provide full agenda of event, including events immediately before/following the EPA official's participation* (see attached) |
| Timing for EPA official's role: | *Example: 1:00pm to 1:15pmEST* 6:05 - 6:10 EST |
| Role of the EPA official at the event: | *Attendance only? Panel presentation? Speaker? Participating in press conference? Touring a facility? Etc.* Speaker |
| Requested presentation topic (if speaking): | The important role of NGO's & the EPA in combatting climate change. |
| Requested presentation format: | *Keynote, panel, Q&A, introduction, fireside chat, etc.* pre-recorded remarks |
| Name and title of person introducing EPA official: | David Drake, President, PSR Board of Directors |
| Audience make up? | *Size of audience and brief description. E.g., 100 expected in attendance made up of attorneys, business owners, students, industry, employees, etc.* 150 - 200 attendees ~~ed~~ health professionals |
| Event held weekly, monthly, annually? | Annually |

## EPA DEPUTY ADMINISTRATOR EVENT INFORMATION FORM

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. <u>This is not a confirmation of attendance</u>.***

### Event Preparation

| | |
|---|---|
| Other EPA speakers? | *Name and titles of EPA personnel* n/a |
| Does EPA need to submit materials prior to event? | *Registration Form? Biography? Picture? Copy of presentation, speaker release form, etc?* Speaker headshot and bio |
| Expected prep and timing for prep calls or meetings: | 10-15 mins if necessary |
| Registration fee charged? How much? | none |
| Describe entity hosting EPA official: | *Private company; 501(c)(3); 501(c)(4); 501(c)(6); 527 Political Action Committee; academic institution; etc.* 501(c)(3) |
| Is the entity also a Federally Registered Lobbyist? | *Yes / (No)* |
| Are you giving a gift, award or anything else of value? Amount? | *E.g., Speaker or courtesy gift; award; plaque; travel support (hotel, transportation, etc.) etc., + description and value* No |
| Are you providing a meal? Amount? | No |

### At the Event and Other Event Logistics

| | |
|---|---|
| Is there a private hold room available for the Administrator? | No / n/a b/c the speech will be pre-recorded |
| Open press/closed press? | |
| Will you be issuing a press release? | yes |
| Person to contact for media purposes: | *Name & Title; Email; Office Number, Cell Number* Mari Faines mfaines@psr.org |
| Dress code: | *Casual/Business/Black Tie Optional/Black Tie/Etc.* Business |
| Room setup: | *What kind of microphone? What is the room setup? Is there a podium?* n/a |
| Notable/honorable guests attending (including elected officials): | Ebony Martin co-director Greenpeace |
| Are you recording the event? Website URL for recording (if event is recorded and posted): | Yes. Event will be streamed live on YouTube |
| Security contact: | *Name & Title; Email; Office Number, Cell Number* Grace Rennie Murphy gmurphy@psr.org, 202.421.5232 |

## EPA DEPUTY ADMINISTRATOR EVENT INFORMATION FORM

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

| | |
|---|---|
| Directions to event (include relevant information about parking, the specific building, best entrance to use) | n/a |
| Where to meet contact: | n/a |

**Contact Information**

| | |
|---|---|
| Your name and position: | Cerece Rennie Murphy, Director of Philanthropy, PSR |
| Phone (best & alternate): | (202) 421-5232 |
| Email address: | cmurphy@psr.org |
| Mailing address: | 1111 14th Street NW Suite 700, Wash., DC 2000 |
| Are you the point-of-contact at the event? If not, contact details: | Yes. |

*Please return this completed form to atkinson.emily@epa.gov and a copy to drinkard.andrea@epa.gov*

# EPA ADMINISTRATOR EVENT INFORMATION FORM

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

## Basic Background

| | |
|---|---|
| Event official title: | *2021 ECOS Fall Meeting – Better, Faster, Smarter: States at the Cutting Edge* |
| Event host(s)/organizer(s): | *Environmental Council of the States (ECOS)* |
| Event date (flexible?): | *September 8-9, 2021* |
| Time, duration, and time zone of event: | *First day 12:30-5:30 p.m. Eastern, second day 12:30-5:15 p.m. Eastern* |
| Deadline for acceptance: | *Initial response by June 28 at noon* |
| Will you accept a surrogate? | *Yes, preferably Deputy Administrator Janet McCabe as backup* |
| Event location and physical address: | *Virtual* |
| Type of event: | *Membership meeting* |
| Host(s) relationship to the EPA? | *Regulatory partner* |
| Event sponsor(s): | *Currently committed: Trihydro, Nucor, Edison Electric Institute, Dominion Energy, bp, Baker Botts, SmartComment, National Association of Water Companies, National Waste & Recycling Association* |

## Event Description and Role of the EPA Official

| | |
|---|---|
| Purpose of event: | *Membership meeting to promote policy discussion and idea sharing among ECOS members and their federal regulatory partners* |
| Brochure/website/invitation/ and/or other event materials: | *https://www.ecos.org/event/2021-ecos-fall-meeting/* |
| Run of show/agenda: | *Draft agenda currently in development* |
| Timing for EPA official's role: | *Preferred time: September 9 at 1:30-2:00 p.m.* |
| Role of the EPA official at the event: | *Speaker* |
| Requested presentation topic (if speaking): | *The value of innovation and state-federal partnerships to promote it* |
| Requested presentation format: | *Keynote presentation followed by Q&A* |
| Name and title of person introducing EPA official: | *ECOS President Patrick McDonnell, Secretary, Pennsylvania Department of Environmental Protection* |
| Audience make up? | *Approximately 200-250 state and federal environmental agency officials, along with representatives of NGOs and industry* |
| Event held weekly, monthly, annually? | *Spring Meeting and Fall Meeting held annually* |

# EPA ADMINISTRATOR EVENT INFORMATION FORM

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

## Event Preparation

| | |
|---|---|
| Other EPA speakers? | *TBD (generally AAs and RAs present on various roundtables)* |
| Does EPA need to submit materials prior to event? | *Register the Administrator free of charge by selecting the Prearranged Complimentary check box; we already have a bio and photo* |
| Expected prep and timing for prep calls or meetings: | *Zoom prep call for U.S. EPA staff with Lia Parisien, ECOS Executive Project Manager, in August* |
| Registration fee charged? How much? | *No charge for Administrator, $250 State, $300 Federal, $350 Other* |
| Describe entity hosting EPA official: | *501(c)(3)* |
| Is the entity also a Federally Registered Lobbyist? | *No* |
| Are you giving a gift, award or anything else of value? Amount? | *No* |
| Are you providing a meal? Amount? | *No* |

## At the Event and Other Event Logistics

| | |
|---|---|
| Is there a private hold room available for the Administrator? | *We can provide a private virtual holding room.* |
| Open press/closed press? | *Open* |
| Will you be issuing a press release? | *Not regarding the Administrator's remarks* |
| Person to contact for media purposes: | *Lia Parisien, ECOS Executive Project Manager, (202) 266-4931, lparisien@ecos.org* |
| Dress code: | *Business Casual* |
| Room setup: | *Virtual via Zoom* |
| Notable/honorable guests attending (including elected officials): | *ECOS President Patrick McDonnell, Secretary, Pennsylvania Department of Environmental Protection, ECOS Vice President Ben Grumbles, Secretary, Maryland Department of the Environment* |

# EPA ADMINISTRATOR EVENT INFORMATION FORM

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

| | |
|---|---|
| Are you recording the event? Website URL for recording (if event is recorded and posted): | *No* |
| Security contact: | *N/A* |
| Directions to event (include relevant information about parking, the specific building, best entrance to use) | *N/A* |
| Where to meet contact: | *N/A* |

## Contact Information

| | |
|---|---|
| Your name and position: | *Lia Parisien* |
| Phone (best & alternate): | *(202) 266-4931(office);* (b) (6) [redacted] *(cell)* |
| Email address: | *lparisien@ecos.org* |
| Mailing address: | *ECOS, 1250 H Street NW Suite 850, Washington, DC 20005* |
| Are you the point-of-contact at the event? If not, contact details: | *Yes* |

*Please return this completed form to scheduling@epa.gov, and copy lance.kathleen@epa.gov*

# WORKING TOGETHER FOR LASTING, COLLABORATIVE CHANGE

## November 17, 2021
## 2:30-4:30 PM EDT

As the Biden-Harris Administration approaches the end of its first year, there are clear and significant opportunities to build expertise and capacity across the federal government for strategic partnerships with philanthropy. Public-private partnerships can be a high-value strategy for the government to achieve greater program effectiveness and lasting impacts. This type of collaboration can also leverage philanthropy's unique capacity to provide risk capital for social innovation that can sometimes be difficult for government to undertake alone.

But how can both philanthropy and government get better at forming these partnerships to meet the goals that they share? And how can both sectors balance the inclination to focus on the most immediate needs and initiatives with the importance of developing capacity to leverage high-value partnerships for the longer term?

To this end, the Partnership for Public Service and Freedman Consulting, LLC, in collaboration with the Council on Foundations, will co-host **Working Together for Lasting, Collaborative Change,** a learning and relationship-building event to create a shared understanding about current opportunities for cross-sector engagement and to surface promising next steps. This virtual and invite-only 2-hour convening will feature a keynote address and moderated discussion with U.S. Secretary of Transportation Pete Buttigieg, discussion with other thought leaders, and interactive breakout discussions for direct exchange among leaders from both government and philanthropy.

The event will focus on best practices in collaboration and identify pain points and gaps that need to be addressed in cross-sector engagement that could improve the impact of future partnerships, such as leveraging the senior government experience of staff at many national and global philanthropies. We'll look at what external supports can help government staff tackle barriers to effective collaboration on current shared priorities for government and philanthropy, such as advancing racial equity, investing in public service talent and leadership, and improving community capacity to effectively use federal assistance.

With historic federal investments to support communities in need and opportunities for lasting, scalable change, the time is now to lay the groundwork that can solidify and strengthen the bridge between the philanthropic and public sectors. Our long-term goal is to help equip both sectors with the resources, communities of support, and institutional infrastructure to work together in a more effective way, both in this current moment and for future administrations.

*For more information about the November 17th convening, contact Kyra Jennings at kyra@tfreedmanconsulting.com. To RSVP, please email Lucas Bladen at lbladen@ourpublicservice.org.*

**From:** Michal Freedhoff
**To:** Fugh, Justina
**Subject:** Fwd: (b) (6) [redacted]
**Date:** Thursday, April 01, 2021 7:47:46 AM
**Attachments:** (b) (6) [redacted]

---

Good morning

Please see the attached and below. (b) (6) [redacted]

Thanks
Michal

Sent from my iPhone

Begin forwarded message:

> **From:** Michal Freedhoff (b) (6) [redacted]
> **Date:** April 1, 2021 at 7:40:05 AM EDT
> **To:** (b) (6) [redacted]
> **Subject:** (b) (6) [redacted]

> -----Original Message-----
> From: Stephen Freedhoff (b) (6) [redacted]
> Sent: Thursday, April 1, 2021 7:30 AM
> To: (b) (6) [redacted]
> Subject: (b) (6) [redacted]

> (b) (6) [redacted]

> [redacted]

> [redacted]

(b) (5), (b) (6)

**From:** Fugh, Justina
**To:** Adhar, Radha; "Amin, Faisal"; "Arroyo, Victoria"; Blythers, Dorien; Carbonell, Tomas; Carroll, Timothy; Cassady, Alison; Chase, Joann; Chaudhary, Dimple; Conger, Nick; Diaz, Catherine; Efron, Brent; Engelman-Lado, Marianne; Enobakhare, Rosemary; Fine, Philip; "Fox, Radhika"; Freedhoff, Michal; "Frey, Christopher"; "Garza, Johnathan"; Goffman, Joseph; Goldberg, Ruby; Green, Jamie; Hamilton, Lindsay; Harney, Alethea; Harris, Sincere; Hicks, Destine; Hoffer, Melissa; Hoover, Zealan; Katims, Casey; Kim, Eunjung; Lance, Kathleen; Laverdiere, Maria; Levy, Maxwell; "Li, Jake"; Lucey, John; Macedonia, Jennifer; andrew.mayock@ceq.eop.gov; McCabe, Janet; Michalos, Maria; "Morgan, Ashley"; "Niebling, William"; Nishida, Jane; "Nunez, Alejandra"; O"Brien, Grant; Adm16.Michael.Regan; Romer, Jennie; Cortez Russell, Loni; Sabater, Juan; Schafer, Zach; Schreyer, Andrew; "Shore, Debra"; Snyder, Rodney; "Utech, Dan"; Wachter, Eric; Waterhouse, Carlton; Weaver, Susannah
**Subject:** News about your upcoming financial disclosure filing requirement
**Date:** Friday, January 28, 2022 2:04:00 PM
**Attachments:** Advisory to all 278 filers about filing fee.pdf
When to Report Transactions on the OGE 278 and Part 7 - November 2020.docx

---

Hi there,
As you are undoubtedly – and perhaps even painfully -- aware, you are in a position that requires you to file the public financial disclosure report (also known as the 278). You previously filed a new entrant report, but I warned you that you have a continuing obligation to file these reports. If you joined EPA between 1/20/21 and 11/1/21, then you'll need to file an incumbent report this year (but if you started at EPA after 11/1/21, then you don't file until 2023). For those of you who joined before 11/1/21, your report will be similar to what you filed previously, but there are some differences:

- This report will cover only CY 2021, so from the date you started at EPA through 12/31/21;
- You will be able to pre-populate your previous form into the one that you file this year;
- You will now have to report on any gifts received from non-relatives that exceeded $415; and
- You will have to report transactions of more than $1000, including mutual funds or 529 plans.

We will assign your incumbent reports to you *in late February* and your due date will be May 16. And, hey, since I have your attention, let's review some important reminders:

- *Don't forget about periodic transaction reporting!* You are required to report any transactions of stocks or bonds more than $1000 within 30 days after receiving notice but not later than 45 days after the trade itself. To report this kind of transaction, submit a 278T in INTEGRITY. If you are late, then you are subject to an automatic late filing fee of $200 for missing the deadline.
- *Keep track of your mutual fund transactions.* For this upcoming filing, you will have to report any transactions of $1000 or more in mutual funds (including 529 plans) in the transactions section.
- *Late fees.* I've attached our reminder about late filing fees as well as a chart about transaction reporting. Alas, last year, we had to fine more than half a dozen people for late transaction filings.
- *Whom should you contact with questions?* Four of us in OGC/Ethics review 278s, so here's the list of contacts for you:

-

| OGC/Ethics | ORGANIZATIONS |
|---|---|
| Victoria Clarke | OIG, OGC, OMS, OW, Regions 3 and 4 |
| Justina Fugh | AO, OCFO, OITA and Regions 8, 9 and 10 |
| | |

| | |
|---|---|
| Shannon Griffo | OAR, OCSPP, OECA and Regions 1 and 2 |
| Ferne Mosley | OLEM, ORD and Regions 5, 6 and 7 |

Thanks for your attention to ethics issues, and I know you're eagerly anticipating the start of the public financial disclosure reporting season later in February!
Cheers,
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

**MEMORANDUM**

SUBJECT: Timely Filing of Public Financial Disclosure and Periodic Transaction Reports

FROM: David Cozad 8/29/19
Acting Designated Agency Ethics Official

TO: All EPA Public Financial Disclosure Report Filers

In 1978, Congress enacted the Ethics In Government Act, 5 U.S.C. app., to establish the Executive Branch financial disclosure reporting system that requires mandatory public disclosure of financial and employment information of certain officials and their immediate families. Because you occupy a designated position (either permanently or for more than 60 days on detail), you are required by this statute to file the public financial disclosure report. As executive branch employees, we are all bound by federal ethics laws and regulations, including prohibitions against financial conflicts of interest and loss of impartiality. Your disclosures allow the Office of General Counsel's Ethics Office (OGC/Ethics) to assist you in identifying and addressing potential or actual conflicts of interest in order to maintain the integrity of the Agency's programs and operations.

This memorandum formally reminds you that you are required by law to timely and accurately file your Public Financial Disclosure Reports (OGE 278e)[1] and Periodic Transaction Reports (OGE 278-Ts).[2] Failure to file timely will result in a **$200 late filing fee** unless you formally request and receive a waiver of the late fee from the Designated Agency Ethics Official (DAEO) or Alternate Designated Agency Ethics Official (ADAEO).[3] Unpaid late fees are subject to the Agency's[4] and the government's debt collection procedures.

In addition to filing timely, you must also file a complete and accurate report. Should OGC/Ethics contact you for any additional required information, you will have no more than **30 days** to update your report. For guidance on how to file an accurate report, please refer to the Public Financial Disclosure Guide or contact OGE/Ethics at ethics@epa.gov.

---

[1] *See* 5 U.S.C. app. § 101; 5 C.F.R. § 2634.201.
[2] Pub. L. 112-105 § 11 (STOCK Act).
[3] *See* 5 U.S.C. app. § 104(d)(1); 5 C.F.R. § 2634.704(a).
[4] *See* Resource Management Directive System 2540-03-P2 dated 07/12/2016.

Please refer to this chart for your filing obligations:

| | |
|---|---|
| OGE 278e - New Entrant reports | **Within 30 days** of entering a covered position (either by appointment to a permanent or acting in covered position) |
| OGE 278e – Incumbent reports | **No later than May 15** |
| OGE 278e – Termination reports | **No later than 30 days after** leaving a covered position (either through reassignment, resignation, or the end of acting in a covered position) (Reports may be submitted within 15 days prior to termination) |
| OGE 278T – Periodic transaction reports[5] | **The *earlier of* 30 days** after learning of a transaction or **45 days** of the transaction taking place. |

How to request an extension of the filing deadline:

For good cause (e.g., travel, workload issues, sickness), you may request up to two 45-day extensions. Submit the request by email, including the reason, to ethics@epa.gov **prior to the due date.** Extensions cannot be granted after the due date has passed.

How to request the waiver of a late filing fee:

If *extraordinary circumstances* prevented you from meeting the deadline and OGC/Ethics assessed a late fee, you may request a waiver of the late fee. *See* 5 C.F.R. § 2634.704. Submit your request in writing to ethics@epa.gov, to the attention of the DAEO and ADAEO, describing the extraordinary circumstances and provide any supporting documentation. Please note that vacations or routine work obligations are not "extraordinary" circumstances. The decision to grant or deny a waiver is at the sole discretion of the DAEO/ADAEO and is final.

You are required by law to comply with these financial reporting obligations. Your colleagues in OGC/Ethics are available to provide assistance, but it is always your obligation to file your reports timely and accurately. In fact, ethics regulations *require* that we refer individuals to the Department of Justice (DOJ) when there is reasonable cause to believe that they have willfully failed to file a required report or provide the information that the report requires. The current maximum civil penalty is $56,216.[6]

As public servants, we know that you take your ethics obligations seriously. As such, we expect you to make a good faith effort to adhere to the timeliness and completeness requirements of your financial disclosure reporting obligations. If you have any questions, please contact ethics@epa.gov.

ATTACHMENT - *When to Report Transactions on the OGE 278 and OGE 278T*

cc: Justina Fugh, Alternate Designated Agency Ethics Official

---

[5] *See* attached guidance – *When to Report Transactions on the OGE 278 and OGE 278T.*

[6] In 2012, OGC/Ethics referred an individual to DOJ for failure to file a termination report despite repeated reminders and entreaties. That individual paid a civil penalty of $15,000 and still had to file the termination report.

# When to Report Transactions

FILING DEADLINE : 30 days from notification or 45 days from transaction *whichever is earlier*

**A $200 late filing fee penalty is assessed for each late periodic reporting period[1]**

| Investment Assets | Periodic Transaction Report<br>Report on the OGE 278-T? | Annual and/or Termination Report<br>Report on Part 7 of the OGE 278e? |
|---|---|---|
| Transactions of $1,000 or less | | |
| • Any asset in which the transaction amount is $1,000 or less regardless of the type of asset or who owns the asset | No | No |
| Investment assets held by you, your spouse, or jointly held | | |
| • Stocks or stock options | Yes | Yes |
| • Corporate or municipal bonds (exclude U.S. Treasury securities) | Yes | Yes |
| • Commodity futures | Yes | Yes |
| • Other investment securities | Yes | Yes |
| • Assets listed above in your individual, joint, or spousal brokerage accounts managed accounts, IRAs, other retirement accounts, and/or other investment vehicles | Yes | Yes |
| Your dependent child's investment assets | | |
| • Stocks | Yes | Yes |
| • Corporate or municipal bonds (exclude U.S. Treasury securities) | Yes | Yes |
| • commodity futures | Yes | Yes |
| • other investment securities | Yes | Yes |
| • Assets listed above in dependent child's own or UGMA brokerage account, IRAs, and/or other investment vehicles | Yes | Yes |
| Other investment assets irrespective of ownership | | |
| • Real Property | No | Yes[2] |
| • Mutual funds, exchange traded funds, 529 plans, index funds, and/or other "excepted investment funds"[3] | No | Yes |
| • Any asset in which the transaction amount is $1,000 or less | No | No |
| • Cash accounts (deposits and/or withdrawals) or certificates of deposit | No | No |
| • Money market accounts and mutual funds | No | No |
| • US Treasury securities (e.g., T bills, Treasury bonds, savings bonds) | No | No |
| • Federal government retirement accounts (e.g., Thrift Savings Plan) | No | No |
| • Life insurance and annuities | No | No |
| • Collectibles | No | No |
| • Assets held within an excepted trust[4] | No | No |
| • Transfer of assets between you, your spouse, and your dependent children | No | No |

Last updated November 2020

[1] This late fee is automatically imposed by law and is non-negotiable. You may request a waiver of any late filing fee from the Designated Agency Ethics Official or the Alternate DAEO if there are extraordinary circumstances. A fee waiver is at the sole discretion of the DAEO/ADAEO and is not subject to appeal. A filer who has unpaid late fees will be referred to the appropriate federal office or agency for debt collection procedures.

[2] Do not report the purchase or sale of your personal residence on Part 7 unless you rent it out at any time during the reporting period.

[3] To be an excepted investment fund (EIF), the asset must be:

(a) widely held (more than 100 participants),
(b) independently managed – arranged so that you neither exercise control nor have the ability to exercise control over the financial interests held by the fund, and
(c) publicly traded (or available) or widely diversified.

Managed accounts, investment clubs, trusts, 529 accounts, brokerage accounts, and individual retirement accounts (IRAs) are not excepted investment funds in and of themselves. It may be that individual assets held within these types of investment vehicles may qualify as EIFs if, for example, your IRA holds a publicly-traded mutual fund. But the fact that you have a managed account does not absolve you of your reporting requirements. That account is legally owned by you, and you're responsible for its assets and reporting transactions. If you have questions, contact ethics@epa.gov.

[4] OGC/Ethics must determine that your trust qualifies as an "excepted trust." For help, email ethics@epa.gov.

| | |
|---|---|
| **From:** | Freedhoff, Michal |
| **To:** | Fugh, Justina |
| **Subject:** | RE: another question |
| **Date:** | Monday, February 01, 2021 3:24:03 PM |

---

Thank you. I suppose the past four years weren't for nothing?
Michal Freedhoff, Ph.D.
Acting Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Monday, February 1, 2021 3:23 PM
**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Subject:** RE: another question

Hi,

You've got the right instincts (why am I not surprised?). Yes, you can talk to the NGO colleague in your EPA official capacity. You could take the meeting with his/her contact, but you won't be terribly helpful. You can provide the funder with general information, I suppose, but you can't advocate or endorse any particular program, operation or service.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Sent:** Monday, February 01, 2021 3:05 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** another question

Hello again

In the category of how to balance my past life with my new one, an NGO colleague reached out to me to both connect in my new role, which I assume I can do (but tell me if I'm wrong), but also asked to connect me with an outside funder of their organization who is looking for guidance on how to allocate some of their resources going forward. This second part of the request seems like perhaps a no-go?

Thanks

Michal

Michal Freedhoff, Ph.D.
Acting Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

**From:** Freedhoff, Michal
**To:** Fugh, Justina
**Subject:** Re: Can we find some time to talk about paperwork?
**Date:** Tuesday, March 30, 2021 1:24:39 PM

---

Ok. I will call you then. I'm more an early bird. I remember talking to Jim Jones at 5:30 am at times during TSCA!

Sent from my iPhone

On Mar 30, 2021, at 1:23 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Let's do today after 5:30 pm unless that's too late for you (ha!). I just want to clear up some items. Can you call me when you're free at (b) (6) [redacted] Just so you know, it's never too late for me. There is a thing as "too early" but never "too late!"

---

**From:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Sent:** Tuesday, March 30, 2021 1:21 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: Can we find some time to talk about paperwork?

Hello

Better to schedule directly with me – I have obeyed the directives to not talk to anyone about anything!

Today I am only free after 5:30. Tomorrow I have 2-3 or 8:30-9. Any windows there for you?

Michal

Michal Freedhoff, Ph.D.
Acting Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Tuesday, March 30, 2021 12:48 PM
**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Subject:** Can we find some time to talk about paperwork?

Hi,

I need to chat with you for about 15 minutes about paperwork (ahem), but am unsure how to proceed. Do you have a staff assistant who can assist me?

Thanks,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Fugh, Justina
**To:** Freedhoff, Michal
**Subject:** RE: closing the loop
**Date:** Monday, February 01, 2021 4:52:00 PM

---

Hi,

(b) (6) [redacted] The only saving grace here is that transactions for excepted investment funds are reportable only once a year, when you file the incumbent report. So you won't need to tell me about those purchases until you file your incumbent report by May 15, 2022.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Sent:** Monday, February 01, 2021 1:47 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: closing the loop

- (b) (6) [redacted]
  - [redacted] then you will have to report those as transactions on an annual basis.

(b) (6) [redacted], but I wanted to confirm? And apologies for not fully understanding the difference between something (b) (6) [redacted]

Thanks
Michal

Michal Freedhoff, Ph.D.
Acting Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Monday, February 1, 2021 12:07 PM
**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Subject:** closing the loop

Hi –

I've confirmed that (b) (6) [redacted]

So…

- (b) (6) [redacted]
- [redacted]
  - [redacted]

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Fugh, Justina

**Sent:** Sunday, January 31, 2021 11:10 PM

**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>

**Subject:** RE: questions about financial disclosure (not for the weekend)

Hi there,

Oh, this form is not fun at all, but here are the answers to your questions:

- (b) (6) [redacted]
  - [redacted]
- [redacted]
  - [redacted]
- [redacted]
  - [redacted]
- [redacted]
- [redacted]
  - Let me double check on whether and how to report that.
- (b) (6) [redacted]
  - [redacted]

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Sent:** Saturday, January 30, 2021 1:48 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** questions about financial disclosure (not for the weekend)

Hello Justina and hope you're enjoying the weekend – please don't feel you need to answer this before Monday!

I am trying my best to fill out the 278 and am getting hung up as I often do on such documents. Before I fill out the giant spreadsheet for it to import them into the form, I wanted to run some asset types by you to see whether all of these types of things need to be listed:

- (b) (6) [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

Thanks for any advice you can provide

Michal

Michal Freedhoff, Ph.D.
Acting Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

| | |
|---|---|
| **From:** | Freedhoff, Michal |
| **To:** | Fugh, Justina |
| **Subject:** | RE: Ethics Training (alas, it"s mandatory) |
| **Date:** | Friday, January 29, 2021 2:26:30 PM |
| **Attachments:** | Biden Ethics Pledge for digital signature.pdf |

---

Here you go! Nice to actually see you today. I enjoyed that walk down our shared memory lane. Sorry I had to jump so abruptly – I had my intro meeting with Secretary Regan and didn't want to keep him waiting.
I am sure we will be talking soon.
Have a great weekend
michal
Michal Freedhoff, Ph.D.
Acting Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov
-----Original Appointment-----
**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Thursday, January 28, 2021 11:58 AM
**To:** Fugh, Justina; Blythers, Dorien; Freedhoff, Michal; Lance, Kathleen; Mayock, Andrew; Mercado Violand, Fernando
**Cc:** Mosley, Ferne; Clarke, Victoria; Griffo, Shannon; Ross, Margaret; Keith, Jennie; Payne, James (Jim)
**Subject:** Ethics Training (alas, it's mandatory)
**When:** Friday, January 29, 2021 12:00 PM-1:00 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Microsoft Teams Meeting
Welcome to EPA! As a new employee, you are required to have one hour of initial ethics training. We love for you to take the training in your first week. Don't worry, we try hard to make it bearable! Attached is the briefing material for your reference as well as the Biden ethics pledge that you'll need to sign.
Looking forward to talking to you and seeing you virtually tomorrow!

---

# Microsoft Teams meeting

**Join on your computer or mobile app**
Click here to join the meeting

**Or call in (audio only)**
(b) (5) [redacted]
Phone Conference ID: (b) (5) [redacted]
Find a local number | Reset PIN

By participating in EPA hosted virtual meetings and events, you are consenting to abide by the agency's terms of use. In addition, you acknowledge that content you post may be collected and used in support

of FOIA and eDiscovery activities.

Learn More | Meeting options

---

# ETHICS PLEDGE

I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. *Lobbyist Gift Ban*. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

2. *Revolving Door Ban — All Appointees Entering Government*. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

3. *Revolving Door Ban — Lobbyists and Registered Agents Entering Government*. If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 *et seq*., or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 *et seq*., within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

   (a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;

   (b) participate in the specific issue area in which that particular matter falls; or

   (c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.

4. *Revolving Door Ban — Appointees Leaving Government*. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.

5. *Revolving Door Ban — Senior and Very Senior Appointees Leaving Government*. If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections' implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.

6. *Revolving Door Ban — Appointees Leaving Government to Lobby*. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.

7. *Golden Parachute Ban*. I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.

8. *Employment Qualification Commitment*. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.

9. *Assent to Enforcement*. I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Personnel," issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.

Freedhoff, Michal Digitally signed by Freedhoff, Michal Date: 2021.01.29 14:22:43 -05'00'

Signature

01/29, 2021

Date

Name (Type or Print): Michal Freedhoff

| | |
|---|---|
| **From:** | Freedhoff, Michal |
| **To:** | Fugh, Justina |
| **Subject:** | RE: for our meeting 6/24 at 12:30 pm |
| **Date:** | Sunday, June 27, 2021 11:04:14 AM |
| **Attachments:** | 06-27-21Certification of Ethics Agreement Compliance - FREEDHOFF.pdf |

---

Michal Freedhoff, Ph.D.
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Wednesday, June 23, 2021 10:07 PM
**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Subject:** for our meeting 6/24 at 12:30 pm

Hi Michal,
We'll do two things at our meeting tomorrow: (1) I'll go over the ethics rules for PAS appointees, and (2) you will then sign the attached certification of compliance with your ethics agreement. Don't sign the certification until we meet because one of the things your attesting to is that you've met with me!
See you tomorrow,
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

| | |
|---|---|
| **From:** | Freedhoff, Michal |
| **To:** | Fugh, Justina |
| **Subject:** | RE: Invitation to Present as a Closs Lecturer to Graduate Chemistry Students |
| **Date:** | Thursday, August 12, 2021 4:11:03 PM |

Thanks – I may suggest to them that we arrange something that is a combo talk and q/a session, do it virtually and perhaps even do it after hours on the grounds that my career in non-traditional academia science policy stuff is not limited to my current role.

Rick will be out of the office for 2 weeks so I'd suggest just go through Kendra – and thank you! Frankly, I have had to remind people in the IO repeatedly to stop putting Jake on certain meetings/correspondence. Jake is great about reminding everyone as well, and we regularly organize meeting agendas in ways that have him join late or leave early, but I think some training would be very helpful.

Thanks!

Michal

Michal Ilana Freedhoff, Ph.D.
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Thursday, August 12, 2021 3:44 PM
**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Subject:** RE: Invitation to Present as a Closs Lecturer to Graduate Chemistry Students

Hi Michal,
Thanks for the insights about what grad students may do! So my updated advice is that you can agree to do this, but you should consider limited yourself to just the lecture. I confirmed with Jennie Keith that we don't yet have OCSPP on our list for invitations training, but we can do so. Now that you're confirmed and have Jake Li for company, this seems like a good time to ensure that your scheduling and support staff know how to vet invitations, gifts and navigate Jake's recusals. Shall we work with Rick Keigwin, who is the deputy ethics official for the OCSPP immediate office, or directly with your scheduler?
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Sent:** Wednesday, August 11, 2021 6:24 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Re: Invitation to Present as a Closs Lecturer to Graduate Chemistry Students

Thanks. I used to organize events like this when I was a graduate student - it's part of the appeal of the invitation, that it's student led. I'm definitely not spending an entire day there either way, but wanted to understand what was allowed before responding.

Much appreciated
M

Sent from my iPhone

> On Aug 10, 2021, at 10:16 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:
>
> Hi Michal,
> Let me check, but I think that Jennie Keith of my staff is already planning on providing invitations training to your staff (combined with ORD). And if it's not OCSPP, then we can certainly provide that training to you, Jake and your scheduling staff. That will help in the longer term. For this shorter term, look for who is sending the request and what they want you to do.
>
> Did you notice that, even though the request is on University of Chicago letterhead, the author does not identify her affiliation? She's not a member of the faculty or the staff, it seems, but rather a graduate student. I can understand agreeing to give one speech to a university, but this request is to spend an entire day with this one university. Would you be willing and able to do the same for all universities that ask? You can't provide preferential treatment for one university over others.
> This seems like a big ask and not from the staff or faculty of the University.
> Justina
>
> Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Sent:** Tuesday, August 10, 2021 4:50 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** FW: Invitation to Present as a Closs Lecturer to Graduate Chemistry Students

Hello and hope you are well

Separate and apart from whether this is something I want to do (though generally I do welcome mentorship/educational opportunities), what are the ethics flags/concerns I need to be aware of when considering this or other similar invitations?

Thank you!

Michal

Michal Ilana Freedhoff, Ph.D.
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

---

**From:** Jeri Beiter (b) (6) [redacted]
**Sent:** Tuesday, August 10, 2021 3:42 PM
**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Subject:** Invitation to Present as a Closs Lecturer to Graduate Chemistry Students

Hello Dr. Freedhoff,

My name is Jeriann Beiter, and I am a graduate student in physical chemistry at the University of Chicago. Each year, the students of the UChicago Chemistry Department organize a lecture series for prominent scientists to visit the university, give a department seminar (~1 hour in length), and meet with students throughout the day to discuss their career path and research. As the result of a student-led nomination and selection process, I would like to invite you to be a Closs Lecturer during this upcoming academic year (2021-2022). Your experiences as a scientist in guiding federal policy and now the EPA Chemical Safety and Pollution Prevention would be a unique and expository addition to the lecture series, and we look forward to hosting you if you are interested!

Due to COVID-19 precautions and for accessibility and planning purposes, your visit would be held virtually via Zoom, with all logistics and organization coordinated through me, as your host. We will also reimburse your meals for the day of your visit, and typically schedule more informal meetings with larger groups of students for lunch and dinner. A list of dates is available below, and I ask that you choose at least one in each quarter (designated by Fall, Winter, and Spring) that would work for you.

**Fall 2021:** 9/28, 10/12, 10/19, 10/26, 11/9, 11/16
**Winter 2022:** 1/11, 1/18, 1/25, 2/8, 2/15, 2/22, 3/8
**Spring 2022:** 3/26, 4/12, 4/19, 4/26, 5/10, 5/17

For more information, please see the attached letter. I look forward to hearing back from you either way at your earliest convenience!

All the best,
Jeriann

Jerian Beiter (she/hers)
Voth Group
Department of Chemistry

<image001.png>

**From:** Fugh, Justina
**To:** Freedhoff, Michal
**Subject:** RE: Quick q (not for weekend)
**Date:** Monday, May 17, 2021 4:09:00 PM

---

Hi Michal,
How are you? I heard that your confirmation hearing went reasonably well ... I heard that the Interior nominee got "grilled on the prairie chicken," whatever that means. (b) (6) [redacted] They're more fun than work (and I love work).

With regard to (b) (6) [redacted], you may either:

- Report those *next year* because they (b) (6) [redacted] so not subject to the periodic reporting deadline, or
- Go ahead and file a 278T (periodic transaction report) in INTEGRITY now so that you don't forget and can upload those transactions next year when you file.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

-----Original Message-----
From: Freedhoff, Michal <Freedhoff.Michal@epa.gov>
Sent: Saturday, May 15, 2021 3:12 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Quick q (not for weekend)

Hello and hope you're having a great day

(b) (6) [redacted]

Do I need to do or report anything right now?

Ty
M

Sent from my iPhone

| | |
|---|---|
| **From:** | Freedhoff, Michal |
| **To:** | Fugh, Justina |
| **Subject:** | RE: University of Chicago Women in Chemistry Guest Speaker |
| **Date:** | Wednesday, January 12, 2022 8:07:53 AM |

Ok, thanks – I wouldn't ask anyone for help on something like this! If there are any restrictions to the way they advertise or any qualifiers about how I speak, please let me know!

Michal Ilana Freedhoff, Ph.D.
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Tuesday, January 11, 2022 11:07 PM
**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Subject:** RE: University of Chicago Women in Chemistry Guest Speaker

Hi Michal,
From my perspective, you could still do this talk in your official capacity, even on a weekend or early evening because PAS appointees are "on the job" 24/7 and don't have to record sick leave or annual leave. If you did this event in your official capacity, then you may continue to use your EPA email address for correspondence, may ask a subordinate to help prepare talking points, and present data or information on behalf of EPA. I think doing this event in official capacity is preferable than personal capacity, even though you'll be talking about your own experiences because, this way, they can use your official EPA title and headshot to share, factually, that you are their speaker in their promotional materials. That would all be fine since they aren't charging people to attend the event.
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Sent:** Tuesday, January 11, 2022 11:39 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** FW: University of Chicago Women in Chemistry Guest Speaker

Hey there!

We chatted about this a long time ago – as you can see the request has shifted to be an outside the

work day virtual thing that is not just about my EPA work experience, but is a broader focus of the sort I've done in the past on non-traditional careers for chemistry PhDs. Is this something that passes muster with you, and is there a way they should or should not advertise the event?

Thanks
Michal

Michal Ilana Freedhoff, Ph.D.
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

---

**From:** Olivia Laxton (b) (6) [redacted]
**Sent:** Sunday, January 9, 2022 8:01 PM
**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Cc:** Maia Czaikowski (b) (6) [redacted]
**Subject:** Re: University of Chicago Women in Chemistry Guest Speaker

Hello again,

No worries!

And yes! That would definitely be of great interest to a lot of students and we would love to hear about that time in your career. I think early evening works best for a lot of people actually, as its hard for people to carve out time during experimental runs. Do you have any availability early February?

Best,

Olivia

---

**From:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Sent:** Saturday, January 8, 2022 6:48 AM
**To:** Olivia Laxton <(b) (6) [redacted]
**Cc:** Maia Czaikowski (b) (6) [redacted]
**Subject:** RE: University of Chicago Women in Chemistry Guest Speaker

Hello there and apologies if I dropped the ball on this!

I'm not sure how much you know about my background, but before coming to EPA I spent almost 25 years in Congress working on a range of issues at the nexus of science/policy/law and I'd certainly want to focus on those years as well.

Would it be possible for the seminar to be scheduled for early evening or during the day on a federal holiday? It would be difficult for me to find the time to do this during the workday, but I would be happy to do it on my own time.

Thanks again for the invitation

Michal

Michal Ilana Freedhoff, Ph.D.
Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

---

**From:** Olivia Laxton (b) (6) [redacted]
**Sent:** Friday, January 7, 2022 5:53 PM
**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Cc:** Maia Czaikowski <(b) (6) [redacted]
**Subject:** University of Chicago Women in Chemistry Guest Speaker

Hello Dr. Freedhoff,

My name is Olivia Laxton and I am co-president with Maia Czaikowski of the Women in Chemistry club at the University of Chicago. I emailed a bit ago about potentially having you speak with our Women in Chemistry club, but I think it may have gotten lost in the shuffle.

I believe you were previously in discussion with Jeri Beiter about a seminar discussion with the club. We are still very interested in having a zoom seminar style meeting with you. It would entail perhaps a 45-minute seminar focusing on your scientific interests, scientific career, choices that led you to the EPA, and what your current work entails -- or whatever you feel you may want to present on -- followed by a 15-minute question and answer section.

Please let us know if this is something you are still interested in. We would love to host you toward the end of January or sometime in February. We totally understand that these are crazy times, and you may be too busy with all the madness in the world. However, we still wanted to reach out to you and would love to host you for such an event. And happy new year!

Best Regards,

Olivia Laxton and Maia Czaikowski
WIC Co-Presidents
Department of Chemistry

University of Chicago

**From:** Fugh, Justina
**To:** Freedhoff, Michal
**Subject:** RE: Welcome to the wonderful world of public financial disclosure reporting!
**Date:** Wednesday, February 03, 2021 9:35:00 AM

---

No, (b) (6) [redacted]

**From:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Sent:** Wednesday, February 03, 2021 9:32 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: Welcome to the wonderful world of public financial disclosure reporting!
Sorry to keep pestering you - we have (b) (6) [redacted]. I know this is not a nominee disclosure, but because I've been made acting in a role that is a PAS, do I need to (b) (6) [redacted]?
Thanks
Michal

**Certain Mortgages Are Not Reportable**

You do not need to report a mortgage or home equity loan on your personal residence, unless (1) you rented out the residence during the reporting period or (2) you are a nominee or appointee to a Presidentially appointed, Senate-confirmed (PAS) position. A PAS nominee or appointee generally must report a mortgage or home equity loan on a personal residence unless a specific additional exclusion applies.

Michal Freedhoff, Ph.D.
Acting Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Monday, January 25, 2021 1:05 AM
**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>; Blythers, Dorien <Blythers.Dorien@epa.gov>; Lance, Kathleen <Lance.Kathleen@epa.gov>; Mayock, Andrew <Mayock.Andrew@epa.gov>; Mercado Violand, Fernando <MercadoViland.Fernando@epa.gov>
**Subject:** Welcome to the wonderful world of public financial disclosure reporting!
Hi there,
Welcome to EPA! My name is Justina Fugh, and I'm the director of the EPA Ethics Office. I've met some of you by phone and will soon meet you all virtually. For your initial ethics training, I'll go over your ethics obligations, which includes submitting the public financial disclosure report. Yes, in your position, you are required by the Ethics in Government Act of 1978 to file the Public Financial Disclosure Report. Using your EPA email address, I have now assigned you a new entrant report that my staff will review. Having this information will allow us to assess your conflicts issues and then to draft recusal statements for those of you who need them. Don't worry … we're here to help you.
DEADLINE FOR SUBMITTING THE REPORT
Technically, your "new entrant" report is due no later than 30 days from your start date at EPA or 2/24/21. If you need additional time, you must contact ethics@epa.gov before your deadline expires. There is a limit to how much additional time we can give you, and we can't grant any

extension after the fact.

THE FINANCIAL DISCLOSURE REPORT, OGE-278e

EPA uses an electronic filing system (www.INTEGRITY.gov) for the public financial disclosure reports that is operated and secured by the U.S. Office of Government Ethics (OGE). You are required by law to complete the form, and we will use it to determine whether you have any financial conflicts of interest or other ethics concerns. We have pre-populated the address field with EPA's address because, well, this is a public form and we don't want anyone to know your personal address. For help in INTEGRITY, check out the OGE Public Financial Disclosure Guide. The email from INTEGRITY.gov will provide you with specific instructions to log into the federal government's max.gov site, the gateway to INTEGRITY. If you didn't receive your account notification, then check your clutter box for messages from INTEGRITY.gov, or contact ethics@epa.gov.

There are several important things to know about the OGE-278e: (1) it is a public form (which means that anyone can ask for a copy of your form, but Congress repealed the requirement for public posting to the internet); (2) you have to fill it out every year you are in this position; (3) when you leave the position, you will have to file a termination report; and (4) you will be subject to a late filing fee of $200 for not filing your report timely.

REQUIREMENT TO ANSWER ANY FOLLOW UP QUESTIONS WITHIN 14 DAYS

We will review your report as quickly as possible. If we have any questions, then we will notify you. At that point, you will have 14 calendar days to respond and resubmit your report back to us with any necessary changes.

REPORTING TRANSACTIONS

While you are in this position, you are a public financial disclosure filer who is subject to certain additional requirements of the Ethics In Government Act as amended by the STOCK Act. You will be required to report any purchase, sale or exchange of stocks, bonds, commodities futures or other forms of securities when the amount of the transaction exceeds $1000. Use INTEGRITY to disclose reportable transactions within 30 days of receiving notification of the transaction, but not later than 45 days after the transaction occurs. You will have to report transactions that occur within brokerage accounts, managed accounts, or other investment vehicles that you own or jointly own with your spouse or another person, as well as transactions of your spouse or dependent children. We will go over this requirement during your initial ethics training, but I've also attached our reminder about late fees and when to report transactions. Remember, you are responsible for reporting transactions, even if you have a managed account, and you will be fined for a tardy periodic transaction report.

YES, YOU CAN BE FINED FOR NOT FILING PROMPTLY

It's worth repeating that you can be fined $200 for not meeting the submission deadline (and you still have to file that report). PLEASE pay attention to your filing requirements! If you need an extension, then you must ask before your deadline expires. There is a limit to how much additional time you may receive.

## HELPFUL HINTS FOR FILLING OUT THE FORM

- This is a wretched and exacting form, so just know that you will have to provide a lot of information.
- You will get three different places to report assets: filer's employment-related assets and income, spouse's employment related assets and income, and other assets and income. You must report assets for yourself, your spouse and any dependent children. We don't

really care where you report your assets, just that you do report them all someplace.

- You must include any investment asset that is worth more than $1000. Include any income from any source that exceeded $200 during the reporting period (including outside jobs or hobbies, rental income). Include any cash/savings accounts that have more than $5000.
- Enter each asset separately. Don't lump items together on one line. Be sure to provide the valuation of the asset AND the amount of the income. For assets that aren't mutual funds, you also have to report the type of income (e.g., dividends, cap gains).
- For 401(k) or IRA plans, provide the name of each of the underlying assets. Don't just write "Vanguard IRA" or "mutual fund." You must specify each asset separately and give the valuation but, for these assets in tax deferred instruments, you do not need to provide the amount of income accrued.
- Do not report your federal salary, your spouse's federal salary, or Thrift Savings Plan information
- If you (not your spouse) have any earned income (e.g., outside job, paid pension), you have to report the actual amount of that income.
- If your spouse works outside of federal service, then include your spouse's employer but not the amount of your spouse's salary. If you are not legally married, do not report your significant other's employer.
- Don't forget to include any life insurance policies (whole life or variable life) as well as the underlying investments. Do not report term life insurance.
- If you have nothing to report in a section, be sure to click the "nothing to report" button
- The various parts of the form have different reporting periods, so please consult the attached "reporting periods" chart. Remember to check out the Office of Government Ethics' Public Financial Disclosure Guide or to contact OGC/Ethics for help.

If you have any questions regarding this message or your obligations, then please contact me or anyone in the OGC Ethics Office at ethics@epa.gov. Good luck with the form and remember, we can answer any questions you may have.

Cheers,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Freedhoff, Michal
**To:** Fugh, Justina
**Subject:** Re: Welcome to the wonderful world of public financial disclosure reporting!
**Date:** Tuesday, January 26, 2021 6:48:04 AM

---

Thank you for all of that! Much appreciated
M

Sent from my iPhone

On Jan 25, 2021, at 10:08 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi,
I was hoping to get your ethics briefing scheduled as an entering group through Sinceré, so let me check on that. But you do NOT need to wait for the training to start on the report. Just forge ahead! Also, I told Joe Cole, the Associate General Counsel for the Pesticides and Toxics Law Office, that you're passionate about EPA and super smart, and that I enjoy working with you. He oversees a very talented crew of lawyers, so you'll enjoy working with them.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Sent:** Monday, January 25, 2021 7:41 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: Welcome to the wonderful world of public financial disclosure reporting!
Thank you Justina and very happy to be here!
When we spoke briefly you mentioned there would be some training – should I wait to start filling this out until after that?
Thanks
Michal
Michal Freedhoff, Ph.D.
Acting Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Monday, January 25, 2021 1:05 AM
**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>; Blythers, Dorien <Blythers.Dorien@epa.gov>; Lance, Kathleen <Lance.Kathleen@epa.gov>; Mayock, Andrew <Mayock.Andrew@epa.gov>; Mercado Violand, Fernando

<MercadoViolland.Fernando@epa.gov>
**Subject:** Welcome to the wonderful world of public financial disclosure reporting!
Hi there,
Welcome to EPA! My name is Justina Fugh, and I'm the director of the EPA Ethics Office. I've met some of you by phone and will soon meet you all virtually. For your initial ethics training, I'll go over your ethics obligations, which includes submitting the public financial disclosure report. Yes, in your position, you are required by the Ethics in Government Act of 1978 to file the Public Financial Disclosure Report. Using your EPA email address, I have now assigned you a new entrant report that my staff will review. Having this information will allow us to assess your conflicts issues and then to draft recusal statements for those of you who need them. Don't worry … we're here to help you.
DEADLINE FOR SUBMITTING THE REPORT
Technically, your "new entrant" report is due no later than 30 days from your start date at EPA or 2/24/21. If you need additional time, you must contact ethics@epa.gov before your deadline expires. There is a limit to how much additional time we can give you, and we can't grant any extension after the fact.
THE FINANCIAL DISCLOSURE REPORT, OGE-278e
EPA uses an electronic filing system (www.INTEGRITY.gov) for the public financial disclosure reports that is operated and secured by the U.S. Office of Government Ethics (OGE). You are required by law to complete the form, and we will use it to determine whether you have any financial conflicts of interest or other ethics concerns. We have pre-populated the address field with EPA's address because, well, this is a public form and we don't want anyone to know your personal address. For help in INTEGRITY, check out the OGE Public Financial Disclosure Guide. The email from INTEGRITY.gov will provide you with specific instructions to log into the federal government's max.gov site, the gateway to INTEGRITY. If you didn't receive your account notification, then check your clutter box for messages from INTEGRITY.gov, or contact ethics@epa.gov.
There are several important things to know about the OGE-278e: (1) it is a public form (which means that anyone can ask for a copy of your form, but Congress repealed the requirement for public posting to the internet); (2) you have to fill it out every year you are in this position; (3) when you leave the position, you will have to file a termination report; and (4) you will be subject to a late filing fee of $200 for not filing your report timely.
REQUIREMENT TO ANSWER ANY FOLLOW UP QUESTIONS WITHIN 14 DAYS
We will review your report as quickly as possible. If we have any questions, then we will notify you. At that point, you will have 14 calendar days to respond and resubmit your report back to us with any necessary changes.
REPORTING TRANSACTIONS
While you are in this position, you are a public financial disclosure filer who is subject to certain additional requirements of the Ethics In Government Act as amended by the STOCK Act. You will be required to report any purchase, sale or exchange of stocks, bonds, commodities futures or other forms of securities when the amount of the transaction exceeds $1000. Use INTEGRITY to disclose reportable transactions within 30 days of receiving notification of the transaction, but not later than 45 days after the

transaction occurs. You will have to report transactions that occur within brokerage accounts, managed accounts, or other investment vehicles that you own or jointly own with your spouse or another person, as well as transactions of your spouse or dependent children. We will go over this requirement during your initial ethics training, but I've also attached our reminder about late fees and when to report transactions. Remember, you are responsible for reporting transactions, even if you have a managed account, and you will be fined for a tardy periodic transaction report.

YES, YOU CAN BE FINED FOR NOT FILING PROMPTLY

It's worth repeating that you can be fined $200 for not meeting the submission deadline (and you still have to file that report). PLEASE pay attention to your filing requirements! If you need an extension, then you must ask before your deadline expires. There is a limit to how much additional time you may receive.

## HELPFUL HINTS FOR FILLING OUT THE FORM

- <!--[if !supportLists]--> <!--[endif]-->This is a wretched and exacting form, so just know that you will have to provide a lot of information.
- <!--[if !supportLists]--> <!--[endif]-->You will get three different places to report assets: filer's employment-related assets and income, spouse's employment related assets and income, and other assets and income. You must report assets for yourself, your spouse and any dependent children. We don't really care where you report your assets, just that you do report them all someplace.
- <!--[if !supportLists]--> <!--[endif]-->You must include any investment asset that is worth more than $1000. Include any income from any source that exceeded $200 during the reporting period (including outside jobs or hobbies, rental income). Include any cash/savings accounts that have more than $5000.
- <!--[if !supportLists]--> <!--[endif]-->Enter each asset separately. Don't lump items together on one line. Be sure to provide the valuation of the asset AND the amount of the income. For assets that aren't mutual funds, you also have to report the type of income (e.g., dividends, cap gains).
- <!--[if !supportLists]--> <!--[endif]-->For 401(k) or IRA plans, provide the name of each of the underlying assets. Don't just write "Vanguard IRA" or "mutual fund." You must specify each asset separately and give the valuation but, for these assets in tax deferred instruments, you do not need to provide the amount of income accrued.
- <!--[if !supportLists]--> <!--[endif]-->Do not report your federal salary, your spouse's federal salary, or Thrift Savings Plan information
- <!--[if !supportLists]--> <!--[endif]-->If you (not your spouse) have any earned income (e.g., outside job, paid pension), you have to report the actual amount of that income.
- <!--[if !supportLists]--> <!--[endif]-->If your spouse works outside of federal service, then include your spouse's employer but not the amount of your spouse's salary. If you are not legally married, do not report your significant other's employer.
- <!--[if !supportLists]--> <!--[endif]-->Don't forget to include any life insurance

policies (whole life or variable life) as well as the underlying investments. Do not report term life insurance.

<!--[if !supportLists]-->• <!--[endif]-->If you have nothing to report in a section, be sure to click the "nothing to report" button

<!--[if !supportLists]-->• <!--[endif]-->The various parts of the form have different reporting periods, so please consult the attached "reporting periods" chart. Remember to check out the Office of Government Ethics' Public Financial Disclosure Guide or to contact OGC/Ethics for help.

If you have any questions regarding this message or your obligations, then please contact me or anyone in the OGC Ethics Office at ethics@epa.gov. Good luck with the form and remember, we can answer any questions you may have.

Cheers,

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Freedhoff, Michal
**To:** Fugh, Justina
**Subject:** Re: Your possible input
**Date:** Tuesday, March 09, 2021 5:20:09 PM

---

Thanks. I just know her from before and know she isn't aware it's not an email I can answer.

Sent from my iPhone

On Mar 9, 2021, at 5:11 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi Michal,
Oh, I can feel that you really want to respond (I'm the same way). What Dr. Blum is asking isn't really an ethics issue *per se*; rather, she's asking a policy type question, right? She wants to be able to forecast what the Biden Administration might be considering going forward. You may have ideas about what direction OCSPP and the Agency should take, so you could comment on those types of things generally, but I expect that you don't want to be boxed into making any commitments. One way to respond is to say, right now, we don't have a confirmed Administrator, Deputy Administrator or even Assistant Administrator for OCSPP, so it's frankly too early to be able to respond with any specificity. That said, you and the Agency's political leadership welcome ideas that Dr. Blum and her colleagues can offer in their op-ed.
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Sent:** Tuesday, March 09, 2021 5:03 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** FW: Your possible input
Hello Justina and hope you are well
I get a lot of these. For some, I don't mind just not responding – but can you suggest a way to explain why I am unable to answer questions like these in this role?
Thank you
Michal
Michal Freedhoff, Ph.D.
Acting Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

---

**From:** Arlene Blum <arleneb@lmi.net>
**Sent:** Tuesday, March 9, 2021 4:56 PM
**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Cc:** Martin Mulvihill <(b) (6) [redacted] Gretta Goldenman
(b) (6) [redacted]
**Subject:** Your possible input

Dear Michal,

My congratulations on you appointment. I know you are very busy, but I'd be very grateful if you could give us some input.

We had an oped accepted yesterday by the NYT. It's on climate change, plastic pollution, and toxic chemicals which are all related to the petrochemical industry. Our editor at the Times asked us to add some things the Biden administration could do. He wrote:
" *This is a chance for you to spell out how Biden might use the levers of government to redirect an enormous economic engine for fossil fuel companies. How does he do that*?"

My colleagues Gretta and Marty, as copied, and I have put together a few policy suggestions that would support a transition to safer chemicals and materials. We would appreciate you ideas on which of the policy recommendations below could reasonably be accomplished by the Biden administration? Can you suggest other ideas?

**Ideas for what we might ask Biden to do:**

- End all subsidies of the fossil fuel industry
- Initiate a managed decline of oil and gas production, beginning with suspension of permits for oil and gas extraction on public lands
- Stop the petrochemical buildout in the US before it goes further, particularly in the US Gulf Coast and Ohio River Valley, by instructing federal agencies to suspend and deny permits for new or expanded plastic production facilities, associated infrastructure projects, and exports.
- Support research, development and training that promotes a transition to safer and more sustainable chemistry and materials.
- Your additional suggestion?

Thanks so much in advance for you input on the feasibility of our suggestions and any other ideas you would suggest.
Kind regards,
Arlene

Arlene Blum, PhD
Mobile: (b) (6) [redacted]
arlene@arleneblum.com
Research Associate in Chemistry, UC Berkeley
Executive Director, Green Science Policy Institute

Web: www .GreenSciencePolicy .org, www.arleneblum.com

| | |
|---|---|
| **From:** | Fugh, Justina |
| **To:** | Freedhoff, Michal |
| **Subject:** | dang it! |
| **Date:** | Friday, April 23, 2021 10:18:00 AM |
| **Attachments:** | Freedhoff EA for signature.pdf |

---

I accidentally included a date at the top of the previous version, but it was yesterday's date! So can you please do this again (I AM SO SORRY) so that we don't have conflicting dates? Now, there's your return to the prosaic from the surreal.... a typo!

-----Original Message-----
From: Freedhoff, Michal <Freedhoff.Michal@epa.gov>
Sent: Friday, April 23, 2021 9:59 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: TIME TO SIGN!

I am pretty sure I did the integrity one correctly. Thank you for all your help! This is still so surreal.

Michal Freedhoff, Ph.D.
Principal Deputy Assistant Administrator Office of Chemical Safety and Pollution Prevention U.S. Environmental Protection Agency Freedhoff michal@epa.gov

-----Original Message-----
From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Friday, April 23, 2021 9:53 AM
To: Freedhoff, Michal <Freedhoff.Michal@epa.gov>
Subject: RE: TIME TO SIGN!

Sorry, here you go.

-----Original Message-----
From: Freedhoff, Michal <Freedhoff.Michal@epa.gov>
Sent: Friday, April 23, 2021 9:51 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: TIME TO SIGN!

Awesome, thanks! now comes the part where I ask you about technology fails. The first one is how do I insert a digital signature on the word document?

Michal Freedhoff, Ph.D.
Principal Deputy Assistant Administrator Office of Chemical Safety and Pollution Prevention U.S. Environmental Protection Agency Freedhoff michal@epa.gov

-----Original Message-----
From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Friday, April 23, 2021 9:46 AM
To: Freedhoff, Michal <Freedhoff.Michal@epa.gov>
Subject: TIME TO SIGN!

Hey Michal,
You've been precleared and nominated, so now it's time to sign. Attached is the ethics agreement for your digital signature and also please go into INTEGRITY to sign your nominee report. You can't change a bloody thing on that report, but please sign! Congratulations!
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

-----Original Message-----
From: Freedhoff, Michal <Freedhoff.Michal@epa.gov>
Sent: Friday, April 23, 2021 9:41 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Re: Quick q

Yep. Thanks.

Sent from my iPhone

> On Apr 23, 2021, at 9:21 AM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:
>
> Hi -
> Are you asking about the SEPW questionnaire? If so, then you'll need to consult with Radha and OCIR. I don't review those, only offer comments on the ethics portion in my nosy way.
> Justina
>
>
> -----Original Message-----
> From: Freedhoff, Michal <Freedhoff.Michal@epa.gov>
> Sent: Friday, April 23, 2021 8:33 AM
> To: Fugh, Justina <Fugh.Justina@epa.gov>
> Subject: Quick q
>
> Good morning Justina and hope all is well.
>
> I was all set to go get my questionnaire notarized yesterday when I noticed two things - first, it was the wrong version of the questionnaire, and second, that it seems as though I need notarization of the financial and ethics stuff as well?
>
> I just wanted to see whether that read is right, and also whether if I sign it electronically using my PIV card I've accomplished the same identity verification purpose that the notary serves?
>
> Thanks
> M
>
> Sent from my iPhone

| | |
|---|---|
| **From:** | Fugh, Justina |
| **To:** | Freedhoff, Michal |
| **Subject:** | here"s the draft EA, without the metadata |
| **Date:** | Wednesday, April 07, 2021 7:56:00 PM |
| **Attachments:** | draft EA.docx |

---

Easier to read this way. I should get comments back from the Office of Government Ethics tomorrow.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Fugh, Justina
**To:** Freedhoff, Michal
**Subject:** RE: closer to the goal line
**Date:** Wednesday, April 21, 2021 5:58:00 PM

---

Hi,
Thanks for the documents and I've updated your report. Am waiting to hear next from OGE.
Cheers,
Justina

---

**From:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Sent:** Wednesday, April 21, 2021 11:12 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: closer to the goal line

I'm so sorry to hear that! (b) (6) [redacted]. I hope you're hanging in there.

Thanks for your help with this – see below – I was (b) (6) [redacted] You'll see below I don't know everything with as much precision as you probably want. I am going to send you some documents by separate email – the reason why I think (b) (6) [redacted]

(b) (6), (b) (3) (A)

Michal Freedhoff, Ph.D.
Principal Deputy Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Tuesday, April 20, 2021 11:00 PM
**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Subject:** RE: closer to the goal line

Hi,
I was (b) (6) [redacted]

(b) (6) [redacted] Here is what I've added to your report in Part 6:

[redacted]

(b) (6), (b) (3) (A) [redacted]

LIABILITIES --

Here's what the instructions say (easy to miss) --

> For this section, report:
>
> Liabilities over $10,000 that you, your spouse, or your dependent child owed at any time during the reporting period for this section.
> Do not report the following types of liabilities: (1) loans secured by a personal motor vehicle, household furniture, or appliances, unless the loan exceeds the item's purchase price; (2) revolving charge accounts, such as credit card balances, if the outstanding liability does not exceed $10,000; (3) personal liabilities owed to a spouse, parent, sibling, or child of yours, your spouse, or your dependent child; and (4) obligations arising from divorce or permanent separation.
>
> You do not need to report a mortgage or home equity loan on your personal residence, unless (1) you rented out the residence during the reporting period or (2) you are a nominee or appointee to a Presidentially-appointed, Senate-confirmed (PAS) position. A PAS nominee or appointee generally must report a mortgage or home equity loan on a personal residence unless a specific additional exclusion applies.

Fill out the chart below and I'll insert the information onto the form for you:

[redacted]

Thanks!
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Sent:** Monday, April 19, 2021 4:35 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: closer to the goal line

It's what I thought it was

(b) (6) [redacted]

Michal Freedhoff, Ph.D.
Principal Deputy Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Monday, April 19, 2021 3:48 PM
**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Subject:** closer to the goal line

Hi,
We are inching closer to preclearance. (b) (6) [redacted]
but there are still some reporting requirements to endure:

- First, I reviewed all of our emails to be sure we have all the necessary information. For your nominee report, (b) (6) [redacted] Have you?

- Second, (b) (6), (b) (5) [redacted]

- (b) (6) [redacted]

(b) (6) [redacted]

Thanks,
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Fugh, Justina
**To:** Freedhoff, Michal
**Subject:** RE: closing in on pre-clearance (which is a good thing)
**Date:** Sunday, April 11, 2021 10:08:00 PM
**Importance:** Low

---

Hi,
Thanks for the screenshots, and I see what you mean. I've changed the entry to (b) (6) [redacted] I'll let you know when it's time to sign the ethics agreement and your 278, but I don't have any information about the FBI or other vetting steps you'll have to navigate.
Sorry!
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Build ng | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Sent:** Saturday, April 10, 2021 7:40 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: closing in on pre-clearance (which is a good thing)

Thanks Justina

I sent you a separate email with some screenshots of (b) (6) [redacted] but take a look and see what you think.

You are correct that (b) (6) [redacted]

I understand that once the financials are figured out, I'm pre-cleared from that perspective – but I assume you don't know whether there is additional FBI, interview/vetting or other steps that have yet to happen?

Thank you!
michal

Michal Freedhoff, Ph.D.
Acting Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Friday, April 9, 2021 10:50 PM
**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Subject:** RE: closing in on pre-clearance (which is a good thing)

Hi Michal,
Let's address your questions first and then let's figure out what's going on with (b) (6) [redacted]

- What does "pre-clearance" mean in terms of where I am in this process? What are the remaining steps?
  - JUSTINA: "Pre-clearance" refers to the review that OGE staff and EPA are doing now to get your nominee report and ethics agreement perfected. Once we iron out any details or errors, OGE will review the documents and announce that they have been "pre-cleared." OGE notifies the White House that, from the ethics perspective, you are ready for nomination. We wait for that to happen and, once it does, your nominee report will be released within INTEGRITY so that you can sign it, and I'll ask you to sign the ethics agreement. I will then formally submit your ethics paperwork to OGE for the official clearance to go to the SEPW. By going through the "pre-clearance" process now, we ensure that there are no delays at all after the White House announces your nomination.

- (b) (6) [redacted] JUST MAKING SURE.
  - JUSTINA: (b) (6) [redacted]

(b) (6), (b) (3) (A)

[redacted]

Okay, we'll get through this!
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Build ng | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Sent:** Friday, April 09, 2021 5:40 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: closing in on pre-clearance (which is a good thing)

Thank you Justina – see caps. Also, what does "pre-clearance" mean in terms of where I am in this process? What are the remaining steps?

Thanks again for all your help!

(b) (6), (b) (5)

[redacted]

(b) (6), (b) (5)

Michal Freedhoff, Ph.D.
Acting Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Friday, April 9, 2021 5:19 PM
**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Subject:** closing in on pre-clearance (which is a good thing)

Hi Michal,
We are super close to pre-clearance, but OGE needs you to confirm a bunch of things (these people make the term "belts and suspenders" sound like the definition for tightrope walking blindfolded without a net). To save you some time, I've attached the pdf of your nominee report here, along with the draft ethics agreement. Don't sign anything yet. As soon as I can (and it could be over the weekend), I'll alert you to take the next appropriate steps.

(b) (6), (b) (5)

(b) (5), (b) (6)

[redacted]

Thanks,
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Build ng | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Freedhoff, Michal
**To:** Fugh, Justina
**Subject:** RE: (b) (6) [redacted]
**Date:** Friday, April 16, 2021 5:38:18 PM
**Attachments:** (b) (6) [redacted]

---

Michal Freedhoff, Ph.D.
Principal Deputy Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

-----Original Message-----
From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Friday, April 16, 2021 4:31 PM
To: Freedhoff, Michal <Freedhoff.Michal@epa.gov>
Subject: RE: (b) (6) [redacted]

Hi,
(b) (6) [redacted] I've reviewed the questions and think you can answer them all readily.
Thanks!
Justina

-----Original Message-----
From: Freedhoff, Michal <Freedhoff.Michal@epa.gov>
Sent: Friday, April 16, 2021 4:16 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: (b) (6) [redacted]

Awesome. Thanks.

Michal Freedhoff, Ph.D.
Principal Deputy Assistant Administrator Office of Chemical Safety and Pollution Prevention U.S. Environmental Protection Agency Freedhoff michal@epa.gov

-----Original Message-----
From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Friday, April 16, 2021 3:10 PM
To: Freedhoff, Michal <Freedhoff.Michal@epa.gov>
Subject: RE: (b) (6) [redacted]

I think so! Have sent it to OGE.

-----Original Message-----
From: Freedhoff, Michal <Freedhoff.Michal@epa.gov>
Sent: Friday, April 16, 2021 11:27 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: (b) (6) [redacted]

This do the trick?

Michal Freedhoff, Ph.D.
Principal Deputy Assistant Administrator Office of Chemical Safety and Pollution Prevention U.S. Environmental Protection Agency Freedhoff michal@epa.gov

**From:** Fugh, Justina
**To:** Freedhoff, Michal
**Subject:** RE: here"s the intent to nominate that includes YOU!
**Date:** Thursday, April 15, 2021 10:12:00 PM

---

Let's try to make it simple for now: (b) (6) [redacted]

---

**From:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Sent:** Thursday, April 15, 2021 5:44 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: here's the intent to nominate that includes YOU!

(b) (6) [redacted]

Michal Freedhoff, Ph.D.
Principal Deputy Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Thursday, April 15, 2021 5:40 PM
**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Subject:** RE: here's the intent to nominate that includes YOU!

(b) (6), (b) (5) [redacted]

---

**From:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Sent:** Thursday, April 15, 2021 5:38 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: here's the intent to nominate that includes YOU!

Woohoo – that one I actually saw yesterday! I thought you meant the PN document they send the senate.

I am still going back and forth (b) (6) [redacted]

Michal Freedhoff, Ph.D.
Principal Deputy Assistant Administrator

Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Thursday, April 15, 2021 5:36 PM
**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Subject:** here's the intent to nominate that includes YOU!

https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/14/president-biden-announces-his-intent-to-nominate-key-administration-leaders-on-climate-and-transportation/

| | |
|---|---|
| **From:** | Fugh, Justina |
| **To:** | Freedhoff, Michal |
| **Subject:** | RE: I have an update for you ... (it"s all good) |
| **Date:** | Wednesday, April 07, 2021 1:33:00 PM |
| **Attachments:** | 5 day letter draft.docx |

---

I just looked up the citation. You have to report any outside earned income or any honorarium received. (b) (6), (b) (5) [redacted] (see draft).

---

**From:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Sent:** Wednesday, April 07, 2021 1:28 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: I have an update for you ... (it's all good)

Susan bodine prob the best example now that I think of it!

Michal Freedhoff, Ph.D.
Acting Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Wednesday, April 7, 2021 1:24 PM
**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Subject:** RE: I have an update for you ... (it's all good)

(b) (5), (b) (6) [redacted]

---

**From:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Sent:** Wednesday, April 07, 2021 1:13 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: I have an update for you ... (it's all good)

I think maybe that's a yes – (b) (5) [redacted]

Michal Freedhoff, Ph.D.

Acting Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Wednesday, April 7, 2021 12:03 PM
**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Subject:** RE: I have an update for you ... (it's all good)

(b) (5) [redacted]. You wouldn't happen to know the answer to that, would you?

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Sent:** Wednesday, April 07, 2021 11:55 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: I have an update for you ... (it's all good)

Thank you! I sent a version of the questionnaire along (with some areas that could need revisions), but do you think I should revise with your edits and re-send or just handle it all at once?

Michal Freedhoff, Ph.D.
Acting Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Wednesday, April 7, 2021 11:16 AM
**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Subject:** RE: I have an update for you ... (it's all good)

This email will work fine.

UPDATE: The Office of Government Ethics and I have scrubbed your nominee report. I have sent them the draft ethics agreement (your commitment about meeting your ethics obligations upon confirmation). OGE will review both carefully as part of the "pre-clearance" process. I've attached the draft EA here just so you can see what it will look like, but don't sign this yet. OGE may make changes to it. But what this all means is that you are making great progress toward pre-clearance. For now, you wait.

NEXT STEPS: I will soon notify you when it's time for you to go into INTEGRITY to sign your nominee report (you can't do that now). You will not be permitted to make any changes at all to the report, so don't even think about it! I will also ask you at that time to digitally sign the ethics agreement. I will get my boss to sign the transmittal letter to OGE to formally confer the package to OGE. They will notify the White House that you've been pre-cleared, and then the WH will make the announcement of your nomination. Next step is the SEPW.

Here are my proposed answers for your SEPW questionnaire:

(b) (5) [redacted]

(b) (5) [redacted]

[redacted]

[redacted]

[redacted]

Cheers,
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Sent:** Wednesday, April 07, 2021 11:01 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Re: I have an update for you ... (it's all good)

Whatever you prefer and deem appropriate! Thanks!

Sent from my iPhone

On Apr 7, 2021, at 10:59 AM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

How best to communicate with you?  Shall I use this email or your personal email address?
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

| | |
|---|---|
| **From:** | Freedhoff, Michal |
| **To:** | Fugh, Justina |
| **Subject:** | RE: to be signed TOMORROW |
| **Date:** | Friday, May 07, 2021 8:32:15 AM |
| **Attachments:** | 05-07-21MichalFreedhoff5 day letter signed.pdf |

Thank you!

Michal Freedhoff, Ph.D.
Principal Deputy Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Thursday, May 6, 2021 3:52 PM
**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Subject:** to be signed TOMORROW

Hi Michal,
Attached is the five-day letter for you to sign TOMORROW. It's set up already with a date of May 7, 2021, which is five days before your hearing. After you sign it (again, tomorrow), please return it to me. I'll send it and Radhika's to Radha.
Thanks!
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Fugh, Justina
**To:** Freedhoff, Michal
**Subject:** RE: We need to explore (b) (6) [redacted]
**Date:** Thursday, April 15, 2021 3:31:00 PM

---

I'll call you via Teams then.

---

**From:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Sent:** Thursday, April 15, 2021 3:29 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: We need to explore (b) (6) [redacted]

5 works

Michal Freedhoff, Ph.D.
Principal Deputy Assistant Administrator
Office of Chemical Safety and Pollution Prevention
U.S. Environmental Protection Agency
Freedhoff.michal@epa.gov

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Thursday, April 15, 2021 3:02 PM
**To:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Subject:** RE: We need to explore (b) (6) [redacted]

Hi,
I'm so sorry but I was on a call with OCIR about an *oversight response* (I thought fondly of you). I'm free now until 4, and then again after 5pm. What's your availability?
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Freedhoff, Michal <Freedhoff.Michal@epa.gov>
**Sent:** Thursday, April 15, 2021 1:14 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Re: We need to explore (b) (6) [redacted]

Sure. I'm free til 1:30. Or a bunch later on. I believe (b) (6) [redacted]

Sent from my iPhone

On Apr 15, 2021, at 1:12 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi Michal,
I find that I need to talk to you further about (b) (6), (b) (5) [redacted]. Can you find some time so that I can ask you some more questions about the arrangements?
Thanks,
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Fugh, Justina
**To:** Blythers, Dorien; Freedhoff, Michal; Lance, Kathleen; Mayock, Andrew; Mercado Violand, Fernando
**Cc:** Mosley, Ferne; Clarke, Victoria; Griffo, Shannon; Ross, Margaret; Keith, Jennie; Payne, James (Jim)
**Subject:** Ethics Training (alas, it"s mandatory)
**Attachments:** Ethics Briefing Packet for Political Appointees.pdf
Biden Ethics Pledge for digital signature.pdf

---

Welcome to EPA! As a new employee, you are required to have one hour of initial ethics training We love for you to take the training in your first week Don't worry, we try hard to make it bearable! Attached is the briefing material for your reference as well as the Biden ethics pledge that you'll need to sign

Looking forward to talking to you and seeing you virtually tomorrow!

---

Microsoft Teams meeting

Join on your computer or mobile app

Click here to join the meeting <(b) (6) [redacted]

Or call in (audio only)

(b) (6) [redacted] United States, Washington DC

Phone Conference ID: (b) (6) [redacted]

Find a local number <https://dialin teams microsoft com/556a4b78-4afd-4fe6-b721-1d903e8cdaa6?id=474134161> | Reset PIN <https://mysettings lync com/pstnconferencing>

By participating in EPA hosted virtual meetings and events, you are consenting to abide by the agency's terms of use In addition, you acknowledge that content you post may be collected and used in support of FOIA and eDiscovery activities

Learn More <https://aka ms/JoinTeamsMeeting> | Meeting options <https://teams microsoft com/meetingOptions/?organizerId=e9a372fe-7f51-48e7-9e3e-972b728b9f24&tenantId=88b378b3-6748-4867-acf9-76aacbeca6a7&threadId=19_meeting_OWUzNjVkZTktOWE2Yy00ZmU5LTg1MjEtMGZjMGQ0NTkyOGQ5@thread v2&messageId=0&language=en-US>

---

# Ethics Briefing

## 1. The Ethics Program at the Environmental Protection Agency

You have ethics officials in the Office of General Counsel who can assist you:

| | |
|---|---|
| **Jim Payne**<br>Designated Agency Ethics Official<br>(202) 564-0212 payne.james@epa.gov | |
| **Justina Fugh**<br>Alternate Agency Ethics Official and Director of Ethics Office<br>(202) 564-1786 fugh.justina@epa.gov | |
| **Shannon Griffo**<br>Ethics Attorney<br>(202) 564-7061<br>griffo.shannon@epa.gov | **Margaret Ross**<br>Ethics Officer<br>(202) 564-3221<br>ross.margaret@epa.gov |
| **Jennie Keith**<br>Ethics Officer<br>(202) 564-3412<br>keith.jennie@epa.gov | **Victoria Clarke**<br>Ethics Attorney<br>202-564-1149<br>clarke.victoria@epa.gov |
| **Ferne Mosley**<br>Ethics Attorney<br>(202) 564-8046<br>mosley.ferne@epa.gov | **OGC/Ethics**<br>All Staff and Helpline<br>(202) 564-2200<br>ethics@epa.gov |

You can also visit the OGC/Ethics SharePoint site for more information.

## 2. The General Principles of Ethical Conduct

As public servants, we have a duty to ensure that every citizen has complete confidence in the integrity of the United States and that we are not putting personal or private interests ahead of the public trust. There are 14 principles that form your basic obligation of public service that we'll address in this briefing material.

## 3. The President's Executive Order (for political appointees only)

On January 20, 2021, President Biden issued an Executive Order that includes an ethics pledge you must sign as a condition of your appointment. You are agreeing to a broader "ethics in government" plan to restore and maintain public trust in government, so please review the preamble carefully. The significant points of the pledge itself are described below:

*If you were a federally registered lobbyist or registered foreign agent in the past 2 years:*

- For the next 2 years, do not participate in any particular matter on which you lobbied or were registrable for under the Foreign Agents Registration Act within the previous 2 years and do not participate in the specific issue area in which that particular matter falls.

- Do not seek or accept employment with any government agency that you lobbied or engaged in registrable activity under FARA within the past 2 years.

*While you are a federally employee:*

- Do not accept any gifts from a registered lobbyist, including attendance at a widely attended gathering. There are a few exceptions (e.g., preexisting personal relationship, discount or benefit available to all government employees) but check with an ethics official for guidance.

- For 2 years from the date of your appointment, do not participate in any particular matter involving specific parties that is directly and substantially related to your former employer or former clients, including regulations and contracts.

    - Note: The definition of *former employer* excludes the federal government, state or local governments, D.C., Native American tribes, U.S. territories or possessions, or any international organization in which the U.S. is a member state. But under the federal impartiality rules, you will still have a one-year cooling off period with those entities (except if your former employer was already the US government).

- Any hiring or other employment decisions that you make will be based on the candidate's qualifications, competence and experience.

- Do not accept any salary or cash payment or any other non-cash benefit from a former employer for entering into government service.

*When you leave federal service, you are agreeing to the following:*

- If you are a "senior employee" subject to the one-year cooling off period under 18 U.S.C. § 207(c), your cooling off period will be extended by another year, for a total of two years.

- If you are a "senior employee" subject to either 18 U.S.C. § 207(c) or (d), for one year following your departure from federal service, you will not work behind the scenes to materially assist others in making communications or appearances to the United States Government that you would otherwise be unable to make under the post-employment restrictions.

- You will not lobby any covered executive branch official or non-career SES appointee for the remainder of this Administration or for 2 years following the end of your appointment, whichever is later.

- You will not engage in any activity on behalf of a foreign government or foreign political party

that would require you to register under the Foreign Agents Registration Act for the remainder of this Administrator or 2 years following the end of your appointment, whichever is later.

A copy of the Executive Order and the Biden Ethics Pledge that you must sign are included in this packet of materials.

## 4. Financial Disclosure Reporting

In your position, you are required to complete a public financial disclosure report as you begin the federal service and every year thereafter. You will file this report in INTEGRITY, an electronic system managed by the Office of Government Ethics. When you leave EPA, you will be required to submit a termination financial disclosure report. In addition, you are required to have one hour of ethics training as a new entrant (PAS appointees have an additional requirement for a specialized one-on-one ethics briefing), and also required to have one hour of ethics training each year. The Ethics Office in the Office of General Counsel (OGC/Ethics) provides your training either in person or virtually.

You must report any transaction of securities (stocks or bonds) over $1000 on a periodic basis in INTEGRITY using the 278T. These periodic transactions must be reported the earlier of 30 days after learning of the transaction or 45 days after the transaction takes place. Failure to file timely results in late fees that are assessed as a matter of law.

In addition, you are required to notify OGC/Ethics within three days of beginning to negotiate for employment with any non-federal entity. To do so, use our Notification of Negotiation form.

Included in this packet of materials are reminders about the types of transactions that are to be reported periodically and not being tardy in filing any reports with OGC/Ethics.

## 5. Attorney Client Privilege & FOIA

By regulation, disclosure by an employee to an ethics official is not protected by the attorney-client privilege. 5 C.F.R. § 2635.107(b). This means that if our records (or yours) are requested under the Freedom of Information Act (FOIA), then we will not be able to redact our advice to you using the attorney-client privilege. However, we can -- and do -- assert personal privacy and deliberative process privileges where applicable. For example, the deliberative process privilege may apply to pre-decisional ethics advice documents, but please note that our final advice to you is generally releasable.

This should **not** stop you from seeking the advice of your ethics officials! Not only does it show you are being a steward of the public trust, but good faith reliance on advice received from your ethics officials after disclosing all relevant facts can shield you from disciplinary action and is a factor that the Department of Justice considers when deciding which cases they wish to prosecute.

## 6. Conflicts of Interest

Do not participate as an agency official in any matter if there is an actual conflict of interest or even the appearance of a conflict of interest. It's a crime to participate *personally and substantially* in *any particular matter* in which, to your knowledge, you or a person whose interests are imputed to you has a financial interest if the particular matter will have a *direct and predictable effect* on that interest.

Example: you own a lot of stock in XYZ Corporation, which is a chemical manufacturer. If your office is considering taking an enforcement action against XYZ Corporation, you must disqualify yourself from participating in the decision. Even if your mother gave your 10-year old twins the stock, you can't participate in the matter because their interest is imputed to you.

Remember, the interests of your spouse, dependent children, general business partner, and any organization in which you serve as officer, director, trustee or employee are imputed to you. This means that, under the criminal statute, it's the same thing as if you held those assets. So, you can't participate in any particular matter that may have a financial impact on the interests that are imputed to you.

**7. <u>Appearance of a Loss of Impartiality</u>**

Even if an action is not strictly prohibited, it is prudent to be careful of any action that a reasonable person with knowledge of the relevant facts may perceive as a violation of the ethics rules, or (if applicable) your ethics pledge and the Executive Order. You must avoid even the appearance of a loss of impartiality when performing official duties.

When we consider impartiality, we expand the ambit of relationships beyond the conflicts realm of "imputed interests." We consider all of your "covered relationships," which includes a lot more people: anybody with whom you have a business, contractual or financial relationship that is more than just a routine consumer transaction; any member of your household or a relative with whom you are close; the employer/partner or prospective employer/partner of your spouse, parent or dependent child; any person or organization for which you have served in the last year as an officer, agent, employee, etc.; and any organization in which you are an active participant.

You should refrain from engaging in official acts that may be perceived as an "appearance problem" by a reasonable person (and the reasonable person is not you, but rather your ethics officials).

Ethics officials can provide advice and determine whether a proposed course of action is appropriate by issuing an impartiality determination, but we cannot provide cover if you have already done the deed.

**8. <u>No representation back to the federal government</u>**

As a federal employee, you are prohibited from representing the interest of any other entity back to the federal government, whether you are paid for those services or not. For the purposes of these criminal statues, 18 U.S.C. §§ 203 and 205, it does not matter that you are representing the interests of another in your private capacity. You cannot serve as agent or attorney for another entity back to the United States on a particular matter in which the US is a party or has a direct and substantial interest.

## 9. Acceptance of Gifts

Be careful of any gift from people outside the Agency, particularly those that are worth more than $20. Gifts are anything of value and include allowing others to pick up the lunch tab, free tickets, invitations to receptions, and lovely fruit baskets. There are only a few exceptions, so consult your ethics officials before accepting any gift. Remember, political appointees can't take gifts from federally registered lobbyists.

EPA does not have broad Agency gift authority, so prohibited gifts must be paid for or returned. You should also not generally accept gifts exceeding $10 from EPA employees, nor give gifts exceeding $10 to your superiors. There are some exceptions, so check with an ethics official. By the way, you may give gifts to any EPA person who makes less money than you provided that person is not your supervisor.

## 10. Attendance at Widely-Attended Gatherings (ethics check required)

Your ethics official must make a written determination in advance as to whether your participation and attendance at certain events meet the criteria for a "widely attended gathering" exception of the gift rule. You can't make that determination yourself (nor can the sponsor of the event). For a WAG determination, your ethics official will consider the type of event, who is attending, and whether your attendance will further an Agency interest. This analysis must be done in writing and in advance of your attending the event. Any WAG that is approved is considered a gift to you, so you will be responsible for reporting the value of the gift on your financial disclose report if it exceeds the reporting threshold. For political appointees, though, please bear in mind that this exception does not apply to federally registered lobbyists. Political appointees cannot accept free attendance at a widely attended gathering that is sponsored by or hosted by a federally registered lobbyist.

IMPORTANT NOTE about **Embedding Ethics into Your Calendaring Process**

> Many ethics issues typically arise through the calendaring process of an EPA principal. Since you are responsible for your ethics obligations, we know you might need a little help. To assist you in navigating calendar and invitation issues, the EPA Ethics Office offers specialized assistance to you and your front office staff to advise on invitations, gifts associated with those invitations, etc. Embedding ethics is a proactive counseling practice that brings together the Principals, their staff, and local Deputy Ethics Officials to establish a process for incorporating ethics vetting into your or the Principal's calendar. Contact Jennie Keith to get started!

## 11. Travel Issues

Approval of gifts of travel, lodging and meals from non-Federal sources for meetings and similar events must be obtained from OGC/Ethics prior to the event. You can't accept such offerings on your own! We have an electronic form that we use to process such requests, and we must report the approvals to the Office of Government Ethics twice a year. See http://intranet.epa.gov/ogc/ethics/travel.htm . Prior to the pandemic, OGC/Ethics accepted over $1 million each year in discretionary travel paid by non-federal sources.

## 12. Preferential Treatment of Non-Federal Entities (Endorsement)

Be careful about showing preferential treatment to any entity. We cannot endorse the products, services or enterprises of another, so you need to be careful about extolling the virtues of a regulated entity, a particular contractor or applicant, etc. Seek ethics advice before collaborating with non-federal entities on initiatives and events because not all of EPA's statutes allow us to cooperate with non-feds.

## 13. Political Activities

You are now bound by the Hatch Act, which governs the political activity of federal employees, even in your personal capacity. Career SES employees are bound by even more restrictions, while Presidentially Appointed and Senate Confirmed (PAS) employees enjoy more liberties. Do not rely on what you think other people can do; find out for yourself by asking your ethics officials.

Some limitations under the Hatch Act are 24/7, meaning that you have restrictions even on your time. For example, you are never permitted to solicit, accept or receive political contributions, not even in your personal time. You can never use your EPA title or position to fundraise in connection with any political activity. Because the Hatch Act rules vary depending on your type of appointment, please see the attached chart and consult your ethics officials.

## 14. Lobbying Issues

EPA employees cannot use appropriated funds to engage in indirect or grassroots lobbying regarding any legislative proposal. Indirect or grassroots lobbying generally means urging members of special interest groups or the general public to contact legislators to support or oppose a legislative proposal. EPA employees cannot make explicit statements to the public to contact members of Congress in support of or in opposition to a legislative proposal. Other prohibited grassroots lobbying includes an employee's explicit request, while on official time, to an outside group asking it to contact Congress to support or oppose EPA's appropriations bill.

In addition, EPA is prohibited from using appropriated funds for activities that would "tend to promote" the public to contact Congress in support of or in opposition to a legislative proposal, even if an EPA employee does not expressly state that the public should contact Congress. This activity is considered "indirect lobbying" and is prohibited. You may, after coordinating with OCIR and Public Affairs, directly contact or lobby members of Congress and their staffs regarding the Administration's legislative proposals. Again, after getting approval from OCIR, you may also educate and inform the public of the Administration's position on legislative proposals by delivering speeches and making public remarks explaining the Administration's position on a legislative proposal.

## 15. Use of Government Personnel and Resources

EPA policy permits employees to "limited use" of government equipment, including the telephone, copying machines, fax machines, etc. Employees cannot, however, engage in outside activity or employment on government time. GSA regulations also prohibit any fundraising on federal property (except for the Combined Federal Campaign), so employees cannot raise money for their favorite charity (i.e., sell cookies, candy or wrapping paper for a "good cause"). They also cannot use the internet connection for gambling or to access pornography. See EPA's Limited Personal Use of Government Equipment Policy. Avoid using your EPA email address for personal matters, and do not use your personal email address for EPA matters.

## 16. Outside Activities

We were advised by the Biden Presidential Transition Team that non-PAS political appointees may have outside positions that are consistent with federal ethics regulations, including the Agency's ethics regulations. Non-Career SES and Schedule C appointees must seek prior approval from EPA Ethics for certain outside activity consistent with EPA's Supplemental Ethics Regulations at 5 C.F.R. § 6401.103. Examples of activity that require prior approval are practicing a profession or teaching, speaking or writing on subjects related to EPA programs, policies or operations. While there is a *de minimis* use of government equipment, that never applies to any compensated outside activity.

Most EPA employees may not receive any compensation for teaching, speaking or writing (including consulting) that relates in significant part to your assigned EPA duties, duties to which you've been assigned in the previous year, or to any ongoing Agency program, policy or operation. But if you are a non-career SES employee, then your restriction is even broader: you may not receive compensation at all for any teaching, speaking or writing that relates to your official duties or even to EPA's general subject matter area, industry, or economic sector primarily affected by EPA's programs and operations. 5 C.F.R. § 2635.807(a)(2)(i)(E)(3).

Non-Career SESers must also abide by these additional restrictions:

- You are subject to the outside earned income cap that is set each January. As of January 2021, that amount is $29,595. See 5 C.F.R. § 2635.804(b) and 5 C.F.R. § 2636.304. This amount changes each year;

- You cannot receive compensation for practicing a profession that involves a fiduciary relationship; affiliating with or being employed by a firm or other entity that provides professional services involving a fiduciary relationship; or teaching without prior approval. See note to 5 C.F.R. § 2635.804(b) and 5 C.F.R. § 2636.305;

- You may be permitted to serve as an officer or member of the board of any association, corporation or other entity, but cannot be compensated for such service. See 5 C.F.R. § 2636.306; and

- You may not receive compensation for any other teaching unless specifically authorized in advance by OGC/Ethics (specifically, the Designated or Alternate Designated Agency Ethics Official listed on the first page of this briefing material). See 5 C.F.R. § 2636.307.

## 17. Ethics Obligations of Supervisors

If you are a supervisor, you must model ethical behavior for your staff. Set forth below are your additional ethics responsibilities, found at 5 C.F.R. § 2638.103:

> Every supervisor in the executive branch has a heightened personal responsibility for advancing government ethics. It is imperative that supervisors serve as models of ethical behavior for subordinates. Supervisors have a responsibility to help ensure that subordinates are aware of their ethical obligations under the Standards of Conduct and that subordinates know how to contact agency ethics officials. Supervisors are also responsible for working with agency ethics officials to help resolve conflicts of interest and enforce government ethics laws and regulations, including those requiring certain employees to file financial disclosure reports. In addition, supervisors are responsible, when requested, for assisting agency ethics officials in evaluating potential conflicts of interest and identifying positions subject to financial disclosure requirements.

Your staff may ask you ethics questions, but unless you are an ethics official, you are not authorized to answer those ethics questions. If you receive an ethics question, then contact your own local Deputy Ethics Official or notify OGC/Ethics at ethics@epa.gov.

## 18. Seeking Employment

It's always odd to talk about seeking employment when we are welcoming you to EPA, but be mindful of the fact that there are restrictions that will apply. You won't be able to participate in a particular matter involving a party with which you are seeking employment, and that obligation starts as soon as you directly or indirectly contact a prospective employer, or as soon as you get a response expressing interest in you. You will need to disqualify yourself from particular matters that may affect the prospective employer.

## 19. Negotiating for Employment

Should your pursuit of future employment advance to "negotiating" for employment with a particular entity, then you will have conflicts of interest. The financial interests of any person or entity with whom you are "negotiating" for employment are imputed to you for the purposes of the criminal conflict of interest statute, 18 U.S.C. § 208. You will need to recuse yourself from participating in any particular matter that will have a direct and predictable effect upon the interests of the prospective employer, either as a specific party or as a member of a class, which will include particular matters that apply generally to the prospective employer's industry or class.

Filers of the public financial disclosure report are further subject to the Ethics In Government Act, as amended by the STOCK Act, which requires you to notify OGC/Ethics within three days of commencing negotiations for future employment with a non-federal employer. Yes, we have a form for that notification.

## 20. Post-Government Employment - Representational Restrictions

Even after you leave federal service, there are federal post-employment restrictions. Your pledge restrictions are supplementary to these restrictions. Your ethics officials are still available to answer your post-employment questions, even after you leave EPA. You will need to have an exit discussion with OGC/Ethics before you leave EPA, but here are the highlights of what we'll discuss regarding the federal law. You will also be bound by the additional restrictions of the Biden Ethics Pledge adumbrated on pp. 2-3 of this briefing material.

Lifetime bar - on particular matters that you worked on

You will be prohibited by criminal statute from representing back to the federal government on any particular matter involving specific parties in which you participated personally and substantially while in federal service. "Representation back""means making an appearance or communication, on behalf of another, with the intent to influence an official action. And the matter must involve the United States or be one in which the US has an interest.

> Example: You are asked by XYZ Corporation to contact EPA about seeking an exemption so that a particular permit you granted while in your position no longer applies to them. You cannot do that because you worked on that matter while at EPA. You are permanently barred from representing another back to the federal government on that same matter.

2-year bar - on EPA matters pending during your last year in federal service

You are prohibited (again, by criminal statute) from representing back to the federal government on any particular matter involving specific parties that was pending under your official responsibility during your last year of federal service. Even if you recuse yourself from a matter, you are still bound by the two-year bar. You are not permanently restricted, since you didn't work on the matter personally and substantially, but you are prohibited from representing another back to the federal government on that matter for two years.

Senior Employee "cooling off restriction" – on any matter

Depending on your rate of pay, you may be considered a "senior official" and will be restricted for one year from making any contact with EPA following your departure (under the federal ethics regulation). Political appointees have additional time restrictions under the Biden Ethics Pledge. This prohibition is not limited to particular matters. Rather, you cannot knowingly make any communication or appearance to EPA employees on behalf of another with the intent to influence in connection with any matter in which you seek official EPA action.

Effective January 3, 2021, the defining rate of pay for "senior officials" is $172,395 per year (excluding locality pay). If you make more than that (before locality pay), then you are a "senior employee" and will be bound by the cooling off period. By the way, SESers do not get locality pay so, most likely, any SESer will be a "senior employee" and subject to this restriction.

Welcome to EPA and thank you for keeping ethics in the forefront of all we do!

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
Washington, D.C. 20460

January 22, 2021

OFFICE OF
GENERAL COUNSEL

**MEMORANDUM**

SUBJECT: Timely filing of Public Financial Disclosure and Periodic Transaction Reports

FROM: Justina Fugh Justina Fugh Digitally signed by Justina Fugh Date: 2021.01.22 12 07:49 -05'00'
Alternate Designated Agency Ethics Official

TO: All EPA Political Appointees

In 1978, Congress enacted the Ethics In Government Act, 5 U.S.C. app. to establish the Executive Branch financial disclosure reporting system that requires mandatory public disclosure of financial and employment information of certain officials and their immediate families. Because you occupy a designated position, you are required by this law to file these reports in the electronic system, *INTEGRITY*. As an executive branch employee, you are bound by federal ethics laws and regulations, including prohibitions against financial conflicts of interest and loss of impartiality. Your disclosures allow the Office of General Counsel's Ethics Office (OGC/Ethics) to assist you in identifying and addressing potential or actual conflicts of interest in order to maintain the integrity of the Agency's programs and operations. These reports are publicly available upon request and the reports of certain Presidential Appointees confirmed by the Senate will be posted on the U.S. Office of Government Ethics' website at www.oge.gov.

This memorandum formally informs you that you are required by law to file timely and accurate Public Financial Disclosure Reports (OGE 278e)[1] and Periodic Transaction Reports (OGE 278-Ts).[2] **Filing a late report will result in a $200 late filing fee** unless you formally request and receive a waiver of the late fee from me or the Designated Agency Ethics Official (DAEO), Jim Payne, after describing extraordinary circumstances that caused you to file a late report.[3] **Unpaid late fees are subject to the Agency's[4] and the government's debt collection procedures and will be referred for collection if left unpaid after 30 days.**

Please refer to this chart for your filing obligations:

---

[1] *See* 5 U.S.C. app. § 101; 5 C.F.R. § 2634.201.
[2] Pub. L. 112-105 § 11 (STOCK Act).
[3] *See* 5 U.S.C. app. § 104(d)(1); 5 C.F.R. § 2634.704(a).
[4] *See* Resource Management Directive System 2540-03-P2 dated 07/12/2016.

| | |
|---|---|
| OGE 278e - New Entrant reports | **Within 30 days** of entering a covered position (either by appointment to a permanent or acting in covered position) |
| OGE 278e – Incumbent reports | **No later than May 15** |
| OGE 278e – Termination reports | **No later than 30 days after** leaving a covered position (either through reassignment, resignation, or the end of acting in a covered position) (Reports may be submitted within 15 days prior to termination) |
| OGE 278T – Periodic transaction reports[5] | **The *earlier of* 30 days** after learning of a transaction or **45 days** of the transaction taking place. |

How to request an extension of the filing deadline:

For good cause (e.g., travel, workload issues, sickness), you may request up to two 45-day extensions. Submit the request by email, including the reason, to ethics@epa.gov **prior to the due date.** Extensions cannot be granted after the due date has passed.

How to request the waiver of a late filing fee:

If *extraordinary circumstances* prevented you from meeting the deadline and OGC/Ethics assessed a late fee, you may request a waiver of the late fee. *See* 5 C.F.R. § 2634.704. Submit your request in writing to ethics@epa.gov describing the extraordinary circumstances and provide any supporting documentation. Please note that vacations or routine work obligations are not "extraordinary" circumstances. The decision to grant or deny a waiver is at the sole discretion of the DAEO/ADAEO and is final.

Your colleagues in OGC/Ethics are available to provide assistance but it is always your obligation to file your reports timely and accurately. In fact, ethics regulations *require* that we refer individuals to the Department of Justice (DOJ) when there is reasonable cause to believe that they have willfully failed to file a required report or provide the information that the report requires. The current maximum civil penalty is $56,216.[6]

As public servants, we hope that you will take your ethics obligations seriously. As such, we expect you to make a good faith effort to adhere to the timeliness and completeness requirements of your financial disclosure reporting obligations. If you have any questions, please contact ethics@epa.gov.

ATTACHMENT - *When to Report Transactions on the OGE 278 and OGE 278-T*

[5] *See* attached guidance – *When to Report Transactions on the OGE 278 and OGE 278-T.*
[6] In 2012, OGC/Ethics referred an individual to DOJ for failure to file a termination report despite repeated reminders and entreaties. That individual paid a civil penalty of $15,000 and still had to file the termination report.

# When to Report Transactions

DUE DATE: The earlier of the following: 30 Days from Notification or 45 Days from Transaction

| Investment Assets | Periodic Transaction Report<br>Report on the OGE 278-T? | Annual and/or Termination Report<br>Report on Part 7 of the OGE 278e? |
|---|---|---|
| Transactions of $1,000 or less | | |
| • Any asset in which the transaction amount is $1,000 or less regardless of the type of asset or who owns the asset | No | No |
| Your investment assets (or jointly held) | | |
| • Your stocks | Yes | Yes |
| • Your bonds (except U.S. Treasury securities) | Yes | Yes |
| • Your commodity futures | Yes | Yes |
| • Your other investment securities | Yes | Yes |
| • Assets listed above in your (joint) brokerage accounts, (joint) managed accounts, IRAs, other retirement accounts, and/or other (joint) investment vehicles | Yes | Yes |
| Your spouse's investment assets | | |
| • Spouse's stocks | Yes | Yes |
| • Spouse's bonds (except U.S. Treasury securities) | Yes | Yes |
| • Spouse's commodity futures | Yes | Yes |
| • Spouse's other investment securities | Yes | Yes |
| • Assets listed above in spouse's <u>own</u> brokerage account, managed accounts, IRAs, other retirement accounts, and/or other investment vehicles | Yes | Yes |
| Your dependent child's investment assets | | |
| • Dependent child's stocks | Yes | Yes |
| • Dependent child's bonds (except U.S. Treasury securities) | Yes | Yes |
| • Dependent child's commodity futures | Yes | Yes |
| • Dependent child's other investment securities | Yes | Yes |
| • Assets listed above in dependent child's <u>own</u> brokerage account, IRAs, and/or other investment vehicles | Yes | Yes |
| Other investment assets irrespective of ownership | | |
| • Real Property | No | Yes[1] |
| • Mutual funds, exchange traded funds, index funds and/or other "excepted investment funds"[2] | No | Yes |
| • Any asset in which the transaction amount is $1,000 or less | No | No |
| • Cash accounts (deposits and/or withdrawals) | No | No |
| • Money market accounts | No | No |
| • Money market funds | No | No |
| • Certificates of deposits | No | No |
| • US Treasury Securities (e.g., T bills, Treasury bonds, U.S. savings bonds) | No | No |
| • Federal Government Retirement Accounts (e.g., Thrift Savings Plan) | No | No |
| • Life insurance and annuities | No | No |
| • Collectibles | No | No |
| • Assets held within an excepted trust[3] | No | No |
| • Transfer of assets between you, your spouse, and your dependent children | No | No |

[1] Do not report the purchase or sale of your personal residence on Part 7 unless you rent it out at any time during the reporting period.

[2] To be an excepted investment fund (EIF), the asset must be:

(a) widely held (more than 100 participants),
(b) independently managed – arranged so that you neither exercise control nor have the ability to exercise control over the financial interests held by the fund, and
(c) publicly traded (or available) or widely diversified.

Managed accounts, investment clubs, trusts, 529 accounts, brokerage accounts, and individual retirement accounts (IRAs) are not excepted investment funds in and of themselves. It may be that individual assets held within these types of investment vehicles may qualify as EIFs if, for example, your IRA holds a publicly-traded mutual fund. But the fact that you have a managed account does not absolve you of your reporting requirements. That account is legally owned by you, and you're responsible for its assets and reporting transactions. If you have questions, contact ethics@epa.gov.

[3] OGC/Ethics must determine that your trust qualifies as an "excepted trust." For help, email ethics@epa.gov.

**REQUIREMENT: Notify OGC/Ethics within 3 business days of commencing the negotiation or agreement for post-government employment or compensation**

## NOTIFICATION OF NEGOTIATION OR AGREEMENT

| Your full name | Your telephone number* | Date negotiation or agreement began |
|---|---|---|
| Your Title / Office / AAship or Region | Your email address* | Name of non-federal entity that you are negotiating with or have an agreement for employment or compensation |

* *Provide information for OGC/Ethics to use to contact you as part of our official duty. For this purpose, you may provide a personal email address or cell number.*

## RECUSAL STATEMENT

To assist in identifying your recusal obligations, check the appropriate boxes below:

| | Yes | No | |
|---|---|---|---|
| 1. | ☐ | ☐ | EPA's programs, policies, or operations affect the non-federal entity with which I am seeking employment. |
| 2. | ☐ | ☐ | My office in EPA does work that affects the non-federal entity with which I am seeking employment. |
| 3. | ☐ | ☐ | The work I participate in affects or will affect the non-federal entity with which I am seeking employment. |

Need help answering these statements? See page 2.

**For as long as I am negotiating for, or have an agreement of, employment or compensation with the entity listed above, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of this entity, unless I first obtain from OGC/Ethics a written authorization or waiver consistent with 5 C.F.R. § 2635.605 or 18 U.S.C. § 208(b)(1). I understand that it is my responsibility to consult with OGC/Ethics if I have questions regarding my recusal obligations.**

Sign and submit to ethics@epa.gov:

**Your signature**

**OGC/Ethics Use Only:**

**Statement 1: EPA's programs, policies, or operations affect the non-federal entity with which I am seeking employment.**

If your answer is "yes" to any of the following questions, then you must answer "yes" to statement 1.

- Is the non-federal entity seeking official action from EPA (even if not your own office)?
- Does the non-federal entity do business or seek to do business with the EPA (even if not your own office)?
- Does the non-federal entity conduct activities that EPA regulates (even if not in your own office)?
- Does the non-federal entity have interests that may be substantially affected by the performance or non-performance of your official duties?
- Is the non-federal entity a membership organization in which the majority of the members are described in the preceding questions?

**Statement 2: My office in EPA does work that affects the non-federal entity with which I am seeking employment.**

To answer this question, think about the nexus between the work of your office and the non-federal entity. The closer the nexus, the more likely you will have to check "yes" to statement 2.

- Consider the particular matters your office works on and whether there is any connection to the work of this entity. Does your office work on permits, investigations, litigation, grants, licenses, contracts, applications, enforcement cases, or other similar types of matters where there is an identified non-federal entity (i.e., particular matters involving specific parties)?
- Also consider whether your office is involved in scientific programs, media programs, or other types of policies, procedures, guidance documents, regulations, etc., that would affect this particular industry or sector (i.e., particular matters of general applicability).

**Statement 3: The work I participate in affects or will affect the non-federal entity with which I am seeking employment.**

Think about the nexus between your work and the non-federal entity as well as its respective class, industry or sector. The closer the nexus between your work and the sector the non-federal entity belongs to, the more likely you will check have to check "yes" to statement 3.

- Will the work you do affect the sector? Don't concentrate on whether your personal contributions will be determinative but rather, overall, how the outcome of the work itself will affect the sector and the non-federal entity with which you are negotiating.
- Do you advise on or consult with your colleagues' projects and work? Does their work affect this sector or the non-federal entity?
- Do you actively supervise or assign work to subordinates? Do those assignments affect the sector or the non-federal entity?

**Need help answering these statements? Contact ethics@epa.gov to discuss.**

Updated September 2020

# Political Activities and Federal Employees

The Hatch Act, enacted in 1939, was amended in 1993 and 2012. It regulates the political activities of executive branch employees, excluding the President and Vice President. The following table summarizes what political activities EPA employees can and cannot do based on their appointment. Note: Public Health Service officers must adhere to 45 CFR Part 73, Subpart F, which is most similar to the Career SES/ALJ column.

**Political activity means an activity "directed toward the success or failure of a political party, a candidate for partisan political office, or a partisan political group."**

| Type of Activity | PAS* | Non-Career SES, Schedule C*, Title 42, SL/ST, AD*, GS, Other | Career SES, ALJs |
|---|---|---|---|
| **Personal** (off premises and off duty) | | | |
| Express support for or opposition to a political candidate when off duty | Yes | Yes | Yes |
| Run as a partisan candidate for nomination or office in a partisan election | No | No | No |
| Solicit and accept contributions for your campaign in a non-partisan election | Yes | Yes | Yes |
| Solicit a contribution from a member of your union | N/A | Yes | N/A |
| Work a phone bank asking individuals to volunteer | Yes | Yes | No |
| Campaign on behalf of a candidate in a partisan election | Yes | Yes | No |
| Be active on behalf of a candidate at political rallies or meetings | Yes | Yes | No |
| Attend political rallies and meetings | Yes | Yes | Yes |
| Contribute money to political organizations | Yes | Yes | Yes |
| Work in non-partisan voter registration drives | Yes | Yes | Yes |
| Work in partisan voter registration drives | Yes | Yes | No |
| Register and vote | Yes | Yes | Yes |
| Sign a nominating petition | Yes | Yes | Yes |
| Distribute campaign material in a partisan election | Yes | Yes | No |
| Work as an election judge, poll watcher, clerical worker on election day and receive compensation for that work | Yes | Yes | Yes but nonpartisan only |
| Drive people to polling station on behalf of a campaign | Yes | Yes | No |
| **Affecting Official Resources** | | | |
| Use office time for political activity | Yes; IG-No | No | No |
| Use official space for political activity in general | Yes; IG-No | No | No |
| **Fundraising** | | | |
| Attend a political fundraiser | Yes | Yes | Yes |
| Solicit, accept or receive political contributions in general | No | No | No |
| Solicit or receive a political contribution on government premises | No | No | No |
| Plan or organize a political fundraiser when off duty | Yes | Yes | No |
| Sponsor, host, or allow your name as sponsor/host for a political fundraiser | No | No | No |
| Serve drinks or check coats at a political fundraiser | Yes | Yes | No |
| Speak at a partisan fundraiser without appealing for money | Yes | Yes | No |
| Allow only your name to be listed as speaker on fundraising invitation | Yes | Yes | No |

**PAS = Political Appointee Confirmed by the Senate; Schedule C = political appointees not confirmed by Senate; AD = Administratively Determined; SES = Senior Executive Service*

# EPA Ethics Program

**Counseling Practice Area:** **Vetting Invitations**

## Quick Summary:

One of the more visible ways ethics issues arise are those that come up during the calendaring of events and invitations for an EPA principal and their immediate staff. The ethics issues run the whole gambit:

Recusal Obligations ✦ Gifts ✦ Fundraising ✦ Political Activity ✦ Endorsements
President's Ethics Pledge ✦ Misuse of Position

Embedding ethics is a proactive counseling practice that brings together the Principals, their immediate staff, and Deputy Ethics Officials to establish a process for incorporating ethics vetting into the Principal's calendar. This helps and supports the EPA principal to meet their ethics obligations and maintain integrity of agency programs and operations.

---

## Who:

Principals (Administrator, Deputy Administrator, Assistant Administrators, and Regional Administrators, certain Deputy Associate Administrators), their immediate staff, and Deputy Ethics Officials.

## What:

Preventing conflicts of interest and other ethics issues by embedding ethics review into the calendaring process for principals.

## When:

Upon the appointee's start of EPA service

## Where:

Through coordination in the principal's front office and immediate staff

## Why:

Principals and other political appointees encounter frequent ethics issues arising through acceptance of external events, travel, and meetings with external participants. With increased public scrutiny and ethics legal frameworks, this is a high risk area in the ethics program. It is the principal's responsibility to avoid ethics issues and to maintain public trust in government.

## How:

To navigate these ethics issues, we establish a process, use standard event information gathering forms, and train periodically, so a principal's front office can obtain all relevant information for an event and ethics officials can advise appropriately and timely prior to acceptance.

# Executive Order on Ethics Commitments by Executive Branch Personnel

JANUARY 20, 2021 • PRESIDENTIAL ACTIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Ethics Pledge. Every appointee in every executive agency appointed on or after January 20, 2021, shall sign, and upon signing shall be contractually committed to, the following pledge upon becoming an appointee:

"I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

"Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

"1. Lobbyist Gift Ban. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

“2. Revolving Door Ban — All Appointees Entering Government. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

“3. Revolving Door Ban — Lobbyists and Registered Agents Entering Government. If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 et seq., or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 et seq., within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

(a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;

(b) participate in the specific issue area in which that particular matter falls; or

(c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.

“4. Revolving Door Ban — Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.

“5. Revolving Door Ban — Senior and Very Senior Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections’ implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment,

I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.

"6. Revolving Door Ban — Appointees Leaving Government to Lobby. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.

"7. Golden Parachute Ban. I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.

"8. Employment Qualification Commitment. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.

"9. Assent to Enforcement. I acknowledge that the Executive Order entitled 'Ethics Commitments by Executive Branch Personnel,' issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service."

Sec. 2. Definitions. For purposes of this order and the pledge set forth in section 1 of this order:

(a) "Executive agency" shall include each "executive agency" as defined by section 105 of title 5, United States Code, and shall include the Executive Office of the President; provided, however, that "executive agency" shall include the United States Postal Service and Postal Regulatory Commission, but shall exclude the Government Accountability Office.

(b) "Appointee" shall include every full-time, non-career Presidential or Vice-Presidential appointee, non-career appointee in the Senior Executive Service (or other SES-type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policymaking character (Schedule C and other positions excepted under comparable criteria) in an executive agency. It does not include any person appointed as a member of the Senior Foreign Service or solely as a uniformed service commissioned officer.

(c) "Gift":

(i) shall have the definition set forth in section 2635.203(b) of title 5, Code of Federal Regulations;

(ii) shall include gifts that are solicited or accepted indirectly, as defined in section 2635.203(f) of title 5, Code of Federal Regulations; and

(iii) shall exclude those items excluded by sections 2635.204(b), (c), (e)(1) and (3), and (j) through (l) of title 5, Code of Federal Regulations.

(d) "Covered executive branch official" and "lobbyist" shall have the definitions set forth in section 1602 of title 2, United States Code.

(e) "Registered lobbyist or lobbying organization" shall mean a lobbyist or an organization filing a registration pursuant to section 1603(a) of title 2, United States Code, and in the case of an organization filing such a registration, "registered lobbyist" shall include each of the lobbyists identified therein.

(f) “Lobby” and “lobbied” shall mean to act or have acted as a registered lobbyist.

(g) “Lobbying activities” shall have the definition set forth in section 1602 of title 2, United States Code.

(h) “Materially assist” means to provide substantive assistance but does not include providing background or general education on a matter of law or policy based upon an individual’s subject matter expertise, nor any conduct or assistance permitted under section 207(j) of title 18, United States Code.

(i) “Particular matter” shall have the same meaning as set forth in section 207 of title 18, United States Code, and section 2635.402(b)(3) of title 5, Code of Federal Regulations.

(j) “Particular matter involving specific parties” shall have the same meaning as set forth in section 2641.201(h) of title 5, Code of Federal Regulations, except that it shall also include any meeting or other communication relating to the performance of one’s official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.

(k) “Former employer” is any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner, except that “former employer” does not include any executive agency or other entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, any United States territory or possession, or any international organization in which the United States is a member state.

(l) “Former client” is any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service provided was limited to speeches or similar appearances. It does not include

clients of the appointee's former employer to whom the appointee did not personally provide services.

(m) "Directly and substantially related to my former employer or former clients" shall mean matters in which the appointee's former employer or a former client is a party or represents a party.

(n) "Participate" means to participate personally and substantially.

(o) "Government official" means any employee of the executive branch.

(p) "Administration" means all terms of office of the incumbent President serving at the time of the appointment of an appointee covered by this order.

(q) "Pledge" means the ethics pledge set forth in section 1 of this order.

(r) "Senior White House staff" means any person appointed by the President to a position under sections 105(a)(2)(A) or (B) of title 3, United States Code, or by the Vice President to a position under sections 106(a)(1)(A) or (B) of title 3.

(s) All references to provisions of law and regulations shall refer to such provisions as are in effect on January 20, 2021.

Sec. 3. Waiver. (a) The Director of the Office of Management and Budget (OMB), in consultation with the Counsel to the President, may grant to any current or former appointee a written waiver of any restrictions contained in the pledge signed by such appointee if, and to the extent that, the Director of OMB certifies in writing:

(i) that the literal application of the restriction is inconsistent with the purposes of the restriction; or

(ii) that it is in the public interest to grant the waiver. Any such written waiver should reflect the basis for the waiver and, in the case of a waiver of the restrictions set forth in paragraphs 3(b) and (c) of the pledge, a discussion of the findings with respect to the factors set forth in subsection (b) of this section.

(b) A waiver shall take effect when the certification is signed by the Director of OMB and shall be made public within 10 days thereafter.

(c) The public interest shall include, but not be limited to, exigent circumstances relating to national security, the economy, public health, or the environment. In determining whether it is in the public interest to grant a waiver of the restrictions contained in paragraphs 3(b) and (c) of the pledge, the responsible official may consider the following factors:

(i) the government's need for the individual's services, including the existence of special circumstances related to national security, the economy, public health, or the environment;

(ii) the uniqueness of the individual's qualifications to meet the government's needs;

(iii) the scope and nature of the individual's prior lobbying activities, including whether such activities were de minimis or rendered on behalf of a nonprofit organization; and

(iv) the extent to which the purposes of the restriction may be satisfied through other limitations on the individual's services, such as those required by paragraph 3(a) of the pledge.

Sec. 4. Administration. (a) The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish such rules or procedures (conforming as nearly as practicable to the agency's general ethics rules and procedures, including those relating to designated agency ethics officers) as are necessary or appropriate to ensure:

(i) that every appointee in the agency signs the pledge upon assuming the appointed office or otherwise becoming an appointee;

(ii) that compliance with paragraph 3 of the pledge is addressed in a written ethics agreement with each appointee to whom it applies, which agreement shall also be approved by the Counsel to the President prior to the appointee commencing work;

(iii) that spousal employment issues and other conflicts not expressly addressed by the pledge are addressed in ethics agreements with appointees or, where no such agreements are required, through ethics counseling; and

(iv) that the agency generally complies with this order.

(b) With respect to the Executive Office of the President, the duties set forth in section 4(a) of this order shall be the responsibility of the Counsel to the President.

(c) The Director of the Office of Government Ethics shall:

(i) ensure that the pledge and a copy of this order are made available for use by agencies in fulfilling their duties under section 4(a) of this order;

(ii) in consultation with the Attorney General or the Counsel to the President, when appropriate, assist designated agency ethics officers in providing advice to current or former appointees regarding the application of the pledge; and

(iii) in consultation with the Attorney General and the Counsel to the President, adopt such rules or procedures as are necessary or appropriate:

(A) to carry out the foregoing responsibilities;

(B) to authorize limited exceptions to the lobbyist gift ban for circumstances that do not implicate the purposes of the ban;

(C) to make clear that no person shall have violated the lobbyist gift ban if the person properly disposes of a gift as provided by section 2635.206 of title 5, Code of Federal Regulations;

(D) to ensure that existing rules and procedures for Government employees engaged in negotiations for future employment with private businesses that are affected by the employees' official actions do not affect the integrity of the Government's programs and operations;

(E) to ensure, in consultation with the Director of the Office of Personnel Management, that the requirement set forth in paragraph 6 of the pledge is honored by every employee of the executive branch;

(iv) in consultation with the Director of OMB, report to the President on whether full compliance is being achieved with existing laws and regulations governing executive branch procurement lobbying disclosure. This report shall include recommendations on steps the executive branch can take to expand, to the fullest extent practicable, disclosure of both executive branch procurement lobbying and of lobbying for Presidential pardons. These recommendations shall include both immediate actions the executive branch can take and, if necessary, recommendations for legislation; and

(v) provide an annual public report on the administration of the pledge and this order.

(d) The Director of the Office of Government Ethics shall, in consultation with the Attorney General, the Counsel to the President, and the Director of the Office of Personnel Management, report to the President on steps the executive branch can take to expand to the fullest extent practicable the revolving door ban set forth in paragraph 5 of the pledge to all executive branch employees who are involved in the procurement process such that they may not for 2 years after leaving Government service lobby any Government official regarding a Government contract that was under their official responsibility in the last 2 years of their Government service. This report shall include both immediate actions the executive branch can take and, if necessary, recommendations for legislation.

(e) All pledges signed by appointees, and all waiver certifications with respect thereto, shall be filed with the head of the appointee's agency for permanent retention in the appointee's official personnel folder or equivalent folder.

Sec. 5. Enforcement. (a) The contractual, fiduciary, and ethical commitments in the pledge provided for herein are solely enforceable by the United States pursuant to this section by any legally available means, including debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive, or monetary relief.

(b) Any former appointee who is determined, after notice and hearing, by the duly designated authority within any agency, to have violated his or her pledge may be barred from lobbying any officer or employee of that agency for up to 5 years in addition to the time period covered by the pledge. The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish procedures to implement this subsection, which procedures shall include (but not be limited to) providing for fact-finding and investigation of possible violations of this order and for referrals to the Attorney General for consideration pursuant to subsection (c) of this order.

(c) The Attorney General is authorized:

(i) upon receiving information regarding the possible breach of any commitment in a signed pledge, to request any appropriate Federal investigative authority to conduct such investigations as may be appropriate; and

(ii) upon determining that there is a reasonable basis to believe that a breach of a commitment has occurred or will occur or continue, if not enjoined, to commence a civil action against the former employee in any United States District Court with jurisdiction to consider the matter.

(d) In any such civil action, the Attorney General is authorized to request any and all relief authorized by law, including but not limited to:

(i) such temporary restraining orders and preliminary and permanent injunctions as may be appropriate to restrain future, recurring, or continuing conduct by the former employee in breach of the commitments in the pledge he or she signed; and

(ii) establishment of a constructive trust for the benefit of the United States, requiring an accounting and payment to the United States Treasury of all money and other things of value received by, or payable to, the former employee arising out of any breach or attempted breach of the pledge signed by the former employee.

Sec. 6. General Provisions. (a) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order and other dissimilar applications of such provision shall not be affected.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN JR.

THE WHITE HOUSE,
January 20, 2021.

# ETHICS PLEDGE

I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. *Lobbyist Gift Ban*. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

2. *Revolving Door Ban — All Appointees Entering Government*. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

3. *Revolving Door Ban — Lobbyists and Registered Agents Entering Government*. If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 *et seq*., or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 *et seq*., within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

   (a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;

   (b) participate in the specific issue area in which that particular matter falls; or

   (c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.

4. *Revolving Door Ban — Appointees Leaving Government*. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.

5. *Revolving Door Ban — Senior and Very Senior Appointees Leaving Government*. If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections' implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.

6. *Revolving Door Ban — Appointees Leaving Government to Lobby*. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.

7. *Golden Parachute Ban*. I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.

8. *Employment Qualification Commitment*. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.

9. *Assent to Enforcement*. I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Personnel," issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.

_____ _____, 20_____

Signature Date

Name (Type or Print): _____

**From:** Keith, Jennie
**To:** Conrad, Daniel
**Subject:** RE: Environmental Law!
**Date:** Tuesday, September 14, 2021 5:00:00 PM

---

Hi Dan,

There are no ethics concerns with respect to this event. Please note the host is a federally registered lobbyist, but also a non-profit 501(c)(3) organization. See the following for more complete details.

Best, Jennie for OGC/Ethics

White House Ethics Pledge

-
The White House Ethics Pledge does not allow political appointees to accept gifts from registered lobbyists. The Ethics Pledge is not implicated in this instance because while the organization is a federally registered lobbyist, it is also a 501(c)(3) organization. Organizations that are registered under 501(c)(3) of the tax code are exempted from the lobbyist gift ban of the Ethics Pledge.

Acceptance of Free Attendance

-
Because the official has been invited to speak and present information on behalf of the agency, pursuant to 5 CFR 2635. 203(b)(8) and (203)(g), acceptance of free attendance and any meals provided on the day of the event is not considered a gift. The official's participation in the event is viewed as a customary and necessary part of his performance of the event and does not involve a gift to him or to the agency. While free attendance will cover a meal that is provided to all attendees, it does not cover side events, receptions, and other meals that are not open to all attendees (unless it's a meal for presenters organized by the host of the event; follow up with OGC/Ethics if that is under consideration).

-
Financial Disclosure Implications

-
Because this is not a gift, there are no financial disclosure reporting obligations.

---

**From:** Conrad, Daniel <conrad.daniel@epa.gov>
**Sent:** Wednesday, September 08, 2021 9:33 AM
**To:** Keith, Jennie <Keith.Jennie@epa.gov>
**Subject:** FW: Environmental Law!

Susannah would like to participate in this in official capacity, please let me know if this raises any issues, thanks.

-Dan

---

**From:** Lazarus, Richard <lazarus@law.harvard.edu>
**Sent:** Monday, September 06, 2021 10:03 AM
**To:** Conrad, Daniel <conrad.daniel@epa.gov>
**Subject:** RE: Environmental Law!

Hi Dan

As requested, the completed form and the original invite are attached.

Hope this is what you need.

Best wishes,

Richard

---

**From:** Conrad, Daniel [mailto:conrad.daniel@epa.gov]
**Sent:** Thursday, September 02, 2021 10:33 AM
**To:** Lazarus, Richard <lazarus@law.harvard.edu>
**Subject:** RE: Environmental Law!

Professor Lazarus,
I work with Susannah in EPA OGC and help get external events cleared. Thanks again also for your presentation earlier this year! If you could fill out the relevant portions of the attached form we can go about getting it set up so Susannah can participate. Thanks
-Dan

Daniel H. Conrad
Acting Associate Deputy General Counsel
U.S. Environmental Protection Agency
Office of General Counsel
Office: (202) 564-0903
Cell: (202) 507-2946

*CONFIDENTIALITY NOTICE: This message may contain deliberative, attorney-client, or otherwise privileged material. Do not release this message under FOIA without appropriate review. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, please contact the sender and delete all copies.*

---------- Forwarded message ---------
From: **Lazarus, Richard** <lazarus@law.harvard.edu>
Date: Thu, Aug 12, 2021 at 4:29 PM
Subject: RE: Environmental Law!
To: Susannah Weaver (b) (6) [redacted]

How about WOTUS rule on Thursday, October 28. Class begins at 10:30 and we would plan on having you join us to talk about recent developments at EPA at around noon for a max of thirty minutes.  Would that work on your end?  Hope so!

In case it might work, I have attached a copy of the kind of formal invite letter that government agencies like to have.

Thanks for considering the possibility.

RIchard

# OFFICE OF GENERAL COUNSEL EVENT INFORMATION FORM

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

## Basic Background

| | |
|---|---|
| Event Title: | Environmental Law Class at Harvard Law School |
| Event Host(s)/Organizer(s): | *Professor Richard Lazarus, Harvard Law School* |
| Event Date (Flexible?): | *Thursday, October 28, 2021* |
| Time & Duration of event participation, and Time Zone: | *12:00 – 12:30 pm* |
| **Deadline for Acceptance:** | ***Friday, October 15, 2021*** |
| Name of EPA Official requested:<br>Will you accept a surrogate? | *Ms. Susannah Weaver, Office of General Counsel*<br>*No surrogate absent prior consultation and approval* |
| Event Location: | *Zoom Event, so Remote in nature. Actual class at Harvard Law School in Cambridge MA* |
| Type of Event: | *Law school class* |
| Host(s) relationship to the EPA? | *No formal relationship* |

## Event Description and Role of the EPA Official

| | |
|---|---|
| Purpose of Event: | *Teaching environmental law to law students* |
| Brochure / website / invitation / and/or other event materials | *Attached* |
| Run of Show / Agenda: | *Environmental law class begins at 10:30 on Clean Water Act. Ms Weaver would join the class at noon.* |
| Role of the EPA official at the event: | *Speaker* |
| Requested Presentation Topic (if speaking): | *Waters of the United States Rule* |
| Requested Presentation Format: | *Short informal presentation based on Q&A with law professor (me) followed by student* |
| Name of Person Introducing EPA Official: | *Professor Richard Lazarus* |
| Audience make up? | *Approximately 55 law students* |
| Event open to press? | *No* |
| Event held Weekly, monthly, annually? | *Class meets two days a week* |

## Event Preparation

| | |
|---|---|
| Other EPA speakers? | *No* |
| Does EPA need to submit materials prior to event? | *No* |
| Expected prep and timing for prep calls or meetings: | *None or at most 15-30 minute of prep. No prep calls or meetings* |

# OFFICE OF GENERAL COUNSEL EVENT INFORMATION FORM

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

| | |
|---|---|
| Registration Fee Charged? How Much? | *No registration fee.* |
| Describe entity hosting EPA official: | *Academic institution (Harvard Law School)* |
| Is the entity also a Federally Registered Lobbyist? | *No, not to my knowledge* |
| Are you giving a gift, award or anything else of value? Amount? | *No* |
| Are you providing a meal? Amount? | *No* |

## At the Event and Other Event Logistics

| | |
|---|---|
| Is there a Hold Room Available for the EPA official? | *No. Remote event on zoom* |
| Open Press/Closed Press? | *No* |
| Person to contact for media purposes: | *Professor Richard Lazarus, lazarus@law.harvard.edu; 617 495 8015* |
| Dress Code: | *No dress code* |
| Room setup: | *Zoom event* |
| Notable/Honorable Guests Attending (including elected officials): | |
| Are you recording the event? Website URL for Recording (if event is recorded and posted) | |
| Directions to event (include relevant information about parking, the specific building, best entrance to use) | |
| Where to meet contact: | |

## Contact Information

| | |
|---|---|
| Your Name and Position | *Professor Richard Lazarus* |
| Phone (best & alternate) | *617 495 8015* |
| Email Address | *lazarus@law.harvard.edu* |
| Mailing Address | *Harvard Law School, Cambridge MA 02138* |
| Are you the point-of-contact at the event? If not, contact details: | *Yes* |

*Please return this completed form to Dan Conrad at conrad.daniel@epa.gov*

HARVARD LAW SCHOOL

Cambridge · Massachusetts · 02138

RICHARD J. LAZARUS
*Howard J. & Katherine W. Aibel Professor of Law*

Areeda Hall 329
1545 Massachusetts Avenue
(617) 495-8015
lazarus@law harvard.edu

August 12 2021

Ms. SusannahWeaver

Office of the General Counsel

U.S. Environmental Protection Agency

Dear Ms. Weaver:

I am writing to invite you to speak to my Environmental Law class at Harvard Law School on Thursday, October 28, 2021. The focus of that class will be the work of your office on the regulations the geographic scope of the Clean Water Act. I understand that your comments and discussion will be limited to publicly available information.

Thanks for your kindness in considering the possibility of taking the time to visit with our students, who I know will be thrilled to meet you.

Sincerely,

**From:** Keith, Jennie
**To:** Conrad, Daniel
**Subject:** Re: Event for Ethics Review- Occurs Next Week
**Date:** Wednesday, July 21, 2021 8:28:17 AM

---

No ethics issues, Dan! Jennie

Sent from my iPhone

> On Jul 20, 2021, at 3:53 PM, Conrad, Daniel <conrad.daniel@epa.gov> wrote:
>
> Hey Jennie, just wanted to check on this one since if she participated it would be this week.
> -Dan
>
> ---
>
> **From:** Conrad, Daniel
> **Sent:** Thursday, July 15, 2021 1:03 PM
> **To:** Keith, Jennie <Keith.Jennie@epa.gov>
> **Subject:** Event for Ethics Review- Occurs Next Week
>
> Jennie,
> See attached. Susannah Weaver would like to participate in this event next week, let me know if you see any issues. Thanks
> -Dan
>
> Daniel H. Conrad
> Acting Associate Deputy General Counsel
> U.S. Environmental Protection Agency
> Office of General Counsel
> Office: (202) 564-0903
> Cell: (202) 507-2946
>
> *CONFIDENTIALITY NOTICE: This message may contain deliberative, attorney-client, or otherwise privileged material. Do not release this message under FOIA without appropriate review. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, please contact the sender and delete all copies.*

# OFFICE OF GENERAL COUNSEL EVENT INFORMATION FORM

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

## Basic Background

| | |
|---|---|
| Event Title: | *US-Asia Institute Rule of Law Program for Chinese Law Students* |
| Event Host(s)/Organizer(s): | *US-Asia Institute (USAI)* |
| Event Date (Flexible?): | *Flexible*<br>*July 19-23 (EDT)* |
| Time & Duration of event participation, and Time Zone: | *July 19: Anytime between 8:00am and 12:00pm (EDT)*<br>*July 20: 10:00am-11:00am (EDT)*<br>*July 21: 9:00am-10:00am (EDT)*<br>*July 22: Anytime between 8:00am and 10:30am (EDT)*<br>*July 23: Anytime between 8:00am and 10:00am (EDT)*<br><br>**Note that "anytime between 8:00am and 10:00am (EDT)" means that the meeting is supposed to end, rather than to start, at 10:00am* |
| **Deadline for Acceptance:** | |
| Name of EPA Official requested:<br>Will you accept a surrogate? | |
| Event Location: | *Zoom* |
| Type of Event: | *Meeting* |
| Host(s) relationship to the EPA? | |

## Event Description and Role of the EPA Official

| | |
|---|---|
| Purpose of Event: | The Rule of Law program fosters the exchange of legal theories and practices between the US and China, ensuring a global perspective for future and established judicial leaders on both sides of the Pacific. It allows students to witness a broad spectrum of views on rule of law while helping them understand the role of rule of law in Chinese and American governance. The discussion will be focused on American rule of law and government. |
| Brochure / website / invitation / and/or other event materials | *https://www.usasiainstitute.org/ruleoflaw/usprogram* |
| Run of Show / Agenda: | *30-45 minutes* |
| Role of the EPA official at the event: | *Speaker* |
| Requested Presentation Topic (if speaking): | *Environmental issues at the domestic and global levels* |
| Requested Presentation Format: | *Optional short remarks + Q&A session* |
| Name of Person Introducing EPA Official: | |

# OFFICE OF GENERAL COUNSEL EVENT INFORMATION FORM

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

| | |
|---|---|
| Audience make up? | *6 Chinese law students + 3 US-Asia Institute staffers* |
| Event open to press? | *No* |
| Event held Weekly, monthly, annually? | *Annually* |

## Event Preparation

| | |
|---|---|
| Other EPA speakers? | |
| Does EPA need to submit materials prior to event? | *No* |
| Expected prep and timing for prep calls or meetings: | |
| Registration Fee Charged? How Much? | *No* |
| Describe entity hosting EPA official: | *501(c)(3)* |
| Is the entity also a Federally Registered Lobbyist? | *No* |
| Are you giving a gift, award or anything else of value? Amount? | *No* |
| Are you providing a meal? Amount? | *No* |

## At the Event and Other Event Logistics

| | |
|---|---|
| Is there a Hold Room Available for the EPA official? | |
| Open Press/Closed Press? | *No press* |
| Person to contact for media purposes: | |
| Dress Code: | |
| Room setup: | *Zoom* |
| Notable/Honorable Guests Attending (including elected officials): | |
| Are you recording the event? Website URL for Recording (if event is recorded and posted) | *No* |
| Directions to event (include relevant information about parking, the specific building, best entrance to use) | |

# OFFICE OF GENERAL COUNSEL EVENT INFORMATION FORM

***This form assists in planning participation in events and activities. Please be complete to minimize need for follow up. This is not a confirmation of attendance.***

| | |
|---|---|
| Where to meet contact: | |

## Contact Information

| | |
|---|---|
| Your Name and Position | *Jayson Shan* |
| Phone (best & alternate) | *202 375 1692* |
| Email Address | jayson.shan@usasiainstitute.org |
| Mailing Address | 232 East Capitol St. NE<br>Washington, D.C. 20003 |
| Are you the point-of-contact at the event? If not, contact details: | *Yes* |

*Please return this completed form to Dan Conrad at conrad.daniel@epa.gov*

| | |
|---|---|
| **From:** | Fugh, Justina |
| **To:** | Weaver, Susannah |
| **Subject:** | FW: Your ethics obligations at EPA (yes, already!) |
| **Date:** | Thursday, June 17, 2021 11:04:00 PM |
| **Attachments:** | Advisory to political appointees about late filing fee Jan 2021.pdf<br>Hatch Act chart Sept 2020.docx<br>When to Report Transactions on the OGE 278T and Part 7 - May 2019.docx |

---

Hi there,

Here's the chatty "welcome to disclosure filing" note that I had previously sent to your personal email address, updated for your start date and title.

Welcome to the wonderful world of public financial disclosure reporting! I understand that you will soon start as Senior Counselor in the Office of General Counsel, which is a Schedule C position. Congratulations! Given your type of appointment, you are required by the Ethics in Government Act of 1978 to file the Public Financial Disclosure.

DEADLINE FOR SUBMITTING THE REPORT

Technically, your "new entrant" report is due no later than 30 days from the date you start at EPA, which will be June 27. Your due date is 30 days after your start date (so 7/27/21) but if you need additional time, you must contact ethics@epa.gov before your deadline expires. There is a limit to how much additional time we can give you, and we can't grant any extension after the fact.

THE FINANCIAL DISCLOSURE REPORT, OGE-278e

EPA uses an electronic filing system (called INTEGRITY) for the public financial disclosure reports that is operated and secured by the U.S. Office of Government Ethics (OGE). You are required by law to complete the form, and we will use it to determine whether you have any financial conflicts of interest or other ethics concerns.

We created an account for you in INTEGRITY and have assigned you a "new entrant" report. Your filer category is "Schedule C" and your filer status is "full time." For help in INTEGRITY, check out the OGE Public Financial Disclosure Guide. The email from INTEGRITY.gov will provide you with specific instructions to log into the federal government's max.gov site, the gateway to INTEGRITY. Check your clutter box for messages from INTEGRITY.gov and if you don't see it in the next day or so, contact ethics@epa.gov.

There are several important things to know about the OGE-278e: (1) it is a public form (which means that anyone can ask for a copy of your form, but Congress repealed the requirement for public posting to the internet); (2) you have to fill it out every year you are in this position; (3) when you leave the position, you have to file a termination report (so remember to notify us); (4) you will be subject to a late filing fee of $200 for not filing your report timely. There are also civil and criminal penalties for failure to file at all or for inaccurate reporting.

REQUIREMENT TO ANSWER ANY FOLLOW UP QUESTIONS WITHIN 14 DAYS

We will review your report as quickly as possible. If we have any questions, then we will notify you. At that point, you will have 14 calendar days to respond and resubmit your report back to us with any necessary changes.

REPORTING TRANSACTIONS

While you are in this position, you are a public financial disclosure filer who is subject to the Ethics in Government Act as amended by the STOCK Act. You are required to report any purchase, sale or exchange of stocks, bonds, commodities futures or other forms of securities when the amount of the transaction exceeds $1000. Use INTEGRITY to disclose reportable transactions within 30 days of receiving notification of the transaction, but not later than 45 days after the transaction occurs. You will have to report transactions that occur within brokerage accounts, managed accounts, or other investment vehicles that you own or jointly own with your spouse or another person, as well as transactions of your spouse or dependent children. For a comprehensive review of reportable transactions, see EPA Ethics Advisory 2012-03 and our revised attached chart. Remember, you are responsible for reporting transactions, even if you have a managed account, and you will be fined for a tardy periodic transaction report.

YES, YOU CAN BE FINED FOR NOT FILING PROMPTLY

It's worth repeating that you can be fined $200 for not meeting the submission deadline (and you still have to file that report). PLEASE pay attention to your filing requirements! If you need an extension, then you must ask before your deadline expires. There is a limit to how much additional time you may receive.

HELPFUL HINTS FOR FILLING OUT THE FORM

- This is a wretched and exacting form, so just know that you will have to provide a lot of information.
- You will get three different places to report assets: filer's employment-related assets and income, spouse's employment related assets and income, and other assets and income. You must report assets for yourself, your spouse and any dependent children. We don't really care where you report your assets, just that you do report them all someplace.
- You must include any investment asset that is worth more than $1000. Include any income from any source that exceeded $200 during the reporting period (including outside jobs or hobbies, rental income). Include any cash/savings accounts that have more than $5000.

- Enter each asset separately. Don't lump items together on one line. Be sure to provide the valuation of the asset AND the amount of the income. For assets that aren't mutual funds, you also have to report the type of income (e.g., dividends, cap gains).

- For 401(k) or IRA plans, provide the name of each of the underlying assets. Don't just write "Vanguard IRA" or "mutual fund." You must specify each asset separately and give the valuation but, for these assets in tax deferred instruments, you do not need to provide the amount of income accrued.

- Do not report your federal salary, your spouse's federal salary, or Thrift Savings Plan information

- If you (not your spouse) have any earned income (e.g., outside job, paid pension), you have to report the actual amount of that income.

- If your spouse works outside of federal service, then include your spouse's employer but not the amount of your spouse's salary. If you are not legally married, do not report your significant other's employer.

- Don't forget to include any life insurance policies (whole life or variable life) as well as the underlying investments. Do not report term life insurance.

- If you have nothing to report in a section, be sure to click the "nothing to report" button

- Remember to check out the Office of Government Ethics' Public Financial Disclosure Guide or to contact OGC/Ethics for help.

## OTHER ETHICS REQUIREMENTS FOR YOU

### HATCH ACT

You are "lesser restricted" under the Hatch Act. During your new employee orientation, the ethics staff will go over the Hatch Act, which governs the political activity of government employees. For a refresher, you can familiarize yourself with the Hatch Act as it affects you by reviewing our online Hatch Act training course or check out our attached handy chart that reminds you of your restrictions.

### ETHICS TRAINING

As a public financial disclosure filer, you must take one hour of ethics training this year. The new employee training you will have with OGC/Ethics meets your annual training requirement for this year. Next year, you will take the annual training online.

If you have any questions regarding this message or your obligations, then please contact me directly or anyone in the OGC Ethics Office at ethics@epa.gov. We'll be happy to assist you.

Cheers,
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
Washington, D.C. 20460

January 22, 2021

OFFICE OF
GENERAL COUNSEL

**MEMORANDUM**

SUBJECT: Timely filing of Public Financial Disclosure and Periodic Transaction Reports

FROM: Justina Fugh Justina Fugh Digitally signed by Justina Fugh Date: 2021.01.22 12:07:49 -05'00'
Alternate Designated Agency Ethics Official

TO: All EPA Political Appointees

In 1978, Congress enacted the Ethics In Government Act, 5 U.S.C. app. to establish the Executive Branch financial disclosure reporting system that requires mandatory public disclosure of financial and employment information of certain officials and their immediate families. Because you occupy a designated position, you are required by this law to file these reports in the electronic system, *INTEGRITY*. As an executive branch employee, you are bound by federal ethics laws and regulations, including prohibitions against financial conflicts of interest and loss of impartiality. Your disclosures allow the Office of General Counsel's Ethics Office (OGC/Ethics) to assist you in identifying and addressing potential or actual conflicts of interest in order to maintain the integrity of the Agency's programs and operations. These reports are publicly available upon request and the reports of certain Presidential Appointees confirmed by the Senate will be posted on the U.S. Office of Government Ethics' website at www.oge.gov.

This memorandum formally informs you that you are required by law to file timely and accurate Public Financial Disclosure Reports (OGE 278e)[1] and Periodic Transaction Reports (OGE 278-Ts).[2] **Filing a late report will result in a $200 late filing fee** unless you formally request and receive a waiver of the late fee from me or the Designated Agency Ethics Official (DAEO), Jim Payne, after describing extraordinary circumstances that caused you to file a late report.[3] **Unpaid late fees are subject to the Agency's[4] and the government's debt collection procedures and will be referred for collection if left unpaid after 30 days.**

Please refer to this chart for your filing obligations:

---

[1] *See* 5 U.S.C. app. § 101; 5 C.F.R. § 2634.201.
[2] Pub. L. 112-105 § 11 (STOCK Act).
[3] *See* 5 U.S.C. app. § 104(d)(1); 5 C.F.R. § 2634.704(a).
[4] *See* Resource Management Directive System 2540-03-P2 dated 07/12/2016.

| | |
|---|---|
| OGE 278e - New Entrant reports | **Within 30 days** of entering a covered position (either by appointment to a permanent or acting in covered position) |
| OGE 278e – Incumbent reports | **No later than May 15** |
| OGE 278e – Termination reports | **No later than 30 days after** leaving a covered position (either through reassignment, resignation, or the end of acting in a covered position) (Reports may be submitted within 15 days prior to termination) |
| OGE 278T – Periodic transaction reports[5] | **The *earlier of* 30 days** after learning of a transaction or **45 days** of the transaction taking place. |

How to request an extension of the filing deadline:

For good cause (e.g., travel, workload issues, sickness), you may request up to two 45-day extensions. Submit the request by email, including the reason, to ethics@epa.gov **prior to the due date.** Extensions cannot be granted after the due date has passed.

How to request the waiver of a late filing fee:

If *extraordinary circumstances* prevented you from meeting the deadline and OGC/Ethics assessed a late fee, you may request a waiver of the late fee. *See* 5 C.F.R. § 2634.704. Submit your request in writing to ethics@epa.gov describing the extraordinary circumstances and provide any supporting documentation. Please note that vacations or routine work obligations are not "extraordinary" circumstances. The decision to grant or deny a waiver is at the sole discretion of the DAEO/ADAEO and is final.

Your colleagues in OGC/Ethics are available to provide assistance but it is always your obligation to file your reports timely and accurately. In fact, ethics regulations *require* that we refer individuals to the Department of Justice (DOJ) when there is reasonable cause to believe that they have willfully failed to file a required report or provide the information that the report requires. The current maximum civil penalty is $56,216.[6]

As public servants, we hope that you will take your ethics obligations seriously. As such, we expect you to make a good faith effort to adhere to the timeliness and completeness requirements of your financial disclosure reporting obligations. If you have any questions, please contact ethics@epa.gov.

ATTACHMENT - *When to Report Transactions on the OGE 278 and OGE 278-T*

[5] *See* attached guidance – *When to Report Transactions on the OGE 278 and OGE 278-T.*
[6] In 2012, OGC/Ethics referred an individual to DOJ for failure to file a termination report despite repeated reminders and entreaties. That individual paid a civil penalty of $15,000 and still had to file the termination report.

# When to Report Transactions

DUE DATE: The earlier of the following: 30 Days from Notification or 45 Days from Transaction

| Investment Assets | Periodic Transaction Report<br>Report on the OGE 278-T? | Annual and/or Termination Report<br>Report on Part 7 of the OGE 278e? |
|---|---|---|
| Transactions of $1,000 or less | | |
| • Any asset in which the transaction amount is $1,000 or less regardless of the type of asset or who owns the asset | No | No |
| Your investment assets (or jointly held) | | |
| • Your stocks | Yes | Yes |
| • Your bonds (except U.S. Treasury securities) | Yes | Yes |
| • Your commodity futures | Yes | Yes |
| • Your other investment securities | Yes | Yes |
| • Assets listed above in your (joint) brokerage accounts, (joint) managed accounts, IRAs, other retirement accounts, and/or other (joint) investment vehicles | Yes | Yes |
| Your spouse's investment assets | | |
| • Spouse's stocks | Yes | Yes |
| • Spouse's bonds (except U.S. Treasury securities) | Yes | Yes |
| • Spouse's commodity futures | Yes | Yes |
| • Spouse's other investment securities | Yes | Yes |
| • Assets listed above in spouse's <u>own</u> brokerage account, managed accounts, IRAs, other retirement accounts, and/or other investment vehicles | Yes | Yes |
| Your dependent child's investment assets | | |
| • Dependent child's stocks | Yes | Yes |
| • Dependent child's bonds (except U.S. Treasury securities) | Yes | Yes |
| • Dependent child's commodity futures | Yes | Yes |
| • Dependent child's other investment securities | Yes | Yes |
| • Assets listed above in dependent child's <u>own</u> brokerage account, IRAs, and/or other investment vehicles | Yes | Yes |
| Other investment assets irrespective of ownership | | |
| • Real Property | No | Yes[1] |
| • Mutual funds, exchange traded funds, index funds and/or other "excepted investment funds"[2] | No | Yes |
| • Any asset in which the transaction amount is $1,000 or less | No | No |
| • Cash accounts (deposits and/or withdrawals) | No | No |
| • Money market accounts | No | No |
| • Money market funds | No | No |
| • Certificates of deposits | No | No |
| • US Treasury Securities (e.g., T bills, Treasury bonds, U.S. savings bonds) | No | No |
| • Federal Government Retirement Accounts (e.g., Thrift Savings Plan) | No | No |
| • Life insurance and annuities | No | No |
| • Collectibles | No | No |
| • Assets held within an excepted trust[3] | No | No |
| • Transfer of assets between you, your spouse, and your dependent children | No | No |

[1] Do not report the purchase or sale of your personal residence on Part 7 unless you rent it out at any time during the reporting period.

[2] To be an excepted investment fund (EIF), the asset must be:

(a) widely held (more than 100 participants),
(b) independently managed – arranged so that you neither exercise control nor have the ability to exercise control over the financial interests held by the fund, and
(c) publicly traded (or available) or widely diversified.

Managed accounts, investment clubs, trusts, 529 accounts, brokerage accounts, and individual retirement accounts (IRAs) are not excepted investment funds in and of themselves. It may be that individual assets held within these types of investment vehicles may qualify as EIFs if, for example, your IRA holds a publicly-traded mutual fund. But the fact that you have a managed account does not absolve you of your reporting requirements. That account is legally owned by you, and you're responsible for its assets and reporting transactions. If you have questions, contact ethics@epa.gov.

[3] OGC/Ethics must determine that your trust qualifies as an "excepted trust." For help, email ethics@epa.gov.

Updated September 2020

# Political Activities and Federal Employees

The Hatch Act, enacted in 1939, was amended in 1993 and 2012. It regulates the political activities of executive branch employees, excluding the President and Vice President. The following table summarizes what political activities EPA employees can and cannot do based on their appointment. Note: Public Health Service officers must adhere to 45 CFR Part 73, Subpart F, which is most similar to the Career SES/ALJ column.

**Political activity means an activity "directed toward the success or failure of a political party, a candidate for partisan political office, or a partisan political group."**

| **Type of Activity** | **PAS*** | **Non-Career SES, Schedule C*, Title 42, SL/ST, AD*, GS, Other** | **Career SES, ALJs** |
|---|---|---|---|
| **Personal** (off premises and off duty) | | | |
| Express support for or opposition to a political candidate when off duty | Yes | Yes | Yes |
| Run as a partisan candidate for nomination or office in a partisan election | No | No | No |
| Solicit and accept contributions for your campaign in a non-partisan election | Yes | Yes | Yes |
| Solicit a contribution from a member of your union | N/A | Yes | N/A |
| Work a phone bank asking individuals to volunteer | Yes | Yes | No |
| Campaign on behalf of a candidate in a partisan election | Yes | Yes | No |
| Be active on behalf of a candidate at political rallies or meetings | Yes | Yes | No |
| Attend political rallies and meetings | Yes | Yes | Yes |
| Contribute money to political organizations | Yes | Yes | Yes |
| Work in non-partisan voter registration drives | Yes | Yes | Yes |
| Work in partisan voter registration drives | Yes | Yes | No |
| Register and vote | Yes | Yes | Yes |
| Sign a nominating petition | Yes | Yes | Yes |
| Distribute campaign material in a partisan election | Yes | Yes | No |
| Work as an election judge, poll watcher, clerical worker on election day and receive compensation for that work | Yes | Yes | Yes but nonpartisan only |
| Drive people to polling station on behalf of a campaign | Yes | Yes | No |
| **Affecting Official Resources** | | | |
| Use office time for political activity | Yes; IG-No | No | No |
| Use official space for political activity in general | Yes; IG-No | No | No |
| **Fundraising** | | | |
| Attend a political fundraiser | Yes | Yes | Yes |
| Solicit, accept or receive political contributions in general | No | No | No |
| Solicit or receive a political contribution on government premises | No | No | No |
| Plan or organize a political fundraiser when off duty | Yes | Yes | No |
| Sponsor, host, or allow your name as sponsor/host for a political fundraiser | No | No | No |
| Serve drinks or check coats at a political fundraiser | Yes | Yes | No |
| Speak at a partisan fundraiser without appealing for money | Yes | Yes | No |
| Allow only your name to be listed as speaker on fundraising invitation | Yes | Yes | No |

**PAS = Political Appointee Confirmed by the Senate; Schedule C = political appointees not confirmed by Senate; AD = Administratively Determined; SES = Senior Executive Service*

**From:** Fugh, Justina
**To:** Susannah Weaver
**Subject:** RE: follow up to our conversation
**Date:** Thursday, June 17, 2021 11:51:00 AM

---

Hi Susannah,
So long as you've taken all appropriate steps to effectuate the name change, it doesn't have to actually occur prior to your entry on board. So that's fine. With regard to your financial disclosure report, it's due 30 days after your effective date, or 7/8/21. If you haven't started the form yet, then I can remove the assignment to your personal email user ID and, instead, re-assign it to you once you have an EPA email address. We prefer using EPA email (which will be weaver.susannah@epa.gov .... I just looked it up!) as the user ID because, that way, we can send you emails with updates or notes. Shall I do that?
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Susannah Weaver (b) (6) [redacted]
**Sent:** Thursday, June 17, 2021 8:36 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Re: follow up to our conversation

Hi Justina,

I hope you are well. We are working away at all of the things we need to do to close down my involvement in our firm. By my start date (June 28) I will have officially withdrawn from the firm and (b) (6) [redacted] The one thing that will not be complete is the official name change with the D.C. Department of Consumer and Regulatory Affairs. We have sent in the paperwork and sought expedited action, but because of the pandemic their offices are closed to the public and the fastest turnaround (they say) is two weeks. If that's the case, the name change would become official with DCRA sometime during my first week at EPA. Let me know if this is a problem.

I haven't gotten to the financial disclosure forms yet because I've been busy with the background check one (and drug testing and fingerprinting), but I'm hoping to turn to them soon and will let you know if I have any questions. Just to confirm, I have two weeks from my start date to complete them, right? I plan/hope to finish them before I start, but wanted to make sure.

Thanks!

Susannah

On Mon, Jun 7, 2021 at 12:33 PM Susannah Weaver (b) (6) [redacted] wrote:

> Thank you Justina! This is all very helpful. I've informed the attorneys in the voting rights case that I need to pull out. I'll have one of my partners sign the amicus brief. And I think I will just tell (b) (6) [redacted].
>
> And yes, please send me whatever forms. I have a feeling I have more time now than I will once I've started : )
>
> Thanks!
>
> On Sun, Jun 6, 2021 at 10:31 PM Fugh, Justina <Fugh.Justina@epa.gov> wrote:
>
>> Hi Susannah,
>> Let's tackle your questions all at once:
>>
>> - I'm a plaintiff in a D.C. voting rights case and the defendants include the United States. I assume I need to withdraw?
>>
>> JUSTINA: Yes. When you become a federal employee, you will be bound by the representational conflict of interest statutes. Even if you are uncompensated, you cannot serve as agent or attorney for another by representing their interests back to the United States in any matter in which the US is a party or has a direct and substantial interest. *See* 18 USC 205.
>>
>> - the meetings I'm thinking about concern new national rulemakings so I would expect to be able to work on them while at EPA, but I can see how from an ethics standpoint it shouldn't make a difference if the meeting was last Thursday or this coming Monday.
>>
>> JUSTINA: Correct. Any new national rulemakings will be matters of general applicability. So long as you neither reveal your former clients' secrets nor interact, appear or communicate with your former clients or former firm, you will be able to work on those new national rulemakings irrespective of whether your meetings take place "last Thursday or this coming Monday."
>>
>> - In terms of the appearance concern, do you think that would be lessened if one of my partners signs the amicus brief instead of me?
>>
>> JUSTINA: Yep.

- I've been (b) (6) [redacted]). Can I keep doing that?

JUSTINA: Ugh. Why couldn't she live in MD or VA? I *think* that DC small claims courts are not considered federal courts, but we'll have to check to be sure. The concern I have is the representational conflict of interest statute again, 18 USC 205, because the prohibition extends to appearing before any federal court. Though there are some limited exceptions, they do not extend to (b) (6) and there is no waiver. To do this work, you will need to seek prior approval of the outside activity from my office when you come on board. (b) (5) [redacted] The only thing we'll need to check to be sure is whether small claims court is akin to a state tribunal instead of federal court.

Now a question from me: do you want me to assign you a new entrant financial disclosure report now, using your personal email address, so you can get started? Or do you want to wait until you actually come on board later in June?
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Susannah Weaver (b) (6) [redacted]
**Sent:** Sunday, June 06, 2021 8:58 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Re: follow up to our conversation

Hi Justina,

I'm sorry to pile on the questions--I'm sure you have a ton on your plate. I have one more (for now). I'm a plaintiff in a D.C. voting rights case and the defendants include the United States. I assume I need to withdraw?

Thanks, and I hope you had a great weekend!

Susannah

On Sat, Jun 5, 2021 at 7:08 AM Susannah Weaver [redacted] wrote:

> Thank you Justina! I really appreciate your counsel and look forward to "seeing" you. Your

analogy makes complete sense--the meetings I'm thinking about concern new national rulemakings so I would expect to be able to work on them while at EPA, but I can see how from an ethics standpoint it shouldn't make a difference if the meeting was last Thursday or this coming Monday. I will talk to my client and partners about it.

In terms of the amicus matter, it is under the aegis of the firm. In terms of the appearance concern, do you think that would be lessened if one of my partners signs the amicus brief instead of me?

And while we're at it, I've been (b) (6) [redacted]). Can I keep doing that?

Thank you and I hope you have a great weekend!

Susannah

On Fri, Jun 4, 2021 at 9:55 PM Fugh, Justina <Fugh.Justina@epa.gov> wrote:

> Hi Susannah,
> Oh, I'm so happy to hear that we'll be "seeing" you soon at EPA! Congratulations!
> With respect to your questions, see my comments embedded in your email:
>
> First, I'll likely start at the agency on June 21 or 28. Between now and then should I limit my current work in any way (for example, not meet with EPA officials from my current perch)? With one exception (noted below) I'm not slated to take on any new litigation over the next few weeks.
> JUSTINA: Yeah, I agree with the idea of not taking on new clients at this juncture because doing so will just increase the number of entities from which you will be recused. As for your current work, well, I find that reducing ethics rules to a common denominator is effective, so I often try to equate an ethics rule with something that everyone understands and maybe makes them laugh. I don't know you well ye, so I hope that I won't offend you, but my first reaction to your question was to think, "well, gosh, she's already pregnant so she can't get more pregnant." In other words, we already know that you'll face ethics restrictions with your former firm and former clients, so any "additional" work you're doing now won't alter the restriction. Whether you meet with EPA or other federal officials at this point is really up to you, the firm and your clients. Everyone will soon know that you're leaving the firm so you could use these next few weeks as your last hurrah on that case or work or whatever and continue to represent your client zealously. Bottom line is that, to me, it doesn't matter when you stop working on the cases you have now. But once you come to EPA, those specific party matters are off limits and so are those clients.
>
> Second, I had agreed some time ago to serve pro bono as counsel on an amicus brief to be filed soon in the D.C. Circuit in a non-environmental case for parties my prior firm (Orrick) could not represent--at this point Google, Box, Amazon, and Bates White. I don't think

these are repeat players at EPA, but it also seems like a silly thing to potentially create a conflict--I wouldn't do anything other than be listed on the amicus brief as counsel for these parties. At this point, I have engagement letters with them specifying that it is a fleeting engagement that won't involve any confidential information and that they waive any future conflict of interest assertion. But would it make any difference if one of my law partners enters an appearance and signs the briefs instead of me?

JUSTINA: Were you serving under the aegis of the firm or in some personal capacity? If one of your current law partners takes over the case, then you will have a recusal issue because of the presence of that firm but as you indicated, the case doesn't have an environmental nexus so it won't likely arise as an EPA matter. Next we have to consider whether your serving as counsel in an *amicus* filing means that those parties become your *clients* for the purposes of reporting on your financial disclosure report (answer: no, because you were not compensated) or for the purposes of the pledge (answer: again, no, because an *amicus* is not a "party" to any specific party matter for the purposes of federal impartiality standards, so there are no pledge implications either). But because you have a "relationship" with these entities short of their being your clients, we'll have to consider addressing the appearance concern given your limited working relationship with these entities in the past year. Please note that EPA can and does absolutely have conflicts issues with Amazon and Alphabet (the parent of Google). For example, Amazon owns Amazon Air, a cargo airline, while Alphabet owns Makani Power that developed airborne wind turbines, and Verily Life Sciences. And don't even get us started on tech companies that own renewable energy storage stuff.

Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Susannah Weaver (b) (6) [redacted]
**Sent:** Friday, June 04, 2021 12:40 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** Re: follow up to our conversation

Hi Justina,

I hope you are well. I got an offer to join EPA earlier today and I'm very excited about it (and thank you for your advice on the terms)!

I have two questions for you. First, I'll likely start at the agency on June 21 or 28. Between now and then should I limit my current work in any way (for example, not meet with EPA

officials from my current perch)? With one exception (noted below) I'm not slated to take on any new litigation over the next few weeks.

Second, I had agreed some time ago to serve pro bono as counsel on an amicus brief to be filed soon in the D.C. Circuit in a non-environmental case for parties my prior firm (Orrick) could not represent--at this point Google, Box, Amazon, and Bates White. I don't think these are repeat players at EPA, but it also seems like a silly thing to potentially create a conflict--I wouldn't do anything other than be listed on the amicus brief as counsel for these parties. At this point, I have engagement letters with them specifying that it is a fleeting engagement that won't involve any confidential information and that they waive any future conflict of interest assertion. But would it make any difference if one of my law partners enters an appearance and signs the briefs instead of me?

Thank you, and I hope you have a great weekend!

Susannah

On Wed, Jun 2, 2021 at 10:23 AM Susannah Weaver (b) (6) [redacted] wrote:

> Hi Justina,
>
> Thank you for sending all of this. I will read it carefully and let you know if I have any questions. It was really nice to talk with you last week and I appreciate all of your insights and advice. I hope to be able to work with you!
>
> All my best,
> Susannah
>
> On Wed, Jun 2, 2021 at 12:53 AM Fugh, Justina <Fugh.Justina@epa.gov> wrote:
>
>> Hi there,
>> Thanks for talking to me last week. It was a pleasure to chat with you, and I'm sorry that this note took a little longer to get to you than I had hoped. As I explained, I'm here to help explain the ethics rules that will apply to you should you join EPA as a political appointee in the Office of General Counsel. Generally speaking, you'll be subject to three interrelated but different ethical constructs: (1) the federal ethics laws and regulations, and (2) the Biden Ethics Pledge as set forth by Executive Order 13989, and (3) your own bar rules. This note will provide you with the broad brush strokes of what I envision as your ethical obligations.
>>
>> FINANCIAL CONFLICTS OF INTEREST

- You will be required to fill out a public financial disclosure report to help us to ascertain your potential conflicts issues. Put simply, we will be looking at your ownership interests in stocks, bonds, sector mutual funds as well as any fiduciary positions that you hold in entities. This form, called the OGE-278e, is a wretched and exacting document that you will fill out electronically. To give you an idea of what we'll be asking, I've attached a paper version (just to give you a sense of what you'll be asked to complete electronically) plus this link to the Public Financial Disclosure help guide.
- From our discussion, you understand that you will have to resign from your position as name partner at the firm and that the firm cannot continue to use your name going forward. You will not be permitted to retain any continuing relationship with the firm, including no capital account, use of their garage for parking, access to an office, etc. You will have to disengage financially from the firm. If you have a defined contribution plan, you may still keep that but obviously the firm will no longer make any contributions to it.
- As I recall, your spouse works for the Department of Commerce. Although his assets as well as those of your dependent children will have reported on the financial disclosure report, based on your description of your assets ([redacted]), I do not anticipate that you will present any financial conflicts.
- For the purposes of the disclosure report, you will have to list all clients to whom you provided legal services of at least $5000 during the preceding two calendar years plus CY 2021. But for the purposes of the pledge restrictions, we will need to know all of the clients over the past two years (from May 2019 to May 2021), irrespective of compensation, including pro bono clients.

BIDEN ETHICS PLEDGE

- The pledge places additional restrictions upon political appointees with respect to their former employers and former clients. For the purposes of the pledge, we go back two years, which means that the firm (or its surviving entity) will be your "former employer" while any client to whom you personally provided services during that time will be considered "former clients." You indicated that EDF has been your primary client over that period of time.
- Under the pledge, you will be restricted for two years (from the date you join EPA) from participating personally and substantially in any particular matter that involves your former employer or any former client as a party

or in which it represents a party. You will not be permitted to meet with the former firm or former clients in your official capacity. You will be restricted for two years from participating personally and substantially in any specific party matter in which any of them is a party or represents a party. You will also not be able to attend any meeting at which any of them is present, unless the subject matter of the discussion is generally applicable to a wider audience (such as all of the members of an affected sector) and at least four other entities representing a diversity of interests are present, besides any of them.

- You are not a federally registered lobbyist.

RECUSALS

- I anticipate that your recusal statement will address your firm and your clients as well as any specific party matters still pending at EPA in which you were involved personally and substantially. But as we discussed, if your prior participation involved litigation over the prior administration's rule, and that case is now in abeyance, then your restriction is limited to that case, not to any ensuing rulemaking in this administration. You can't reveal any client secrets, of course, and we won't let you attend a meeting at which only your former firm or former client is present, but you will be permitted to work on a new rule.
- Just so you know, I already received from Sinceré Harris your list of cases:

  - *State of California v. EPA*, No. 21-1035 (D.C. Cir.) (challenge to Jan. 13, 2021 significant contribution rule). This litigation is closed.
  - *Environmental Defense Fund v. EPA*, No. 4:21-cv-00003 (D. Mont.) (challenge to Jan. 6, 2021 science transparency rule). This litigation is closed.
  - *Environmental Defense Fund v. EPA*, No. 20-1360 (D.C. Cir.) (challenge to Sept. 15, 2020 rule to rule weakening emissions standards for volatile organic compounds from oil and gas sources). This litigation is in abeyance.
  - *State of California v. EPA*, No. 20-1357 (D.C. Cir.) (challenge to Sept. 14, 2020 rule to remove methane emissions standards and downstream standards for oil and gas sources). This litigation is in abeyance.
  - *Air Alliance Houston v. EPA,* No. 20-1268 (D.C. Cir.) (challenge to May 20, 2020 risk and technology review for air toxics from power plants). This litigation is in abeyance.
  - *American Academy of Pediatricians v. Wheeler*, No. 20-1221 (D.C. Cir.) (challenge to May 20, 2020 withdrawal of

appropriate and necessary finding to regulate toxic pollution from power plants). This litigation is in abeyance.

- *Environmental Defense Fund v. EPA*, No. 19-1222 (D.C. Cir.) (challenge to Aug. 26, 2019 rule to extend deadlines for implementing landfill emissions guidelines). This litigation is closed.
- *American Lung Ass'n v. EPA*, No. 19-1140 (D.C. Cir.) (challenge to July 8, 2019 rule rescinding the Clean Power Plan and promulgating the ACE rule). Petitions for certiorari are currently pending
- *State of Maryland v. EPA,* No. 18-1285 (D.C. Cir.) (challenge to Oct. 25, 2018 denial of section 126 petition). This litigation is closed.
- *State of California v. EPA*, No. 18-1139 (D.C. Cir.) (challenge to April 13, 2018 mid-term evaluation of vehicle emission standards). This litigation is closed.
- *State of California v. EPA*, 4:18-cv-03237 (N.D. Cal.) (challenge to EPA's failure to fulfill its mandatory duty to implement landfill emission guidelines). This litigation is closed.
- *State of New York v. Pruitt*, No. 1:18-cv-00773 (D.D.C.) (challenge to EPA's unreasonable delay in fulfilling its mandatory duty to issue oil and gas emission guidelines). Awaiting CRA vote.
- *Truck Trailers Manufacturers Ass'n v. EPA*, No. 16-1430 (D.C. Cir.) (supporting EPA in challenge to Oct. 25, 2016 rule regulating, among other things, trailers). Awaiting decision.
- *Nat'l Waste & Recycling Ass'n v. EPA*, Nos. 16-1371, 16-1372 (D.C. Cir.) (supporting EPA in challenges to Aug. 19, 2016 rules strengthening new source performance standards and emissions guidelines for landfills). This litigation is in abeyance.
- *Murray Energy Corp. v. EPA*, No. 16-1127 (D.C. Cir.) (supporting EPA in challenge to April 25, 2016 supplemental appropriate and necessary finding to regulate toxic pollution from power plants). This litigation is in abeyance.
- *State of West Virginia v. EPA*, No. 15-1363 (D.C. Cir.) (supporting EPA in challenge to Oct. 23, 2015 Clean Power Plan). This litigation is closed.
- *American Petroleum Inst. v. EPA*, No. 13-1108 (D.C. Cir.) (supporting EPA in consolidated challenges to EPA's 2012-2016 rules regulating pollution from oil and gas sources). This litigation is in abeyance.

Should you decide to join EPA, we'll be ready to address your recusals. That's my quick overview, but I tried not to burden you with attachments or citations. I can provide you more information if you want, though, so just ask!
Justina

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

| | |
|---|---|
| **From:** | Fugh, Justina |
| **To:** | Weaver, Susannah |
| **Subject:** | RE: Friday meeting with methane partners campaign |
| **Date:** | Wednesday, August 25, 2021 6:23:00 PM |

We'll check in with Ann Ferrio to find out about the topic. She works closely with our office on ethics checks for Tomàs.

---

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Wednesday, August 25, 2021 6:05 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** FW: Friday meeting with methane partners campaign

Hi Justina,

I wanted to see if I can join this meeting on Friday. I note that it has two EDF participants (out of 14). I don't know anything about the meeting except what is below, but I'm happy to follow up if you have any questions.

Thanks,
Susannah

---

**From:** Campbell, Ann <Campbell.Ann@epa.gov>
**Sent:** Wednesday, August 25, 2021 6:02 PM
**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Subject:** Re: Friday meeting with methane partners campaign

Great timing Susannah. I just received the list below. I'll be running an ethics check for Tomas tomorrow. I've emphasized to the requestor that the list must be finalized by 3p tomorrow and that the invitation may not be forwarded. If we receive any changes, I'll be sure to flag those for you.

Heres the list:

Sarah Smith ssmith@catf.us;
Darin Schroeder dschroeder@catf.us;
Jessica Ennis <jennis@earthjustice.org>;
Lauren pagel <lpagel@earthworksaction.org>;
Jon Goldstein jgoldstein@edf.org;
Patrice Tomcik ptomcik@momscleanairforce.org; David Doniger <ddoniger@nrdc.org>;
Lyssa Lynch llynch@nrdc.org;
Mahyar Sorour mahyar.sorour@sierraclub.org;
Rosalie Winn rwinn@edf.org;
Matt Walker mwalker@cleanair.org;
Andres Restrepo andres.restrepo@sierraclub.org
Mark Magana markmagana@greenlatinos.org;

Paul Billings <Paul.Billings@lung.org>

Ann (Campbell) Ferrio
Chief of Staff
Office of Air and Radiation
(202) 566-1370

On Aug 25, 2021, at 5:58 PM, Weaver, Susannah <Weaver.Susannah@epa.gov> wrote:

Hi Ann,

Can you tell me who, if anyone, will be at this meeting beyond the EPA folks? I want to make sure that I'm not recused. And do you have any additional information on the topic (no need to track anything down, just if you have it)?

Thanks!
Susannah

Susannah Weaver
Senior Counselor
Environmental Protection Agency, Office of General Counsel
1200 Pennsylvania Ave. NW
Washington, DC 20460
(202) 564-1928 (office)
(202) 819-6517 (mobile)

**From:** Fugh, Justina
**To:** Weaver, Susannah
**Subject:** RE: Information Needed For Your Recusal Statement
**Date:** Thursday, July 01, 2021 12:54:00 PM

---

Great! I'll coordinate with Victoria. Thanks!

---

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Thursday, July 01, 2021 12:38 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** FW: Information Needed For Your Recusal Statement

FYI—see below two emails.

Thanks!

Susannah

---

**From:** Weaver, Susannah
**Sent:** Thursday, July 1, 2021 11:07 AM
**To:** Clarke, Victoria <clarke.victoria@epa.gov>
**Subject:** RE: Information Needed For Your Recusal Statement

Hi Victoria,

One other thing to ask you about/add. On June 26, 2019 I filed an amicus brief on behalf of NRDC in Michigan State Court. That was the last/only thing I filed on behalf of NRDC in that case, and the case was decided a month later (July 26, 2019). I realize this is right on the 2 year line for me so wanted to check in with you about it.

Thanks,
Susannah

---

**From:** Weaver, Susannah
**Sent:** Tuesday, June 29, 2021 9:59 PM
**To:** Clarke, Victoria <clarke.victoria@epa.gov>
**Subject:** RE: Information Needed For Your Recusal Statement

Hi Victoria,

Please see my responses below. When I filed all my case withdrawals, I did find a few to add to the list for recusals. And just to make sure I'm clear, this is a list of cases in which I've represented a party in litigation where EPA is also a party that have been active at any time during the two years before I started, right? Most of these cases are closed (i.e., mandate issued or judgment entered).

Let me know if I misunderstand and let me know if you have any questions.

Thanks,
Susannah

---

**From:** Clarke, Victoria <clarke.victoria@epa.gov>
**Sent:** Tuesday, June 29, 2021 12:03 PM
**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Subject:** Information Needed For Your Recusal Statement

Hi Susannah,

I'm beginning to put together your recusal statement and think through recusal issues for you. Now, we won't be able to issue you a recusal statement until we see and certify your financial disclosure report, but your assets are only one piece of the puzzle. In addition to financial conflicts of interest, we also need to make sure your recusal statement covers your Pledge, Impartiality, and Bar Obligations.

For Pledge Obligations, we are concerned with former employers and former clients within the past two years prior to your date of appointment. To that end, I have a few questions for you:

- Other than Donahue, Goldberg, & Littleton, was there anyone else that employed you within the past two years?

No

- Did you serve on any boards of directors, act as an officer for any organization, or perhaps you had a trustee role? (It doesn't matter if you were compensated for your service.)

I don't know if this counts, but I am on the Georgetown University Law Center Board of Visitors.

- Who were your clients within the last two years that you personally provided services to?

Environmental Defense Fund (many cases, up until last week)

Adirondack Council (two cases, the later in which the mandate issued July 20, 2020)

Public Health Law Center (local counsel on an amicus brief)

A group of epidemiologists: Yvonne Maldonado, Gregg Gonsalves, William Hanage, Gavin Yamey (counsel on amicus briefs)

I represented the following on an amicus brief filed November 25, 2019 and the engagement letter specified that engagement ended upon filing: Advanced Micro Devices, Inc., Google LLC, Uber, Amazon.com, Inc., Bloomberg LP, Hewlett Packard Enterprise, HP Inc., SAP America, Inc., Uber Technologies, Inc.

I don't know if this qualifies. My firm filed a similar amicus brief shortly before I left (June 18, 2021). My name was not on the brief and I did not enter an appearance in the case (nor did I work on the brief), but I had earlier signed engagement letters on behalf of my firm with the following: Bates White LLC, Amazon, Box, Inc., Google, Square, Inc., Waymo, LLC. The engagement letter similarly specified that the engagement ended upon filing the brief.

For Bar Obligations, from Justina I already have a list of your cases that you need to be recused from – they're in the bulleted list below. If there are any cases that need to be added to the list, now is the time to do it!

- *State of California v. EPA*, No. 21-1035 (and consolidated cases) (D.C. Cir.) (challenge to Jan. 13, 2021 significant contribution rule). This litigation is closed.
- *Environmental Defense Fund v. EPA*, No. 4:21-cv-00003 (D. Mont.) (challenge to Jan. 6, 2021 science transparency rule). This litigation is closed.
- *Environmental Defense Fund v. EPA*, No. 20-1360 (and consolidated cases) (D.C. Cir.) (challenge to Sept. 15, 2020 rule to rule weakening emissions standards for volatile organic compounds from oil and gas sources). This litigation is in abeyance.
- *State of California v. EPA*, No. 20-1357 (and consolidated cases) (D.C. Cir.) (challenge to Sept. 14, 2020 rule to remove methane emissions standards and downstream standards for oil and gas sources). This litigation is in abeyance.
- *Air Alliance Houston v. EPA,* No. 20-1268 (and consolidated cases) (D.C. Cir.) (challenge to May 20, 2020 risk and technology review for air toxics from power plants). This litigation is in abeyance.
- *American Academy of Pediatricians v. Wheeler*, No. 20-1221 (and consolidated cases) (D.C. Cir.) (challenge to May 20, 2020 withdrawal of appropriate and necessary finding to regulate toxic pollution from power plants). This litigation is in abeyance.
- *California v. EPA*, No. 19-17480 (9th Cir) (defending appeal by EPA in mandatory duty case). Mandate issued December 2020.
- *Environmental Defense Fund v. EPA*, No. 19-1222 (and consolidated case) (D.C. Cir.) (challenge to Aug. 26, 2019 rule to extend deadlines for implementing landfill emissions guidelines). This litigation is closed.
- *American Lung Ass'n v. EPA*, No. 19-1140 (and consolidated cases) (D.C. Cir.) (challenge to July 8, 2019 rule rescinding the Clean Power Plan and promulgating the ACE rule). Petitions for certiorari are currently pending
- *State of Maryland v. EPA,* No. 18-1285 (and consolidated cases) (D.C. Cir.) (challenge to Oct. 25, 2018 denial of section 126 petition). This litigation is closed.
- *State of California v. EPA*, No. 18-1139 (and consolidated cases) (D.C. Cir.) (challenge to April 13, 2018 mid-term evaluation of vehicle emission standards). This litigation is closed.
- *State of California v. EPA*, 4:18-cv-03237 (N.D. Cal.) (challenge to EPA's failure to fulfill its mandatory duty to implement landfill emission guidelines). This litigation is closed.
- *State of New York v. Pruitt*, No. 1:18-cv-00773 (D.D.C.) (challenge to EPA's unreasonable delay in fulfilling its mandatory duty to issue oil and gas emission guidelines). Awaiting CRA vote.
- *North Dakota v. EPA*, No. 17-1014 (and consolidated cases) (D.C. Cir.) (supporting EPA in

challenge to denial of petition to reconsider CPP). This litigation is closed.

- *Chesapeake Bay Foundation v. Pruitt*, No. 1:17-cv-02939-JKB (and consolidated cases) (D. Md.). This litigation is closed.
- *Truck Trailers Manufacturers Ass'n v. EPA*, No. 16-1430 (D.C. Cir.) (supporting EPA in challenge to Oct. 25, 2016 rule regulating, among other things, trailers). Awaiting decision.
- *NRDC v. EPA*, No. 16-1425 (D.C. Cir.) (challenge to EPA's failure to regulate methane emissions in 2012 rule). This litigation is in abeyance.
- *Nat'l Waste & Recycling Ass'n v. EPA*, Nos. 16-1371, 16-1372 (D.C. Cir.) (supporting EPA in challenges to Aug. 19, 2016 rules strengthening new source performance standards and emissions guidelines for landfills). This litigation is in abeyance.
- *Murray Energy Corp. v. EPA*, No. 16-1127 (and consolidated cases) (D.C. Cir.) (supporting EPA in challenge to April 25, 2016 supplemental appropriate and necessary finding to regulate toxic pollution from power plants). This litigation is in abeyance.
- *State of Wisconsin v. EPA*, No. 16-1406 (and consolidated cases) (D.C. Cir.) (supporting EPA in challenge to CASPR). This litigation is closed.
- *State of West Virginia v. EPA*, No. 15-1363 (and consolidated cases) (D.C. Cir.) (supporting EPA in challenge to Oct. 23, 2015 Clean Power Plan). This litigation is closed.
- *American Petroleum Inst. v. EPA*, No. 13-1108 (and consolidated cases) (D.C. Cir.) (supporting EPA in consolidated challenges to EPA's 2012-2016 rules regulating pollution from oil and gas sources). This litigation is in abeyance.

If you have any questions, let me know. Thank you!
Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel | Ethics Office
Washington, D.C. |7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

| | |
|---|---|
| **From:** | Fugh, Justina |
| **To:** | Weaver, Susannah |
| **Subject:** | RE: Methane partners meeting request form |
| **Date:** | Thursday, August 26, 2021 10:35:00 AM |

Hi,
Yes, you may attend this meeting even though your former client, EDF, is attending. We made this determination based on the subject matter (not limited to a specific party matter), the number of other attendees (not just EDF and more than four other attendees), and the diversity of interests represented. We have similarly advised Tomàs that he may attend, too.
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Wednesday, August 25, 2021 6:08 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** FW: Methane partners meeting request form

More info on this meeting. Thanks!

---

**From:** Campbell, Ann <Campbell.Ann@epa.gov>
**Sent:** Wednesday, August 25, 2021 6:05 PM
**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Subject:** Methane partners meeting request form

Sorry Susannah, here is our meeting request form as well that describes the purpose of the meeting. I typically append these to my ethics check. Please let me know if you need any additional information.

Ann (Campbell) Ferrio
Chief of Staff
Office of Air and Radiation
(202) 566-1370

# *External Meeting Request Form for Joe Goffman*

Today's Date: 8/23/2021

Requesting Organization: Clean Air Task Force on behalf of the Methane Partners Campaign

Title of the Meeting: Meeting with Methane Partners Campaign Leadership

Purpose: To discuss coalition priorities and expectations ahead of the proposal of new 111b and 111d rules for Methane

Background: The Methane Partners Campaign, a coalition of local, state, and national environmental, labor, public health and environmental justice organizations seeking federal protections from oil and gas pollution would like to meet with EPA leadership ahead of the methane rule proposal.

Is this meeting related to ongoing litigation: No

Earliest possible date for the meeting: 8/24

Last possible date for the meeting: 8/27

Is the meeting urgent and if so, why: **Yes.** Because of President Biden's call for considering a new methane-based proposal for new and existing source in the oil and gas sector by September 2021 and the fact that it is almost September, the MPC would like to present to EPA what its views are on EPA's possible actions.

Requested Time Length: 1 hour

Have you met with anyone within EPA: The MPC has not had a meeting with EPA. While individual partner organizations have met with some agency staff to answer technical questions, the MPC has not had an opportunity to meet with EPA as a group.

Invitees: Joe Goffman, Tomas Carbonell, Dan Utech

External Participants: Staff members from each from MPC's leadership team, as available: American Lung Association, BlueGreen Alliance, Clean Air Council, Clean Air Task Force, Dakota Resource Council, Earthjustice, Earthworks, Environmental Defense Fund (TBD based on Tomas' availability), GreenLatinos, NRDC, Ohio Environmental Council, Sierra Club. MPC will share full list of participant names based on availability once a meeting time is confirmed.

Teleconference Required: Yes

Video Conference Required: Yes

Point of Contact for the Meeting: Matt Oberhoffner, MPC Campaign Co-Chair, (b) (6) [redacted]

**From:** Weaver, Susannah
**To:** Fugh, Justina
**Subject:** RE: questions on financial disclosure forms
**Date:** Tuesday, July 13, 2021 6:45:39 AM

---

Thanks Justina—this is super helpful. The solar ones were only my list to discuss with you. Look forward to talking with you at noon.

Susannah

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Monday, July 12, 2021 10:54 PM
**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Subject:** RE: questions on financial disclosure forms

Hi,
Sure! I sent you an invitation for Tuesday, 7/13 at 12 noon. In peeking at your form, though, I see that you entered only the stock ticker symbols. While we find the ticker symbols helpful (really!), you're required to provide the name of the asset itself:

> Description: Provide the exact name of the fund (e.g., write "Janus Balanced Fund"; do not write only "Janus" or "Balanced Fund"). Providing the ticker symbol is also helpful. *See* this link from the Guide.

Other comments:

- (b) (6), (b) (3) (A) [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted].

-
With respect to your conflicts, you appear to own more than the regulatory exemption level for participating in specific party matters that involve two companies: SunRun and SolarEdge Technologies, and more than the regulatory exemption level for participating in matters of general

applicability involving solar energy (SunRun, SolarEdge and (b) (6) [redacted]). We should talk about that tomorrow, too.
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Monday, July 12, 2021 8:36 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** questions on financial disclosure forms

Hi Justina,

Could we set up a time to chat for 15 minutes tomorrow or Wednesday. I ***think*** I'm nearing the end of the financial disclosure forms, but have a few questions for you. I'm free noon-2 and 3-5 tomorrow and then much of the day Wednesday after 10am.

Thanks,
Susannah

**From:** Fugh, Justina
**To:** Weaver, Susannah
**Subject:** RE: recusals
**Date:** Thursday, July 01, 2021 12:24:00 PM

---

Hi Susannah,

Because of the Biden ethics pledge restrictions, we need to know all of the clients to whom you personally provided services, whether compensated or not, over the past two years (from 6/27/19 to 6/27/21). The financial disclosure report will give us the names of clients to whom you provided compensated services of more than $5000, but for Biden pledge recusal purposes, we need to know all of your clients, including *pro bono* ones, during the preceding two years. The reason is that, under the pledge, you can't work on any specific party matter in which any former client (as defined by the pledge) is a party or represents a party, even if you did not work on that specific party matter yourself. Without knowing your list of clients, we can't help shield you appropriately. We do already have your list of cases that you worked on personally and substantially that are still pending, and that's how I was able to ascertain that you must be recused from a discussion about a current case that the Air and Radiation Law Office wanted to have with you.

From my 6/2/21 email message to you as a reminder:

BIDEN ETHICS PLEDGE

- The pledge places additional restrictions upon political appointees with respect to their former employers and former clients. For the purposes of the pledge, we go back two years, which means that the firm (or its surviving entity) will be your "former employer" while any client to whom you personally provided services during that time will be considered "former clients." You indicated that EDF has been your primary client over that period of time.
- Under the pledge, you will be restricted for two years (from the date you join EPA) from participating personally and substantially in any particular matter that involves your former employer or any former client as a party or in which it represents a party. You will not be permitted to meet with the former firm or former clients in your official capacity. You will be restricted for two years from participating personally and substantially in any specific party matter in which any of them is a party or represents a party. You will also not be able to attend any meeting at which any of them is present, unless the subject matter of the discussion is generally applicable to a wider audience (such as all of the members of an affected sector) and at least four other entities representing a diversity of interests are present, besides any of them.
- You are not a federally registered lobbyist.

RECUSALS

- I anticipate that your recusal statement will address your firm and your clients

as well as any specific party matters still pending at EPA in which you were involved personally and substantially. But as we discussed, if your prior participation involved litigation over the prior administration's rule, and that case is now in abeyance, then your restriction is limited to that case, not to any ensuing rulemaking in this administration. You can't reveal any client secrets, of course, and we won't let you attend a meeting at which only your former firm or former client is present, but you will be permitted to work on a new rule.

- Just so you know, I already received from Sinceré Harris your list of cases

Thanks!
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Thursday, July 01, 2021 12:10 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** recusals

Hi Justina,

Is there anything you need from me other than the Integrity report (which I have been planning to do every evening this week until something else has gotten in the way, but I'll try to do this evening)?

Thanks,
Susannah

**From:** Fugh, Justina
**To:** Weaver, Susannah
**Cc:** Payne, James (Jim)
**Subject:** RE: UPDATE: welcome to EPA, and may I call you?
**Date:** Tuesday, June 29, 2021 1:03:00 PM

---

Nope, that'll work for now. Thanks!

---

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Tuesday, June 29, 2021 12:49 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Payne, James (Jim) <payne.james@epa.gov>
**Subject:** Re: UPDATE: welcome to EPA, and may I call you?

Hi Justina,

I did not provide any legal services to any of these entities during the past two years.

Are there other things you wanted to discuss?

Thanks, Susannah

Sent from my iPhone

On Jun 29, 2021, at 12:44 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Hi Susannah,
Here are the parties to the two cases that the Air and Radiation Law Office would like to discuss with you. Please eyeball the parties and then, if true, please confirm by email that you did not provide any legal services to any of them during the past two years:

*Mayor and City Council of Baltimore v. BP PLC, et al.*, No. 24-C-18-004219 (Md. Cir. Ct.)

| |
|---|
| Mayor And City Council Of Baltimore City |
| Exxon Mobil Corp. |
| Exxonmobil Oil Corporation |
| Royal Dutch Shell Plc |
| Citgo Petroleum Corp. |
| Louisiana Land & Exploration Co. |
| Conocophillips |
| |

| |
|---|
| Crown Central Petroleum Corporation |
| Phillips 66 |
| Chevron Corp |
| Chevron U.S.A Inc. |
| BP America, Inc. |
| Bp Products North America Inc |
| Crown Central LLC |
| Crown Central New Holdings LLC |
| Marathon Oil Company |
| Marathon Petroleum Corporation |
| Speedway LLC |
| Hess Corp. |
| Cnx Resources Corporation |
| Consol Energy Inc. |
| Consol Marine Terminals LLC |
| Bp P.L.C. |
| Attorney General Of Maryland |

*State of Rhode Island v. Chevron Corp. et al.*, Case No. PC-2018-4716 (Providence Sup. Ct.).
Rhode Island, plus Chevron Corp.; Chevron U.S.A. Inc.; ExxonMobil Corp.; BP P.L.C.; BP America, Inc.; BP Products North America, Inc.; Royal Dutch Shell P.L.C.; Motiva Enterprises, LLC; Shell Oil Products Company LLC; Citgo Petroleum Corp.; ConocoPhillips; ConocoPhillips Company; Phillips 66; Marathon Oil Company; Marathon Oil Corporation; Marathon Petroleum Corp.; Marathon Petroleum Company, LP; Speedway LLC; Hess Corp.; Lukoil Pan Americas, LLC; and Getty Petroleum Marketing, Inc.

With your confirmation, I'll be able to provide advice to you and ARLO. I know from our previous conversations that you don't have any likely financial conflicts of interest.
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Fugh, Justina
**Sent:** Tuesday, June 29, 2021 11:57 AM

**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Cc:** Payne, James (Jim) <payne.james@epa.gov>
**Subject:** Hi -- welcome to EPA, and may I call you?

Hi Susannah,
We have a question about whether you will be able to work on the "climate nuisance" cases. I know you confirmed with Jim Payne that you had not previously worked on any of them, so that will mean you don't have a bar issue. But I still need to wade through whether you have a Biden pledge issue, which will arise if you personally provided any legal services to any of the parties involved during the last 2 years (from 6/27/19 to 6/27/21). I'm getting a list of the parties involved in the two cases for which EPA will need your immediate attention, so can you find time to talk to me later today?

If you send me your phone number, I can call you or set up a Teams call.
Thanks!
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

**From:** Fugh, Justina
**To:** Weaver, Susannah
**Cc:** Hoffer, Melissa; Payne, James (Jim); Clarke, Victoria
**Subject:** UPDATED: outside activity determination, plus ethics reminder
**Date:** Monday, August 2, 2021 4:32:00 PM
**Attachments:** approval of outside activity - GULC typo corrected.pdf

---

Sorry, having a bad day with typos. Here's the corrected approval for you, with cc's to the relevant people.
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Fugh, Justina
**Sent:** Monday, August 2, 2021 4:09 PM
**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Cc:** Clarke, Victoria <clarke.victoria@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>
**Subject:** outside activity determination, plus ethics reminder

Hi Susannah,
Attached please find the approval of your outside activity to serve on the Board of Visitors for the Georgetown University Law Center, which contains a reminder about changing the GULC website. As I wrote to you earlier today, I noticed that the GULC board of visitors' website lists you solely reference to your EPA affiliation (see here). Please contact GULC immediately to have that identification changed. Because you serve in personal capacity, you cannot be referenced solely by your federal agency. Doing so is considered to be a misuse of position. You may instead be listed as "federal employee" or "personal capacity." Please confirm with me when the website has been changed.
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Friday, July 30, 2021 12:49 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>

**Cc:** Clarke, Victoria <clarke.victoria@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>
**Subject:** request for approval to remain on the Georgetown Law Board of Visitors

Hi Justina,

I understand that I need to get approval to remain on the Georgetown University Law Center's Board of Visitors pursuant to 5 C.F.R. 6401.103. Please consider this my request. Here is the required information:

**(1)** Employee's name, title and grade

Susannah Weaver, Senior Counselor at OGC, GS-15

**(2)** Nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected

I am currently a member of the Georgetown University Law Center's Board of Visitors. The Board provides counsel to the Dean of the Law Center, with a particular focus on: (a) strengthening the academic goals of the Law Center and improving its visibility, both nationally and internationally; (b) addressing the concerns of alumni, students, faculty, parents, and friends of the Law Center; and (c) increasing and strengthening the financial resources of the Law Center. We typically have two meetings each year, which have been conducted remotely since spring 2020. I am not compensated for this role.

**(3)** The name and business of the person or organization for which the work will be done (in cases of self-employment, indicate the type of services to be rendered and estimate the number of clients or customers anticipated during the next 6 months)

Georgetown University Law Center

**(4)** The estimated time to be devoted to the activity

2-3 days per year.

**(5)** Whether the service will be performed entirely outside of normal duty hours (if not, estimate the number of hours of absence from work required)

I intend to use my annual leave to attend any meetings that occur during normal duty hours. I estimate that this would be no more than 2 days per year.

**(6)** The employee's statement that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment

I will not use any official duty time or Government property, resources, or facilities not available to the general public in connection with this role.

**(7)** The basis for compensation (e.g., fee, per diem, per annum, etc.)

There is no compensation. When we have in-person meetings, food is provided.

**(8)** The employee's statement that he or she has read, is familiar with, and will abide by the restrictions described in 5 CFR part 2635 and § 6401.102

I have read, am familiar with, and will abide by the restrictions described in 5 CFR part 2635 and § 6401.102.

**(9)** An identification of any EPA assistance agreements or contracts held by a person to or for whom services would be provided.

I am not aware of any EPA assistance agreements or contracts with the Georgetown University Law Center and did not find any on the EPA Active Contracts list (https://ofmpub.epa.gov/apex/activecontracts/f?p=123:2).

Please let me know if you need any additional information from me.

Thank you,
Susannah

Susannah Weaver
Senior Counselor
Environmental Protection Agency, Office of General Counsel
1200 Pennsylvania Ave. NW
Washington, DC 20460
(202) 564-1928 (office)
(202) 819-6517 (mobile)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
Washington, D.C. 20460

August 2, 2021

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Approval of Outside Activity

FROM: Justina Fugh JUSTINA FUGH Digitally signed by JUSTINA FUGH Date: 2021.08.02 16:30:42 -04'00'
Alternate Designated Agency Ethics Official

TO: Susannah Weaver
Senior Counselor

I have received your request to serve on the Georgetown University Law Center's (GULC) Board of Visitors as an outside activity. In this uncompensated position, you serve as an officer or director and provide advice to the Dean of the Law Center on how to strengthen their teaching, scholarship and service and also to increase and strengthen the financial resources of the Law Center. Based on the information you have provided, I am approving your request as consistent with 5 C.F.R. Part 2635, Subpart H, provided that you are not identified solely with reference to your EPA affiliation. Please note that, generally, an approval for outside employment remains valid for five years, though you must request a new approval should there be a change in the nature or scope of your duties.

I have set forth below a reminder about several ethics principles:

Financial Conflicts of Interest

Because you serve in a fiduciary role, you have a financial conflict of interest with GULC. You cannot participate in your EPA duties in any matter that will have a direct and predictable financial effect upon the school. You cannot work on particular matters that involves GULC as a specific party (e.g., whether the General Counsel should accept an invitation to speak at the University or for you to interview GULC law school students for OGC summer honors positions), nor can you work on particular matters of general applicability (e.g., a grant proposal to which all law schools might apply if GULC is an expected applicant).

You have already and should continue to report this position on your public financial disclosure report.

Representation

Don't forget, you are generally prohibited by a criminal law from representing another entity back to the federal government in any matter in which the United States is a party or has a direct and substantial interest. This representational conflict of interest statute applies even though you are uncompensated. *See* 18 USC § 205. In your capacity on the Board of Visitors, you cannot contact the US government or its employees on behalf of GULC, which also precludes contacting federal employees to speak in their official capacities.

Misuse of Position

Be mindful about the Agency's Limited Personal Use of Equipment policy. Avoid using EPA equipment -- including phones, workspace, computer or time -- in connection with this activity. Should you refer to your EPA position and title, then you may do so as one of at least three biographical details, with EPA not having any undue prominence. *See* 5 C.F.R. § 2635.807(b). As indicated earlier, I noticed that the GULC website lists you solely with reference to your EPA affiliation. Please take steps immediately to notify GULC to change that designation. You are not serving in your official EPA capacity.

Since we are still teleworking, be mindful of the fact that your home is now your federal workplace. When you are "on the EPA clock" (that is, your duty hours), focus on EPA work only. You must be careful to delineate between your official time and use of our resources from your personal time. Avoid using EPA equipment, including the computer or email address, in connection with your outside activity.

Fundraising

Because the Board of Visitors appear to engage in fundraising for GULC, please note that, as a federal employee, you now have certain additional restrictions. Pursuant to 5 C.F.R. § 2635.808(c), you cannot personally solicit funds from any subordinate or from any person known to you to be a prohibited source of this Agency that may be substantially affected by the performance or nonperformance of your official duties. In addition, you cannot use or permit the use of your EPA official title, position or affiliation to further any fundraising effort.

* * * * *

As always, if you have any questions, please feel free to contact me at (202) 564-1786 or fugh.justina@epa.gov.

cc: Melissa Hoffer, Acting General Counsel
James Payne, Designated Agency Ethics Official
Victoria Clarke, Deputy Ethics Official, OGC

**Clarke, Victoria**

---

**Subject:** New Employee Ethics Briefing
**Location:** Microsoft Teams Meeting

**Start:** Mon 6/28/2021 1:00 PM
**End:** Mon 6/28/2021 2:00 PM

**Recurrence:** (none)

**Meeting Status:** Meeting organizer

**Organizer:** Clarke, Victoria
**Required Attendees:** li.jake@epa.gov; (b) (6) [redacted] weaver.susannah@epa.gov; (b) (6) [redacted]; Schafer, Zach
**Optional Attendees:** Harris, Sincere; Mercado Violand, Fernando; Payne, James (Jim)

Ethics briefing for Susannah Weaver (Schd. C GS-15, Senior Counsel OGC); Jake Li (Schd. C GS-15, Deputy AA OCSPP); Zach Shafer (OW).

---

# Microsoft Teams meeting

**Join on your computer or mobile app**
Click here to join the meeting

**Or call in (audio only)**
(b) (6) [redacted] United States, Washington DC
Phone Conference ID: (b) (6) [redacted]
Find a local number | Reset PIN

By participating in EPA hosted virtual meetings and events, you are consenting to abide by the agency's terms of use. In addition, you acknowledge that content you post may be collected and used in support of FOIA and eDiscovery activities.

Learn More | Meeting options

---

Revised 2/24/21 (for political appointees)

# Ethics Briefing

## 1. The Ethics Program at the Environmental Protection Agency

You have ethics officials in the Office of General Counsel who can assist you:

| | |
|---|---|
| **Jim Payne**<br>Designated Agency Ethics Official<br>(202) 564-0212 payne.james@epa.gov | |
| **Justina Fugh**<br>Alternate Agency Ethics Official and Director of Ethics Office<br>(202) 564-1786 fugh.justina@epa.gov | |
| **Shannon Griffo**<br>Ethics Attorney<br>(202) 564-7061<br>griffo.shannon@epa.gov | **Margaret Ross**<br>Ethics Officer<br>(202) 564-3221<br>ross.margaret@epa.gov |
| **Jennie Keith**<br>Ethics Officer<br>(202) 564-3412<br>keith.jennie@epa.gov | **Victoria Clarke**<br>Ethics Attorney<br>202-564-1149<br>clarke.victoria@epa.gov |
| **Ferne Mosley**<br>Ethics Attorney<br>(202) 564-8046<br>mosley.ferne@epa.gov | **OGC/Ethics**<br>All Staff and Helpline<br>(202) 564-2200<br>ethics@epa.gov |

You can also visit the OGC/Ethics SharePoint site for more information.

## 2. The General Principles of Ethical Conduct

As public servants, we have a duty to ensure that every citizen has complete confidence in the integrity of the United States and that we are not putting personal or private interests ahead of the public trust. There are 14 principles that form your basic obligation of public service that we'll address in this briefing material.

## 3. <u>The President's Executive Order (for political appointees only)</u>

On January 20, 2021, President Biden issued an Executive Order that includes an ethics pledge you must sign as a condition of your appointment. You are agreeing to a broader "ethics in government" plan to restore and maintain public trust in government, so please review the preamble carefully. The significant points of the pledge itself are described below:

*If you were a federally registered lobbyist or registered foreign agent in the past 2 years:*

- Do not seek or accept employment with any government agency that you lobbied or engaged in registrable activity under FARA within the past 2 years.
- You will need a written ethics agreement which memorializes your compliance with the terms of the Pledge prior to starting, which must also be approved by the White House.
- For the next 2 years, do not participate in any particular matter on which you lobbied or were registrable for under the Foreign Agents Registration Act within the previous 2 years and do not participate in the specific issue area in which that particular matter falls.

*While you are a federally employee:*

- Do not accept any gifts from a registered lobbyist, including attendance at a widely attended gathering. There are a few exceptions (e.g., preexisting personal relationship, discount or benefit available to all government employees) but check with an ethics official for guidance.
- For 2 years from the date of your appointment, do not participate in any particular matter involving specific parties that is directly and substantially related to your former employer or former clients, including regulations and contracts.
    - Note: The definition of *former employer* excludes the federal government, state or local governments, D.C., Native American tribes, U.S. territories or possessions, or any international organization in which the U.S. is a member state. But under the federal impartiality rules, you will still have a one-year cooling off period with those entities (except if your former employer was already the US government).
- Any hiring or other employment decisions that you make will be based on the candidate's qualifications, competence, and experience.
- Do not accept any salary or cash payment or any other non-cash benefit from a former employer for entering into government service.

*When you leave federal service, you are agreeing to the following:*

- If you are a "senior employee" subject to the one-year cooling off period under 18 U.S.C. § 207(c), your cooling off period will be extended by another year, for a total of two years.

- If you are a "senior employee" subject to either 18 U.S.C. § 207(c) or (d), for one year following your departure from federal service, you will not work behind the scenes to materially assist others in making communications or appearances to the United States Government that you would otherwise be unable to make under the post-employment restrictions.

- You will not lobby any covered executive branch official or non-career SES appointee for the remainder of this Administration or for 2 years following the end of your appointment, whichever is later.

- You will not engage in any activity on behalf of a foreign government or foreign political party that would require you to register under the Foreign Agents Registration Act for the remainder of this Administrator or 2 years following the end of your appointment, whichever is later.

You are expected to abide by all commitments in the Pledge, however, the Pledge does allow for a waiver of certain restrictions, provided that certain criteria are met. The DAEO, in consultation with White House Counsel, is delegated the authority to grant Pledge waivers. LA-21-04. All Pledge waivers must be made public within ten days of issuance.

A copy of the Executive Order and the Biden Ethics Pledge that you must sign are included in this packet of materials.

**4. Financial Disclosure Reporting**

In your position, you are required to complete a public financial disclosure report as you begin the federal service and every year thereafter. You will file this report in INTEGRITY, an electronic system managed by the Office of Government Ethics. When you leave EPA, you will be required to submit a termination financial disclosure report. In addition, you are required to have one hour of ethics training as a new entrant (PAS appointees have an additional requirement for a specialized one-on-one ethics briefing), and also required to have one hour of ethics training each year. The Ethics Office in the Office of General Counsel (OGC/Ethics) provides your training either in person or virtually.

You must report any transaction of securities (stocks or bonds) over $1000 on a periodic basis in INTEGRITY using the 278T. These periodic transactions must be reported the earlier of 30 days after learning of the transaction or 45 days after the transaction takes place. Failure to file timely results in late fees that are assessed as a matter of law.

In addition, you are required to notify OGC/Ethics within three days of beginning to negotiate for employment with any non-federal entity. To do so, use our Notification of Negotiation form.

Included in this packet of materials are reminders about the types of transactions that are to be reported periodically and not being tardy in filing any reports with OGC/Ethics.

## 5. Attorney Client Privilege & FOIA

By regulation, disclosure by an employee to an ethics official is not protected by the attorney-client privilege. 5 C.F.R. § 2635.107(b). This means that if our records (or yours) are requested under the Freedom of Information Act (FOIA), then we will not be able to redact our advice to you using the attorney-client privilege. However, we can -- and do -- assert personal privacy and deliberative process privileges where applicable. For example, the deliberative process privilege may apply to pre-decisional ethics advice documents, but please note that our final advice to you is generally releasable.

This should **not** stop you from seeking the advice of your ethics officials! Not only does it show you are being a steward of the public trust, but good faith reliance on advice received from your ethics officials after disclosing all relevant facts can shield you from disciplinary action and is a factor that the Department of Justice considers when deciding which cases they wish to prosecute.

## 6. Conflicts of Interest

Do not participate as an agency official in any matter if there is an actual conflict of interest or even the appearance of a conflict of interest. It's a crime to participate *personally and substantially* in *any particular matter* in which, to your knowledge, you or a person whose interests are imputed to you has a financial interest if the particular matter will have a *direct and predictable effect* on that interest.

> Example: you own a lot of stock in XYZ Corporation, which is a chemical manufacturer. If your office is considering taking an enforcement action against XYZ Corporation, you must disqualify yourself from participating in the decision. Even if your mother gave your 10-year old twins the stock, you can't participate in the matter because their interest is imputed to you.

Remember, the interests of your spouse, dependent children, general business partner, and any organization in which you serve as officer, director, trustee or employee are imputed to you. This means that, under the criminal statute, it's the same thing as if you held those assets. So, you can't participate in any particular matter that may have a financial impact on the interests that are imputed to you.

## 7. Appearance of a Loss of Impartiality

Even if an action is not strictly prohibited, it is prudent to be careful of any action that a reasonable person with knowledge of the relevant facts may perceive as a violation of the ethics rules, or (if applicable) your ethics pledge and the Executive Order. You must avoid even the appearance of a loss of impartiality when performing official duties.

When we consider impartiality, we expand the ambit of relationships beyond the conflicts realm of "imputed interests." We consider all of your "covered relationships," which includes a lot more people: anybody with whom you have a business, contractual or financial relationship that is more than just a routine consumer transaction; any member of your household or a relative with whom you are close; the employer/partner or prospective employer/partner of your spouse, parent or dependent child; any person or organization for which you have served in the last year as an officer, agent, employee, etc.; and any organization in which you are an active participant.

You should refrain from engaging in official acts that may be perceived as an “appearance problem” by a reasonable person (and the reasonable person is not you, but rather your ethics officials).

Ethics officials can provide advice and determine whether a proposed course of action is appropriate by issuing an impartiality determination, but we cannot provide cover if you have already done the deed.

**8. <u>No representation back to the federal government</u>**

As a federal employee, you are prohibited from representing the interest of any other entity back to the federal government, whether you are paid for those services or not. For the purposes of these criminal statues, 18 U.S.C. §§ 203 and 205, it does not matter that you are representing the interests of another in your private capacity. You cannot serve as agent or attorney for another entity back to the United States on a particular matter in which the US is a party or has a direct and substantial interest.

**9. <u>Acceptance of Gifts</u>**

Be careful of any gift from people outside the Agency, particularly those that are worth more than $20. Gifts are anything of value and include allowing others to pick up the lunch tab, free tickets, invitations to receptions, and lovely fruit baskets. There are only a few exceptions, so consult your ethics officials before accepting any gift. Remember, political appointees can’t take gifts from federally registered lobbyists.

EPA does not have broad Agency gift authority, so prohibited gifts must be paid for or returned. You should also not generally accept gifts exceeding $10 from EPA employees, nor give gifts exceeding $10 to your superiors. There are some exceptions, so check with an ethics official. By the way, you may give gifts to any EPA person who makes less money than you provided that person is not your supervisor.

**10. <u>Attendance at Widely-Attended Gatherings (ethics check required)</u>**

Your ethics official must make a written determination in advance as to whether your participation and attendance at certain events meet the criteria for a “widely attended gathering” exception of the gift rule. You can’t make that determination yourself (nor can the sponsor of the event). For a WAG determination, your ethics official will consider the type of event, who is attending, and whether your attendance will further an Agency interest. This analysis must be done in writing and in advance of your attending the event. Any WAG that is approved is considered a gift to you, so you will be responsible for reporting the value of the gift on your financial disclose report if it exceeds the reporting threshold. For political appointees, though, please bear in mind that this exception does not apply to federally registered lobbyists. Political appointees cannot accept free attendance at a widely attended gathering that is sponsored by or hosted by a federally registered lobbyist.

IMPORTANT NOTE about **<u>Embedding Ethics into Your Calendaring Process</u>**

> Many ethics issues typically arise through the calendaring process of an EPA principal. Since you are responsible for your ethics obligations, we know you might need a little help. To assist you in navigating calendar and invitation issues, the EPA Ethics Office offers specialized assistance to

you and your front office staff to advise on invitations, gifts associated with those invitations, etc. Embedding ethics is a proactive counseling practice that brings together the Principals, their staff, and local Deputy Ethics Officials to establish a process for incorporating ethics vetting into your or the Principal's calendar. Contact Jennie Keith to get started!

## 11. Travel Issues

Approval of gifts of travel, lodging and meals from non-Federal sources for meetings and similar events must be obtained from OGC/Ethics prior to the event. You can't accept such offerings on your own! We have an electronic form that we use to process such requests, and we must report the approvals to the Office of Government Ethics twice a year. See http://intranet.epa.gov/ogc/ethics/travel.htm . Prior to the pandemic, OGC/Ethics accepted over $1 million each year in discretionary travel paid by non-federal sources.

## 12. Preferential Treatment of Non-Federal Entities (Endorsement)

Be careful about showing preferential treatment to any entity. We cannot endorse the products, services or enterprises of another, so you need to be careful about extolling the virtues of a regulated entity, a particular contractor or applicant, etc. Seek ethics advice before collaborating with non-federal entities on initiatives and events because not all of EPA's statutes allow us to cooperate with non-feds.

## 13. Political Activities

You are now bound by the Hatch Act, which governs the political activity of federal employees, even in your personal capacity. Career SES employees are bound by even more restrictions, while Presidentially Appointed and Senate Confirmed (PAS) employees enjoy more liberties. Do not rely on what you think other people can do; find out for yourself by asking your ethics officials.

Some limitations under the Hatch Act are 24/7, meaning that you have restrictions even on your time. For example, you are never permitted to solicit, accept or receive political contributions, not even in your personal time. You can never use your EPA title or position to fundraise in connection with any political activity. Because the Hatch Act rules vary depending on your type of appointment, please see the attached chart and consult your ethics officials.

## 14. Lobbying Issues

EPA employees cannot use appropriated funds to engage in indirect or grassroots lobbying regarding any legislative proposal. Indirect or grassroots lobbying generally means urging members of special interest groups or the general public to contact legislators to support or oppose a legislative proposal. EPA employees cannot make explicit statements to the public to contact members of Congress in support of or in opposition to a legislative proposal. Other prohibited grassroots lobbying includes an employee's explicit request, while on official time, to an outside group asking it to contact Congress to support or oppose EPA's appropriations bill.

In addition, EPA is prohibited from using appropriated funds for activities that would "tend to promote" the public to contact Congress in support of or in opposition to a legislative proposal, even if an EPA employee does not expressly state that the public should contact Congress. This activity is

considered “indirect lobbying” and is prohibited. You may, after coordinating with OCIR and Public Affairs, directly contact or lobby members of Congress and their staffs regarding the Administration's legislative proposals. Again, after getting approval from OCIR, you may also educate and inform the public of the Administration's position on legislative proposals by delivering speeches and making public remarks explaining the Administration's position on a legislative proposal.

## 15. Use of Government Personnel and Resources

EPA policy permits employees to “limited use” of government equipment, including the telephone, copying machines, fax machines, etc. Employees cannot, however, engage in outside activity or employment on government time. GSA regulations also prohibit any fundraising on federal property (except for the Combined Federal Campaign), so employees cannot raise money for their favorite charity (i.e., sell cookies, candy or wrapping paper for a “good cause”). They also cannot use the internet connection for gambling or to access pornography. See EPA’s Limited Personal Use of Government Equipment Policy. Avoid using your EPA email address for personal matters, and do not use your personal email address for EPA matters.

## 16. Outside Activities

We were advised by the Biden Presidential Transition Team that non-PAS political appointees may have outside positions that are consistent with federal ethics regulations, including the Agency’s ethics regulations. Non-Career SES and Schedule C appointees must seek prior approval from EPA Ethics for certain outside activity consistent with EPA’s Supplemental Ethics Regulations at 5 C.F.R. § 6401.103. Examples of activity that require prior approval are practicing a profession or teaching, speaking or writing on subjects related to EPA programs, policies or operations. While there is a *de minimis* use of government equipment, that never applies to any compensated outside activity.

Most EPA employees may not receive any compensation for teaching, speaking or writing (including consulting) that relates in significant part to your assigned EPA duties, duties to which you’ve been assigned in the previous year, or to any ongoing Agency program, policy or operation. But if you are a non-career SES employee, then your restriction is even broader: you may not receive compensation at all for any teaching, speaking or writing that relates to your official duties or even to EPA’s general subject matter area, industry, or economic sector primarily affected by EPA’s programs and operations. 5 C.F.R. § 2635.807(a)(2)(i)(E)(3).

Non-Career SESers must also abide by these additional restrictions:

- You are subject to the outside earned income cap that is set each January. As of January 2021, that amount is $29,595. See 5 C.F.R. § 2635.804(b) and 5 C.F.R. § 2636.304. This amount changes each year.
    - If you start after January 1, then the amount of earned income you can receive is pro-rated by the number of days in the calendar year that you hold the non-career SES position;
- You cannot receive compensation for practicing a profession that involves a fiduciary relationship; affiliating with or being employed by a firm or other entity that provides

professional services involving a fiduciary relationship; or teaching without prior approval. See note to 5 C.F.R. § 2635.804(b) and 5 C.F.R. § 2636.305;

- You may be permitted to serve as an officer or member of the board of any association, corporation or other entity, but cannot be compensated for such service. See 5 C.F.R. § 2636.306; and

- You may not receive compensation for any other teaching unless specifically authorized in advance by OGC/Ethics (specifically, the Designated or Alternate Designated Agency Ethics Official listed on the first page of this briefing material). See 5 C.F.R. § 2636.307.

## 17. Ethics Obligations of Supervisors

If you are a supervisor, you must model ethical behavior for your staff. Set forth below are your additional ethics responsibilities, found at 5 C.F.R. § 2638.103:

> Every supervisor in the executive branch has a heightened personal responsibility for advancing government ethics. It is imperative that supervisors serve as models of ethical behavior for subordinates. Supervisors have a responsibility to help ensure that subordinates are aware of their ethical obligations under the Standards of Conduct and that subordinates know how to contact agency ethics officials. Supervisors are also responsible for working with agency ethics officials to help resolve conflicts of interest and enforce government ethics laws and regulations, including those requiring certain employees to file financial disclosure reports. In addition, supervisors are responsible, when requested, for assisting agency ethics officials in evaluating potential conflicts of interest and identifying positions subject to financial disclosure requirements.

Your staff may ask you ethics questions, but unless you are an ethics official, you are not authorized to answer those ethics questions. If you receive an ethics question, then contact your own local Deputy Ethics Official or notify OGC/Ethics at ethics@epa.gov.

## 18. Seeking Employment

It's always odd to talk about seeking employment when we are welcoming you to EPA, but be mindful of the fact that there are restrictions that will apply. You won't be able to participate in a particular matter involving a party with which you are seeking employment, and that obligation starts as soon as you directly or indirectly contact a prospective employer, or as soon as you get a response expressing interest in you. You will need to disqualify yourself from particular matters that may affect the prospective employer.

## 19. Negotiating for Employment

Should your pursuit of future employment advance to "negotiating" for employment with a particular entity, then you will have conflicts of interest. The financial interests of any person or entity with whom you are "negotiating" for employment are imputed to you for the purposes of the criminal conflict of interest statute, 18 U.S.C. § 208. You will need to recuse yourself from participating in any particular matter that will have a direct and predictable effect upon the interests of the prospective employer, either as a specific party or as a member of a class, which will include particular matters that apply

generally to the prospective employer's industry or class.

Filers of the public financial disclosure report are further subject to the Ethics In Government Act, as amended by the STOCK Act, which requires you to notify OGC/Ethics within three days of commencing negotiations for future employment with a non-federal employer. Yes, we have a form for that notification.

## 20. Post-Government Employment - Representational Restrictions

Even after you leave federal service, there are federal post-employment restrictions. Your pledge restrictions are supplementary to these restrictions. Your ethics officials are still available to answer your post-employment questions, even after you leave EPA. You will need to have an exit discussion with OGC/Ethics before you leave EPA, but here are the highlights of what we'll discuss regarding the federal law. You will also be bound by the additional restrictions of the Biden Ethics Pledge adumbrated on pp. 2-3 of this briefing material.

Lifetime bar - on particular matters that you worked on

You will be prohibited by criminal statute from representing back to the federal government on any particular matter involving specific parties in which you participated personally and substantially while in federal service. "Representation back""means making an appearance or communication, on behalf of another, with the intent to influence an official action. And the matter must involve the United States or be one in which the US has an interest.

> Example: You are asked by XYZ Corporation to contact EPA about seeking an exemption so that a particular permit you granted while in your position no longer applies to them. You cannot do that because you worked on that matter while at EPA. You are permanently barred from representing another back to the federal government on that same matter.

2-year bar - on EPA matters pending during your last year in federal service

You are prohibited (again, by criminal statute) from representing back to the federal government on any particular matter involving specific parties that was pending under your official responsibility during your last year of federal service. Even if you recuse yourself from a matter, you are still bound by the two-year bar. You are not permanently restricted, since you didn't work on the matter personally and substantially, but you are prohibited from representing another back to the federal government on that matter for two years.

Senior Employee "cooling off restriction" – on any matter

Depending on your rate of pay, you may be considered a "senior official" and will be restricted for one year from making any contact with EPA following your departure (under the federal ethics regulation). Political appointees have additional time restrictions under the Biden Ethics Pledge. This prohibition is not limited to particular matters. Rather, you cannot knowingly make any communication or appearance to EPA employees on behalf of another with the intent to influence in connection with any matter in which you seek official EPA action.

Effective January 3, 2021, the defining rate of pay for "senior officials" is $172,395 per year (excluding

locality pay). If you make more than that (before locality pay), then you are a “senior employee” and will be bound by the cooling off period. By the way, SESers do not get locality pay so, most likely, any SESer will be a “senior employee” and subject to this restriction.

Welcome to EPA and thank you for keeping ethics in the forefront of all we do!

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
Washington, D.C. 20460

January 22, 2021

OFFICE OF
GENERAL COUNSEL

**MEMORANDUM**

SUBJECT: Timely filing of Public Financial Disclosure and Periodic Transaction Reports

FROM: Justina Fugh
Alternate Designated Agency Ethics Official

TO: All EPA Political Appointees

In 1978, Congress enacted the Ethics In Government Act, 5 U.S.C. app. to establish the Executive Branch financial disclosure reporting system that requires mandatory public disclosure of financial and employment information of certain officials and their immediate families. Because you occupy a designated position, you are required by this law to file these reports in the electronic system, *INTEGRITY*. As an executive branch employee, you are bound by federal ethics laws and regulations, including prohibitions against financial conflicts of interest and loss of impartiality. Your disclosures allow the Office of General Counsel's Ethics Office (OGC/Ethics) to assist you in identifying and addressing potential or actual conflicts of interest in order to maintain the integrity of the Agency's programs and operations. These reports are publicly available upon request and the reports of certain Presidential Appointees confirmed by the Senate will be posted on the U.S. Office of Government Ethics' website at www.oge.gov.

This memorandum formally informs you that you are required by law to file timely and accurate Public Financial Disclosure Reports (OGE 278e)[1] and Periodic Transaction Reports (OGE 278-Ts).[2] **Filing a late report will result in a $200 late filing fee** unless you formally request and receive a waiver of the late fee from me or the Designated Agency Ethics Official (DAEO), Jim Payne, after describing extraordinary circumstances that caused you to file a late report.[3] **Unpaid late fees are subject to the Agency's[4] and the government's debt collection procedures and will be referred for collection if left unpaid after 30 days.**

Please refer to this chart for your filing obligations:

[1] *See* 5 U.S.C. app. § 101; 5 C.F.R. § 2634.201.
[2] Pub. L. 112-105 § 11 (STOCK Act).
[3] *See* 5 U.S.C. app. § 104(d)(1); 5 C.F.R. § 2634.704(a).
[4] *See* Resource Management Directive System 2540-03-P2 dated 07/12/2016.

| | |
|---|---|
| OGE 278e - New Entrant reports | **Within 30 days** of entering a covered position (either by appointment to a permanent or acting in covered position) |
| OGE 278e – Incumbent reports | **No later than May 15** |
| OGE 278e – Termination reports | **No later than 30 days after** leaving a covered position (either through reassignment, resignation, or the end of acting in a covered position) (Reports may be submitted within 15 days prior to termination) |
| OGE 278T – Periodic transaction reports[5] | **The *earlier of* 30 days** after learning of a transaction or **45 days** of the transaction taking place. |

How to request an extension of the filing deadline:

For good cause (e.g., travel, workload issues, sickness), you may request up to two 45-day extensions. Submit the request by email, including the reason, to ethics@epa.gov **prior to the due date.** Extensions cannot be granted after the due date has passed.

How to request the waiver of a late filing fee:

If *extraordinary circumstances* prevented you from meeting the deadline and OGC/Ethics assessed a late fee, you may request a waiver of the late fee. *See* 5 C.F.R. § 2634.704. Submit your request in writing to ethics@epa.gov describing the extraordinary circumstances and provide any supporting documentation. Please note that vacations or routine work obligations are not "extraordinary" circumstances. The decision to grant or deny a waiver is at the sole discretion of the DAEO/ADAEO and is final.

Your colleagues in OGC/Ethics are available to provide assistance but it is always your obligation to file your reports timely and accurately. In fact, ethics regulations *require* that we refer individuals to the Department of Justice (DOJ) when there is reasonable cause to believe that they have willfully failed to file a required report or provide the information that the report requires. The current maximum civil penalty is $56,216.[6]

As public servants, we hope that you will take your ethics obligations seriously. As such, we expect you to make a good faith effort to adhere to the timeliness and completeness requirements of your financial disclosure reporting obligations. If you have any questions, please contact ethics@epa.gov.

ATTACHMENT - *When to Report Transactions on the OGE 278 and OGE 278-T*

[5] *See* attached guidance – *When to Report Transactions on the OGE 278 and OGE 278-T.*
[6] In 2012, OGC/Ethics referred an individual to DOJ for failure to file a termination report despite repeated reminders and entreaties. That individual paid a civil penalty of $15,000 and still had to file the termination report.

# When to Report Transactions

DUE DATE: The earlier of the following: 30 Days from Notification or 45 Days from Transaction

| Investment Assets | Periodic Transaction Report<br>Report on the OGE 278-T? | Annual and/or Termination Report<br>Report on Part 7 of the OGE 278e? |
|---|---|---|
| Transactions of $1,000 or less | | |
| • Any asset in which the transaction amount is $1,000 or less regardless of the type of asset or who owns the asset | No | No |
| Your investment assets (or jointly held) | | |
| • Your stocks | Yes | Yes |
| • Your bonds (except U.S. Treasury securities) | Yes | Yes |
| • Your commodity futures | Yes | Yes |
| • Your other investment securities | Yes | Yes |
| • Assets listed above in your (joint) brokerage accounts, (joint) managed accounts, IRAs, other retirement accounts, and/or other (joint) investment vehicles | Yes | Yes |
| Your spouse's investment assets | | |
| • Spouse's stocks | Yes | Yes |
| • Spouse's bonds (except U.S. Treasury securities) | Yes | Yes |
| • Spouse's commodity futures | Yes | Yes |
| • Spouse's other investment securities | Yes | Yes |
| • Assets listed above in spouse's <u>own</u> brokerage account, managed accounts, IRAs, other retirement accounts, and/or other investment vehicles | Yes | Yes |
| Your dependent child's investment assets | | |
| • Dependent child's stocks | Yes | Yes |
| • Dependent child's bonds (except U.S. Treasury securities) | Yes | Yes |
| • Dependent child's commodity futures | Yes | Yes |
| • Dependent child's other investment securities | Yes | Yes |
| • Assets listed above in dependent child's <u>own</u> brokerage account, IRAs, and/or other investment vehicles | Yes | Yes |
| Other investment assets irrespective of ownership | | |
| • Real Property | No | Yes[1] |
| • Mutual funds, exchange traded funds, index funds and/or other "excepted investment funds"[2] | No | Yes |
| • Any asset in which the transaction amount is $1,000 or less | No | No |
| • Cash accounts (deposits and/or withdrawals) | No | No |
| • Money market accounts | No | No |
| • Money market funds | No | No |
| • Certificates of deposits | No | No |
| • US Treasury Securities (e.g., T bills, Treasury bonds, U.S. savings bonds) | No | No |
| • Federal Government Retirement Accounts (e.g., Thrift Savings Plan) | No | No |
| • Life insurance and annuities | No | No |
| • Collectibles | No | No |
| • Assets held within an excepted trust[3] | No | No |
| • Transfer of assets between you, your spouse, and your dependent children | No | No |

[1] Do not report the purchase or sale of your personal residence on Part 7 unless you rent it out at any time during the reporting period.

[2] To be an excepted investment fund (EIF), the asset must be:

(a) widely held (more than 100 participants),
(b) independently managed – arranged so that you neither exercise control nor have the ability to exercise control over the financial interests held by the fund, and
(c) publicly traded (or available) or widely diversified.

Managed accounts, investment clubs, trusts, 529 accounts, brokerage accounts, and individual retirement accounts (IRAs) are not excepted investment funds in and of themselves. It may be that individual assets held within these types of investment vehicles may qualify as EIFs if, for example, your IRA holds a publicly-traded mutual fund. But the fact that you have a managed account does not absolve you of your reporting requirements. That account is legally owned by you, and you're responsible for its assets and reporting transactions. If you have questions, contact ethics@epa.gov.

[3] OGC/Ethics must determine that your trust qualifies as an "excepted trust." For help, email ethics@epa.gov.

**REQUIREMENT: Notify OGC/Ethics within 3 business days of commencing the negotiation or agreement for post-government employment or compensation**

## NOTIFICATION OF NEGOTIATION OR AGREEMENT

| | | |
|---|---|---|
| **Your full name** | **Your telephone number*** | **Date negotiation or agreement began** |
| **Your Title / Office / AAship or Region** | **Your email address*** | **Name of non-federal entity that you are negotiating with or have an agreement for employment or compensation** |

* *Provide information for OGC/Ethics to use to contact you as part of our official duty. For this purpose, you may provide a personal email address or cell number.*

## RECUSAL STATEMENT

To assist in identifying your recusal obligations, check the appropriate boxes below:

| | Yes | No | |
|---|---|---|---|
| **1.** | ☐ | ☐ | EPA's programs, policies, or operations affect the non-federal entity with which I am seeking employment. |
| **2.** | ☐ | ☐ | My office in EPA does work that affects the non-federal entity with which I am seeking employment. |
| **3.** | ☐ | ☐ | The work I participate in affects or will affect the non-federal entity with which I am seeking employment. |

Need help answering these statements? See page 2.

**For as long as I am negotiating for, or have an agreement of, employment or compensation with the entity listed above, I will not participate personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of this entity, unless I first obtain from OGC/Ethics a written authorization or waiver consistent with 5 C.F.R. § 2635.605 or 18 U.S.C. § 208(b)(1). I understand that it is my responsibility to consult with OGC/Ethics if I have questions regarding my recusal obligations.**

Sign and submit to ethics@epa.gov:

**Your signature**

**OGC/Ethics Use Only:**

**Statement 1: EPA's programs, policies, or operations affect the non-federal entity with which I am seeking employment.**

If your answer is "yes" to any of the following questions, then you must answer "yes" to statement 1.

- Is the non-federal entity seeking official action from EPA (even if not your own office)?
- Does the non-federal entity do business or seek to do business with the EPA (even if not your own office)?
- Does the non-federal entity conduct activities that EPA regulates (even if not in your own office)?
- Does the non-federal entity have interests that may be substantially affected by the performance or non-performance of your official duties?
- Is the non-federal entity a membership organization in which the majority of the members are described in the preceding questions?

**Statement 2: My office in EPA does work that affects the non-federal entity with which I am seeking employment.**

To answer this question, think about the nexus between the work of your office and the non-federal entity. The closer the nexus, the more likely you will have to check "yes" to statement 2.

- Consider the particular matters your office works on and whether there is any connection to the work of this entity. Does your office work on permits, investigations, litigation, grants, licenses, contracts, applications, enforcement cases, or other similar types of matters where there is an identified non-federal entity (i.e., particular matters involving specific parties)?
- Also consider whether your office is involved in scientific programs, media programs, or other types of policies, procedures, guidance documents, regulations, etc., that would affect this particular industry or sector (i.e., particular matters of general applicability).

**Statement 3: The work I participate in affects or will affect the non-federal entity with which I am seeking employment.**

Think about the nexus between your work and the non-federal entity as well as its respective class, industry or sector. The closer the nexus between your work and the sector the non-federal entity belongs to, the more likely you will check have to check "yes" to statement 3.

- Will the work you do affect the sector? Don't concentrate on whether your personal contributions will be determinative but rather, overall, how the outcome of the work itself will affect the sector and the non-federal entity with which you are negotiating.
- Do you advise on or consult with your colleagues' projects and work? Does their work affect this sector or the non-federal entity?
- Do you actively supervise or assign work to subordinates? Do those assignments affect the sector or the non-federal entity?

**Need help answering these statements? Contact ethics@epa.gov to discuss.**

Updated September 2020

# Political Activities and Federal Employees

The Hatch Act, enacted in 1939, was amended in 1993 and 2012. It regulates the political activities of executive branch employees, excluding the President and Vice President. The following table summarizes what political activities EPA employees can and cannot do based on their appointment. Note: Public Health Service officers must adhere to 45 CFR Part 73, Subpart F, which is most similar to the Career SES/ALJ column.

**Political activity means an activity "directed toward the success or failure of a political party, a candidate for partisan political office, or a partisan political group."**

| Type of Activity | PAS* | Non-Career SES, Schedule C*, Title 42, SL/ST, AD*, GS, Other | Career SES, ALJs |
|---|---|---|---|
| **Personal** (off premises and off duty) | | | |
| Express support for or opposition to a political candidate when off duty | Yes | Yes | Yes |
| Run as a partisan candidate for nomination or office in a partisan election | No | No | No |
| Solicit and accept contributions for your campaign in a non-partisan election | Yes | Yes | Yes |
| Solicit a contribution from a member of your union | N/A | Yes | N/A |
| Work a phone bank asking individuals to volunteer | Yes | Yes | No |
| Campaign on behalf of a candidate in a partisan election | Yes | Yes | No |
| Be active on behalf of a candidate at political rallies or meetings | Yes | Yes | No |
| Attend political rallies and meetings | Yes | Yes | Yes |
| Contribute money to political organizations | Yes | Yes | Yes |
| Work in non-partisan voter registration drives | Yes | Yes | Yes |
| Work in partisan voter registration drives | Yes | Yes | No |
| Register and vote | Yes | Yes | Yes |
| Sign a nominating petition | Yes | Yes | Yes |
| Distribute campaign material in a partisan election | Yes | Yes | No |
| Work as an election judge, poll watcher, clerical worker on election day and receive compensation for that work | Yes | Yes | Yes but nonpartisan only |
| Drive people to polling station on behalf of a campaign | Yes | Yes | No |
| **Affecting Official Resources** | | | |
| Use office time for political activity | Yes; IG-No | No | No |
| Use official space for political activity in general | Yes; IG-No | No | No |
| **Fundraising** | | | |
| Attend a political fundraiser | Yes | Yes | Yes |
| Solicit, accept or receive political contributions in general | No | No | No |
| Solicit or receive a political contribution on government premises | No | No | No |
| Plan or organize a political fundraiser when off duty | Yes | Yes | No |
| Sponsor, host, or allow your name as sponsor/host for a political fundraiser | No | No | No |
| Serve drinks or check coats at a political fundraiser | Yes | Yes | No |
| Speak at a partisan fundraiser without appealing for money | Yes | Yes | No |
| Allow only your name to be listed as speaker on fundraising invitation | Yes | Yes | No |

**PAS = Political Appointee Confirmed by the Senate; Schedule C = political appointees not confirmed by Senate; AD = Administratively Determined; SES = Senior Executive Service*

# EPA Ethics Program

**Counseling Practice Area:** **Vetting Invitations**

## Quick Summary:

One of the more visible ways ethics issues arise are those that come up during the calendaring of events and invitations for an EPA principal and their immediate staff. The ethics issues run the whole gambit:

Recusal Obligations ✦ Gifts ✦ Fundraising ✦ Political Activity ✦ Endorsements
President's Ethics Pledge ✦ Misuse of Position

Embedding ethics is a proactive counseling practice that brings together the Principals, their immediate staff, and Deputy Ethics Officials to establish a process for incorporating ethics vetting into the Principal's calendar. This helps and supports the EPA principal to meet their ethics obligations and maintain integrity of agency programs and operations.

---

## Who:

Principals (Administrator, Deputy Administrator, Assistant Administrators, and Regional Administrators, certain Deputy Associate Administrators), their immediate staff, and Deputy Ethics Officials.

## What:

Preventing conflicts of interest and other ethics issues by embedding ethics review into the calendaring process for principals.

## When:

Upon the appointee's start of EPA service

## Where:

Through coordination in the principal's front office and immediate staff

## Why:

Principals and other political appointees encounter frequent ethics issues arising through acceptance of external events, travel, and meetings with external participants. With increased public scrutiny and ethics legal frameworks, this is a high risk area in the ethics program. It is the principal's responsibility to avoid ethics issues and to maintain public trust in government.

## How:

To navigate these ethics issues, we establish a process, use standard event information gathering forms, and train periodically, so a principal's front office can obtain all relevant information for an event and ethics officials can advise appropriately and timely prior to acceptance.

# Executive Order on Ethics Commitments by Executive Branch Personnel

JANUARY 20, 2021 • PRESIDENTIAL ACTIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and sections 3301 and 7301 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Ethics Pledge. Every appointee in every executive agency appointed on or after January 20, 2021, shall sign, and upon signing shall be contractually committed to, the following pledge upon becoming an appointee:

"I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

"Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

"1. Lobbyist Gift Ban. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

“2. Revolving Door Ban — All Appointees Entering Government. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

“3. Revolving Door Ban — Lobbyists and Registered Agents Entering Government. If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 et seq., or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 et seq., within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

(a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;

(b) participate in the specific issue area in which that particular matter falls; or

(c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.

“4. Revolving Door Ban — Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.

“5. Revolving Door Ban — Senior and Very Senior Appointees Leaving Government. If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections’ implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment,

I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.

"6. Revolving Door Ban — Appointees Leaving Government to Lobby. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.

"7. Golden Parachute Ban. I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.

"8. Employment Qualification Commitment. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.

"9. Assent to Enforcement. I acknowledge that the Executive Order entitled 'Ethics Commitments by Executive Branch Personnel,' issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service."

Sec. 2. Definitions. For purposes of this order and the pledge set forth in section 1 of this order:

(a) “Executive agency” shall include each “executive agency” as defined by section 105 of title 5, United States Code, and shall include the Executive Office of the President; provided, however, that “executive agency” shall include the United States Postal Service and Postal Regulatory Commission, but shall exclude the Government Accountability Office.

(b) “Appointee” shall include every full-time, non-career Presidential or Vice-Presidential appointee, non-career appointee in the Senior Executive Service (or other SES-type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policymaking character (Schedule C and other positions excepted under comparable criteria) in an executive agency. It does not include any person appointed as a member of the Senior Foreign Service or solely as a uniformed service commissioned officer.

(c) “Gift”:

(i) shall have the definition set forth in section 2635.203(b) of title 5, Code of Federal Regulations;

(ii) shall include gifts that are solicited or accepted indirectly, as defined in section 2635.203(f) of title 5, Code of Federal Regulations; and

(iii) shall exclude those items excluded by sections 2635.204(b), (c), (e)(1) and (3), and (j) through (l) of title 5, Code of Federal Regulations.

(d) “Covered executive branch official” and “lobbyist” shall have the definitions set forth in section 1602 of title 2, United States Code.

(e) “Registered lobbyist or lobbying organization” shall mean a lobbyist or an organization filing a registration pursuant to section 1603(a) of title 2, United States Code, and in the case of an organization filing such a registration, “registered lobbyist” shall include each of the lobbyists identified therein.

(f) “Lobby” and “lobbied” shall mean to act or have acted as a registered lobbyist.

(g) “Lobbying activities” shall have the definition set forth in section 1602 of title 2, United States Code.

(h) “Materially assist” means to provide substantive assistance but does not include providing background or general education on a matter of law or policy based upon an individual’s subject matter expertise, nor any conduct or assistance permitted under section 207(j) of title 18, United States Code.

(i) “Particular matter” shall have the same meaning as set forth in section 207 of title 18, United States Code, and section 2635.402(b)(3) of title 5, Code of Federal Regulations.

(j) “Particular matter involving specific parties” shall have the same meaning as set forth in section 2641.201(h) of title 5, Code of Federal Regulations, except that it shall also include any meeting or other communication relating to the performance of one’s official duties with a former employer or former client, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties.

(k) “Former employer” is any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner, except that “former employer” does not include any executive agency or other entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, any United States territory or possession, or any international organization in which the United States is a member state.

(l) “Former client” is any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service provided was limited to speeches or similar appearances. It does not include

clients of the appointee's former employer to whom the appointee did not personally provide services.

(m) "Directly and substantially related to my former employer or former clients" shall mean matters in which the appointee's former employer or a former client is a party or represents a party.

(n) "Participate" means to participate personally and substantially.

(o) "Government official" means any employee of the executive branch.

(p) "Administration" means all terms of office of the incumbent President serving at the time of the appointment of an appointee covered by this order.

(q) "Pledge" means the ethics pledge set forth in section 1 of this order.

(r) "Senior White House staff" means any person appointed by the President to a position under sections 105(a)(2)(A) or (B) of title 3, United States Code, or by the Vice President to a position under sections 106(a)(1)(A) or (B) of title 3.

(s) All references to provisions of law and regulations shall refer to such provisions as are in effect on January 20, 2021.

Sec. 3. Waiver. (a) The Director of the Office of Management and Budget (OMB), in consultation with the Counsel to the President, may grant to any current or former appointee a written waiver of any restrictions contained in the pledge signed by such appointee if, and to the extent that, the Director of OMB certifies in writing:

(i) that the literal application of the restriction is inconsistent with the purposes of the restriction; or

(ii) that it is in the public interest to grant the waiver. Any such written waiver should reflect the basis for the waiver and, in the case of a waiver of the restrictions set forth in paragraphs 3(b) and (c) of the pledge, a discussion of the findings with respect to the factors set forth in subsection (b) of this section.

(b) A waiver shall take effect when the certification is signed by the Director of OMB and shall be made public within 10 days thereafter.

(c) The public interest shall include, but not be limited to, exigent circumstances relating to national security, the economy, public health, or the environment. In determining whether it is in the public interest to grant a waiver of the restrictions contained in paragraphs 3(b) and (c) of the pledge, the responsible official may consider the following factors:

(i) the government's need for the individual's services, including the existence of special circumstances related to national security, the economy, public health, or the environment;

(ii) the uniqueness of the individual's qualifications to meet the government's needs;

(iii) the scope and nature of the individual's prior lobbying activities, including whether such activities were de minimis or rendered on behalf of a nonprofit organization; and

(iv) the extent to which the purposes of the restriction may be satisfied through other limitations on the individual's services, such as those required by paragraph 3(a) of the pledge.

Sec. 4. Administration. (a) The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish such rules or procedures (conforming as nearly as practicable to the agency's general ethics rules and procedures, including those relating to designated agency ethics officers) as are necessary or appropriate to ensure:

(i) that every appointee in the agency signs the pledge upon assuming the appointed office or otherwise becoming an appointee;

(ii) that compliance with paragraph 3 of the pledge is addressed in a written ethics agreement with each appointee to whom it applies, which agreement shall also be approved by the Counsel to the President prior to the appointee commencing work;

(iii) that spousal employment issues and other conflicts not expressly addressed by the pledge are addressed in ethics agreements with appointees or, where no such agreements are required, through ethics counseling; and

(iv) that the agency generally complies with this order.

(b) With respect to the Executive Office of the President, the duties set forth in section 4(a) of this order shall be the responsibility of the Counsel to the President.

(c) The Director of the Office of Government Ethics shall:

(i) ensure that the pledge and a copy of this order are made available for use by agencies in fulfilling their duties under section 4(a) of this order;

(ii) in consultation with the Attorney General or the Counsel to the President, when appropriate, assist designated agency ethics officers in providing advice to current or former appointees regarding the application of the pledge; and

(iii) in consultation with the Attorney General and the Counsel to the President, adopt such rules or procedures as are necessary or appropriate:

(A) to carry out the foregoing responsibilities;

(B) to authorize limited exceptions to the lobbyist gift ban for circumstances that do not implicate the purposes of the ban;

(C) to make clear that no person shall have violated the lobbyist gift ban if the person properly disposes of a gift as provided by section 2635.206 of title 5, Code of Federal Regulations;

(D) to ensure that existing rules and procedures for Government employees engaged in negotiations for future employment with private businesses that are affected by the employees' official actions do not affect the integrity of the Government's programs and operations;

(E) to ensure, in consultation with the Director of the Office of Personnel Management, that the requirement set forth in paragraph 6 of the pledge is honored by every employee of the executive branch;

(iv) in consultation with the Director of OMB, report to the President on whether full compliance is being achieved with existing laws and regulations governing executive branch procurement lobbying disclosure. This report shall include recommendations on steps the executive branch can take to expand, to the fullest extent practicable, disclosure of both executive branch procurement lobbying and of lobbying for Presidential pardons. These recommendations shall include both immediate actions the executive branch can take and, if necessary, recommendations for legislation; and

(v) provide an annual public report on the administration of the pledge and this order.

(d) The Director of the Office of Government Ethics shall, in consultation with the Attorney General, the Counsel to the President, and the Director of the Office of Personnel Management, report to the President on steps the executive branch can take to expand to the fullest extent practicable the revolving door ban set forth in paragraph 5 of the pledge to all executive branch employees who are involved in the procurement process such that they may not for 2 years after leaving Government service lobby any Government official regarding a Government contract that was under their official responsibility in the last 2 years of their Government service. This report shall include both immediate actions the executive branch can take and, if necessary, recommendations for legislation.

(e) All pledges signed by appointees, and all waiver certifications with respect thereto, shall be filed with the head of the appointee's agency for permanent retention in the appointee's official personnel folder or equivalent folder.

Sec. 5. Enforcement. (a) The contractual, fiduciary, and ethical commitments in the pledge provided for herein are solely enforceable by the United States pursuant to this section by any legally available means, including debarment proceedings within any affected executive agency or judicial civil proceedings for declaratory, injunctive, or monetary relief.

(b) Any former appointee who is determined, after notice and hearing, by the duly designated authority within any agency, to have violated his or her pledge may be barred from lobbying any officer or employee of that agency for up to 5 years in addition to the time period covered by the pledge. The head of every executive agency shall, in consultation with the Director of the Office of Government Ethics, establish procedures to implement this subsection, which procedures shall include (but not be limited to) providing for fact-finding and investigation of possible violations of this order and for referrals to the Attorney General for consideration pursuant to subsection (c) of this order.

(c) The Attorney General is authorized:

(i) upon receiving information regarding the possible breach of any commitment in a signed pledge, to request any appropriate Federal investigative authority to conduct such investigations as may be appropriate; and

(ii) upon determining that there is a reasonable basis to believe that a breach of a commitment has occurred or will occur or continue, if not enjoined, to commence a civil action against the former employee in any United States District Court with jurisdiction to consider the matter.

(d) In any such civil action, the Attorney General is authorized to request any and all relief authorized by law, including but not limited to:

(i) such temporary restraining orders and preliminary and permanent injunctions as may be appropriate to restrain future, recurring, or continuing conduct by the former employee in breach of the commitments in the pledge he or she signed; and

(ii) establishment of a constructive trust for the benefit of the United States, requiring an accounting and payment to the United States Treasury of all money and other things of value received by, or payable to, the former employee arising out of any breach or attempted breach of the pledge signed by the former employee.

Sec. 6. General Provisions. (a) If any provision of this order or the application of such provision is held to be invalid, the remainder of this order and other dissimilar applications of such provision shall not be affected.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN JR.

THE WHITE HOUSE,
January 20, 2021.

# ETHICS PLEDGE

I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. *Lobbyist Gift Ban*. I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

2. *Revolving Door Ban — All Appointees Entering Government*. I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

3. *Revolving Door Ban — Lobbyists and Registered Agents Entering Government*. If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 *et seq*., or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 *et seq*., within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

   (a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;

   (b) participate in the specific issue area in which that particular matter falls; or

   (c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.

4. *Revolving Door Ban — Appointees Leaving Government*. If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.

5. *Revolving Door Ban — Senior and Very Senior Appointees Leaving Government*. If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections' implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.

6. *Revolving Door Ban — Appointees Leaving Government to Lobby*. In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.

7. *Golden Parachute Ban*. I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.

8. *Employment Qualification Commitment*. I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.

9. *Assent to Enforcement*. I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Personnel," issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.

_____ _____, 20_____

Signature Date

Name (Type or Print): _____

**From:** Susannah Weaver
**To:** Clarke, Victoria
**Subject:** Fwd: Consent to divestiture
**Date:** Friday, August 13, 2021 2:28:36 PM

---

---------- Forwarded message ---------
From: (b) (6) [redacted]
Date: Thu, Aug 12, 2021 at 8:41 PM
Subject: Consent to divestiture
To: Susannah Weaver (b) (6) [redacted]

(b) (6) [redacted]

[redacted]

| | |
|---|---|
| **From:** | Fugh, Justina |
| **To:** | Weaver, Susannah |
| **Cc:** | Clarke, Victoria; Hoffer, Melissa |
| **Subject:** | outside activity determination, plus ethics reminder |
| **Date:** | Monday, August 02, 2021 4:08:50 PM |
| **Attachments:** | approval of outside activity - GULC.pdf |

---

Hi Susannah,
Attached please find the approval of your outside activity to serve on the Board of Visitors for the Georgetown University Law Center, which contains a reminder about changing the GULC website. As I wrote to you earlier today, I noticed that the GULC board of visitors' website lists you solely reference to your EPA affiliation (see here). Please contact GULC immediately to have that identification changed. Because you serve in personal capacity, you cannot be referenced solely by your federal agency. Doing so is considered to be a misuse of position. You may instead be listed as "federal employee" or "personal capacity." Please confirm with me when the website has been changed.
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Friday, July 30, 2021 12:49 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Clarke, Victoria <clarke.victoria@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>
**Subject:** request for approval to remain on the Georgetown Law Board of Visitors
Hi Justina,
I understand that I need to get approval to remain on the Georgetown University Law Center's Board of Visitors pursuant to 5 C.F.R. 6401.103. Please consider this my request. Here is the required information:
**(1)** Employee's name, title and grade
Susannah Weaver, Senior Counselor at OGC, GS-15
**(2)** Nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected
I am currently a member of the Georgetown University Law Center's Board of Visitors. The Board provides counsel to the Dean of the Law Center, with a particular focus on: (a) strengthening the academic goals of the Law Center and improving its visibility, both nationally and internationally; (b) addressing the concerns of alumni, students, faculty, parents, and friends of the Law Center; and (c) increasing and strengthening the financial resources of the Law Center. We typically have two meetings each year, which have been conducted remotely since spring 2020. I am not compensated for this role.
**(3)** The name and business of the person or organization for which the work will be done (in cases of self-employment, indicate the type of services to be rendered and estimate the number of clients or customers anticipated during the next 6 months)
Georgetown University Law Center
**(4)** The estimated time to be devoted to the activity
2-3 days per year.

**(5)** Whether the service will be performed entirely outside of normal duty hours (if not, estimate the number of hours of absence from work required)
I intend to use my annual leave to attend any meetings that occur during normal duty hours. I estimate that this would be no more than 2 days per year.
**(6)** The employee's statement that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment
I will not use any official duty time or Government property, resources, or facilities not available to the general public in connection with this role.
**(7)** The basis for compensation (e.g., fee, per diem, per annum, etc.)
There is no compensation. When we have in-person meetings, food is provided.
**(8)** The employee's statement that he or she has read, is familiar with, and will abide by the restrictions described in 5 CFR part 2635 and § 6401.102
I have read, am familiar with, and will abide by the restrictions described in 5 CFR part 2635 and § 6401.102.
**(9)** An identification of any EPA assistance agreements or contracts held by a person to or for whom services would be provided.
I am not aware of any EPA assistance agreements or contracts with the Georgetown University Law Center and did not find any on the EPA Active Contracts list (https://ofmpub.epa.gov/apex/activecontracts/f?p=123:2).
Please let me know if you need any additional information from me.
Thank you,
Susannah
Susannah Weaver
Senior Counselor
Environmental Protection Agency, Office of General Counsel
1200 Pennsylvania Ave. NW
Washington, DC 20460
(202) 564-1928 (office)
(202) 819-6517 (mobile)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
Washington, D.C. 20460

August 2, 2021

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Approval of Outside Activity

FROM: Justina Fugh JUSTINA FUGH Digitally signed by JUSTINA FUGH Date: 2021.08.02 16:04:27 -04'00'
Alternate Designated Agency Ethics Official

TO: Susannah Weaver
Senior Counselor

I have received your request to serve on the Georgetown University Law Center's (GULC) Board of Visitors as an outside activity. In this uncompensated position, you serve as an officer or director and provide advice to the Dean of the Law Center on how to strengthen their teaching, scholarship and service and also to increase and strengthen the financial resources of the Law Center. Based on the information you have provided, I am approving your request as consistent with 5 C.F.R. Part 2635, Subpart H, provided that you are not identified solely with reference to your EPA affiliation. Please note that, generally, an approval for outside employment remains valid for five years, though you must request a new approval should there be a change in the nature or scope of your duties.

I have set forth below a reminder about several ethics principles:

Financial Conflicts of Interest

Because you serve in a fiduciary role, you have a financial conflict of interest with GULC. You cannot participate in your EPA duties in any matter that will have a direct and predictable financial effect upon the school. You cannot work on particular matters that involves GULC as a specific party (e.g., whether the General Counsel should accept an invitation to speak at the University or for you to interview GULC law school students for OGC summer honors positions), nor can you work on particular matters of general applicability (e.g., a grant proposal to which all law schools might apply if GULC is an expected applicant).

You have already and should continue to report this position on your public financial disclosure report.

Representation

Don't forget, you are generally prohibited by a criminal law from representing another entity back to the federal government in any matter in which the United States is a party or has a direct and substantial interest. This representational conflict of interest statute applies even though you are uncompensated. *See* 18 USC § 205. In your capacity on the Board of Visitors, you contact the US government on behalf of GULC, which includes contacting federal employees to speak in their official capacities.

Misuse of Position

Be mindful about the Agency's Limited Personal Use of Equipment policy. Avoid using EPA equipment -- including phones, workspace, computer or time -- in connection with this activity. Should you refer to your EPA position and title, then you may do so as one of at least three biographical details, with EPA not having any undue prominence. *See* 5 C.F.R. § 2635.807(b). As indicated earlier, I noticed that the GULC website lists you solely with reference to your EPA affiliation. Please take steps immediately to notify GULC to change that designation. You are not serving in your official EPA capacity.

Since we are still teleworking, be mindful of the fact that your home is now your federal workplace. When you are "on the EPA clock" (that is, your duty hours), focus on EPA work only. You must be careful to delineate between your official time and use of our resources from your personal time. Avoid using EPA equipment, including the computer or email address, in connection with your outside activity.

Fundraising

Because the Board of Visitors appear to engage in fundraising for GULC, please note that, as a federal employee, you now have certain additional restrictions. Pursuant to 5 C.F.R. § 2635.808(c), you cannot personally solicit funds from any subordinate or from any person known to you to be a prohibited source of this Agency that may be substantially affected by the performance or nonperformance of your official duties. In addition, you cannot use or permit the use of your EPA official title, position or affiliation to further any fundraising effort.

* * * * *

As always, if you have any questions, please feel free to contact me at (202) 564-1786 or fugh.justina@epa.gov.

| | |
|---|---|
| **From:** | Fugh, Justina |
| **To:** | Weaver, Susannah; Hoffer, Melissa |
| **Cc:** | Payne, James (Jim) |
| **Subject:** | RE: ACE |
| **Date:** | Tuesday, November 09, 2021 12:00:00 AM |

Hi Susannah,
My apologies for neglecting to answer you sooner, but I got a new EPA computer on Friday (with the attendant partial down-time) and then was out sick on Monday. Allow me to clarify that you and Melissa may continue to work on the current Section 111(d) rulemaking, including justifying how and why EPA has the authority to regulate coal fired power plants under Section 111(d). Please isolate yourselves to this regulatory perspective and effort since you are both recused from working on the ACE litigation. You cannot actively contribute to the litigation of those cases given recusal issues, and you therefore can't anticipate what the litigation team may do. But you may both continue to work on the Biden Administration's new rulemaking under Section 111(d) and not run afoul of your recusal obligations.
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Tuesday, November 2, 2021 4:18 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>
**Cc:** Payne, James (Jim) <payne.james@epa.gov>
**Subject:** RE: ACE

Hi Justina,

Thank you so much for this advice. Just to make sure I took away the correct understanding from our call yesterday and that we do not cross any lines, I want to confirm the following.

Melissa and I may work on a new statement of policy delineating this Administration's view of how our Clean Air Act section 111 authorities should be interpreted. We may do this even though it may be referenced/used in the *West Virginia* litigation so long as we do not involve ourselves in the litigation, for example by working with ARLO attorneys or DOJ on the litigation.

Please let me know if I'm getting this wrong, or if you would add any caveats or specifications to the above.

Thanks,
Susannah

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Tuesday, November 2, 2021 2:09 PM
**To:** Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Weaver, Susannah <Weaver.Susannah@epa.gov>
**Cc:** Payne, James (Jim) <payne.james@epa.gov>
**Subject:** RE: ACE

Hi Melissa and Susannah,
This note responds to Melissa's email below and confirms the conversation that Susannah and I had yesterday. You are both recused from participating as part of your official EPA duties in litigation related to the Affordable Clean Energy (ACE) rule, including *West Virginia v. EPA*, for which the Supreme Court recently granted *certiorari.* While you both have scrupulously avoided participation in the ACE litigation itself, you wonder if you may participate in policy discussions related to what EPA may do given the Supreme Court's decision to consider these cases. For example, the Administrator may direct the EPA to continue or discontinue working on rulemaking to regulate carbon emission from power plants. As senior legal advisors, your insights can assist the Administrator as he considers the Agency's options now, even before the Supreme Court's ruling, which may not come until next summer.

This note confirms that you may participate in these policy discussions and decisions despite your recusal from the litigation. As you know, you are recused from working on the merits of the litigation only, which is the specific party matter itself. You are not recused, nor should you be, from participating in a matter of general applicability, which includes the contemplated rulemaking on carbon emissions. So long as you do not involve yourselves in the litigation (e.g., working with ARLO attorneys or DOJ about the ACE litigation), then you may nevertheless participate fully in the rulemaking discussions and decisions.
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Hoffer, Melissa <Hoffer.Melissa@epa.gov>
**Sent:** Monday, November 1, 2021 9:10 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Payne, James (Jim) <payne.james@epa.gov>
**Subject:** ACE

Hi Justina,

I am recused from the ACE case. On Friday, SCOTUS granted cert in the industry appeal of the CADC decision vacating the rule. I am writing to confirm my understanding that my recusal is limited to discussion of litigation strategy and does not bar me from involvement in discussion of policy/communications strategy in light of the cert grant—we currently have ongoing rulemaking efforts.

Thanks.

Melissa A. Hoffer
Acting General Counsel
Principal Deputy General Counsel
U.S. Environmental Protection Agency
Office of General Counsel
1200 Pennsylvania Avenue, NW
Washington, DC 20460
T: 202.440.1671
E: hoffer.melissa@epa.gov

| | |
|---|---|
| **From:** | Susannah Weaver |
| **To:** | Clarke, Victoria |
| **Subject:** | Re: Briefing materials from today |
| **Date:** | Monday, June 28, 2021 7:50:31 PM |
| **Attachments:** | Weaver signed ethics pledge.pdf |

---

Hi Victoria,

Shoot--I saved the wrong scanned thing. Thank you for deleting it--I will try to delete the sent mail too. Here should be the signed ethics pledge.

Thanks,
Susannah

On Mon, Jun 28, 2021 at 7:40 PM Clarke, Victoria <clarke.victoria@epa.gov> wrote:

> Hi Susannah!
>
> You've sent me (b) (6) [redacted] and not the signed pledge. I am going to delete the email and attachment that you sent me (since it has your PII!), unless you can recall it back?
>
> Victoria
>
> Victoria Clarke
>
> Attorney-Advisor
>
> U.S. Environmental Protection Agency
>
> Office of General Counsel | Ethics Office
>
> Washington, D.C. |7348 WJCN
>
> EPA Office: 202-564-1149
>
> EPA Cell: 202-336-9101
>
> ---
>
> **From:** Susannah Weaver <(b) (6) [redacted]>
> **Sent:** Monday, June 28, 2021 4:43 PM
> **To:** Clarke, Victoria <clarke.victoria@epa.gov>
> **Subject:** Re: Briefing materials from today
>
> Hi Victoria,
>
> I've attached the signed ethics pledge. Thank you for the helpful training today.
>
> Thanks,
>
> Susannah
>
> On Mon, Jun 28, 2021 at 2:10 PM Clarke, Victoria <clarke.victoria@epa.gov> wrote:

> Hi Susannah! Lovely to see you today! Attached are the briefing materials from today. I've also got a separate version of the Biden Ethics Pledge in case you cannot open the PDF portfolio.
>
> Victoria
>
> Victoria Clarke
>
> Attorney-Advisor
>
> U.S. Environmental Protection Agency
>
> Office of General Counsel | Ethics Office
>
> Washington, D.C. |7348 WJCN
>
> EPA Office: 202-564-1149
>
> EPA Cell: 202-336-9101

# ETHICS PLEDGE

I recognize that this pledge is part of a broader ethics in government plan designed to restore and maintain public trust in government, and I commit myself to conduct consistent with that plan. I commit to decision-making on the merits and exclusively in the public interest, without regard to private gain or personal benefit. I commit to conduct that upholds the independence of law enforcement and precludes improper interference with investigative or prosecutorial decisions of the Department of Justice. I commit to ethical choices of post-Government employment that do not raise the appearance that I have used my Government service for private gain, including by using confidential information acquired and relationships established for the benefit of future clients.

Accordingly, as a condition, and in consideration, of my employment in the United States Government in a position invested with the public trust, I commit myself to the following obligations, which I understand are binding on me and are enforceable under law:

1. *Lobbyist Gift Ban.* I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.

2. *Revolving Door Ban — All Appointees Entering Government.* I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.

3. *Revolving Door Ban — Lobbyists and Registered Agents Entering Government.* If I was registered under the Lobbying Disclosure Act, 2 U.S.C. 1601 *et seq.*, or the Foreign Agents Registration Act (FARA), 22 U.S.C. 611 *et seq.*, within the 2 years before the date of my appointment, in addition to abiding by the limitations of paragraph 2, I will not for a period of 2 years after the date of my appointment:

   (a) participate in any particular matter on which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment;

   (b) participate in the specific issue area in which that particular matter falls; or

   (c) seek or accept employment with any executive agency with respect to which I lobbied, or engaged in registrable activity under FARA, within the 2 years before the date of my appointment.

4. *Revolving Door Ban — Appointees Leaving Government.* If, upon my departure from the Government, I am covered by the post-employment restrictions on communicating with employees of my former executive agency set forth in section 207(c) of title 18, United States Code, and its implementing regulations, I agree that I will abide by those restrictions for a period of 2 years following the end of my appointment. I will abide by these same restrictions with respect to communicating with the senior White House staff.

5. *Revolving Door Ban — Senior and Very Senior Appointees Leaving Government.* If, upon my departure from the Government, I am covered by the post-employment restrictions set forth in sections 207(c) or 207(d) of title 18, United States Code, and those sections' implementing regulations, I agree that, in addition, for a period of 1 year following the end of my appointment, I will not materially assist others in making communications or appearances that I am prohibited from undertaking myself by (a) holding myself out as being available to engage in lobbying activities in support of any such communications or appearances; or (b) engaging in any such lobbying activities.

6. *Revolving Door Ban — Appointees Leaving Government to Lobby.* In addition to abiding by the limitations of paragraph 4, I also agree, upon leaving Government service, not to lobby any covered executive branch official or non-career Senior Executive Service appointee, or engage in any activity on behalf of any foreign government or foreign political party which, were it undertaken on January 20, 2021, would require that I register under FARA, for the remainder of the Administration or 2 years following the end of my appointment, whichever is later.

7. *Golden Parachute Ban.* I have not accepted and will not accept, including after entering Government, any salary or other cash payment from my former employer the eligibility for and payment of which is limited to individuals accepting a position in the United States Government. I also have not accepted and will not accept any non-cash benefit from my former employer that is provided in lieu of such a prohibited cash payment.

8. *Employment Qualification Commitment.* I agree that any hiring or other employment decisions I make will be based on the candidate's qualifications, competence, and experience.

9. *Assent to Enforcement.* I acknowledge that the Executive Order entitled "Ethics Commitments by Executive Branch Personnel," issued by the President on January 20, 2021, which I have read before signing this document, defines certain of the terms applicable to the foregoing obligations and sets forth the methods for enforcing them. I expressly accept the provisions of that Executive Order as a part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of Federal Government service.

Signature

6/28/2021, 2021
Date

Name (Type or Print): Susannah L. Weaver

| | |
|---|---|
| **From:** | Weaver, Susannah |
| **To:** | Clarke, Victoria; Fugh, Justina |
| **Subject:** | RE: Certificate of Divestiture - Susannah Weaver - [ Message and attachment(s) contain CUI ] |
| **Date:** | Friday, September 17, 2021 8:51:17 AM |

Thank you Victoria!

---

**From:** Clarke, Victoria <clarke.victoria@epa.gov>
**Sent:** Thursday, September 16, 2021 6:47 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Weaver, Susannah <Weaver.Susannah@epa.gov>
**Subject:** RE: Certificate of Divestiture - Susannah Weaver - [ Message and attachment(s) contain CUI ]

Hi there! Chiming in to say something certainly worked, as I can see a periodic transaction report with sales of SolarEdge and SunRun waiting in my queue to certify and review. I'll go ahead and do that now.

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel | Ethics Office
Washington, D.C. |7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Wednesday, September 15, 2021 3:30 PM
**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
**Subject:** RE: Certificate of Divestiture - Susannah Weaver - [ Message and attachment(s) contain CUI ]

Okay, I'll send a note to the integrity helpdesk and copy you.

---

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Wednesday, September 15, 2021 3:25 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
**Subject:** RE: Certificate of Divestiture - Susannah Weaver - [ Message and attachment(s) contain CUI ]

I just tried again. I get the same message when I use my PIV card. And I get a message that I need to use a more secure form of authentication when I try my login and password.

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Wednesday, September 15, 2021 3:17 PM

**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
**Subject:** RE: Certificate of Divestiture - Susannah Weaver - [ Message and attachment(s) contain CUI ]

Did you try more than once? Sometimes, I get that error message too, but I just ignore it and try again. I always get in with the second try!

---

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Wednesday, September 15, 2021 1:45 PM
**To:** Clarke, Victoria <clarke.victoria@epa.gov>
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: Certificate of Divestiture - Susannah Weaver - [ Message and attachment(s) contain CUI ]

Hi Victoria,

I went to file my 278-T and am able to login to max.gov, but I get this message when I try to get into Integrity.gov. Can you help? I tried logging in both using my PIV card and my login ID and password. Can you help or point me in the right direction?

Thanks,
Susannah

# Integrity.gov

## Access Denied

You are not authorized to access this page.

Please check with your Agency Integrity administrator or Ethics Official for further assistance.

---

**From:** Clarke, Victoria <clarke.victoria@epa.gov>
**Sent:** Tuesday, September 14, 2021 8:20 AM
**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: Certificate of Divestiture - Susannah Weaver - [ Message and attachment(s) contain CUI ]

Hi Susannah,

Yes, the (b) (6) [redacted] is a diversified investment fund for the purposes of 5

C.F.R. 2634.1003.

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel | Ethics Office
Washington, D.C. |7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

---

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Thursday, September 09, 2021 9:57 PM
**To:** Clarke, Victoria <clarke.victoria@epa.gov>
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: Certificate of Divestiture - Susannah Weaver - [ Message and attachment(s) contain CUI ]

Thanks Victoria! We're planning to take care of this this weekend. And just to be absolutely sure, are the "diversified investment funds as defined in 5 CFR 2634.1003," that we need to reinvest in per the letter the same as what we've been talking about as a diversified fund, i.e., including the (b) (6) [redacted]?

---

**From:** Clarke, Victoria <clarke.victoria@epa.gov>
**Sent:** Friday, September 3, 2021 2:33 PM
**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Cc:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** FW: Certificate of Divestiture - Susannah Weaver - [ Message and attachment(s) contain CUI ]

Hi Susannah!

Attached, please find the CD issued by OGE today. You have 60 days (November 2, 2021) to sell the assets and reinvest the proceeds into a "safe" asset (e.g., a diversified mutual fund).

When you sell the securities, make sure you file a 278-T within 30 days of receiving notice of the sale or 45 days from the date of the sale, whichever is sooner.

Now, you had also previously asked about the (b) (6) [redacted]) and if that is an asset you could invest in without there being a financial conflict of interest, and yes, you can. (b) (6) [redacted]

(b) (6) [redacted]

The fund does *not* have a prospectus that states it concentrates its investments in any particular industry or business (e.g., banking, biotechnology), which is how OGE classifies a sector mutual fund (DO-00-030). Therefore, (b) (6) is not a sector mutual fund.

Have a happy Friday and holiday weekend.

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel | Ethics Office
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

---

**From:** CD <cd@oge.gov>
**Sent:** Friday, September 03, 2021 2:15 PM
**To:** Clarke, Victoria <clarke.victoria@epa.gov>
**Cc:** Christopher Brown <cbrown@oge.gov>; Elaine Newton <enewton@oge.gov>
**Subject:** Certificate of Divestiture - Susannah Weaver - [ Message and attachment(s) contain CUI ]

Good Afternoon:

In response to your request of 08/13/2021, attached is Certificate of Divestiture, OGE-2021-174 for Susannah Weaver, Environmental Protection Agency. Please forward the certificate to Mrs. Weaver.

If there are any questions, you may contact Christopher Brown at 202-482-9235.

Please confirm receipt of this email by replying to all.

Thank you.

CONTROLLED
Email and attachment(s) contain CUI.

Gwendolyn Cannon-Jenkins
US Office of Government Ethics

| | |
|---|---|
| **From:** | Weaver, Susannah |
| **To:** | Clarke, Victoria |
| **Subject:** | RE: Draft recusal statement |
| **Date:** | Tuesday, August 10, 2021 2:40:22 PM |

---

Perfect—thanks!

---

**From:** Clarke, Victoria <clarke.victoria@epa.gov>
**Sent:** Tuesday, August 10, 2021 2:34 PM
**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Subject:** RE: Draft recusal statement

Sure! I can give you a call after the monthly ethics meeting – say around 4 pm?

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel | Ethics Office
Washington, D.C. |7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

---

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Tuesday, August 10, 2021 1:45 PM
**To:** Clarke, Victoria <clarke.victoria@epa.gov>
**Subject:** RE: Draft recusal statement

Hi Victoria,

Thank you so much for putting this together and taking care of the CD request. The letter generally looks good to me. I have a few small questions. If you're free could you give me a quick call either 3:30-4:45 today or tomorrow morning 9:30-11.

Thanks!

Susannah

---

**From:** Clarke, Victoria <clarke.victoria@epa.gov>
**Sent:** Monday, August 9, 2021 3:30 PM
**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Subject:** Draft recusal statement

Hi Susannah,

Justina, Shannon, and I have conferred on your recusal statement, and I'm submitting to you a draft for your review. You'll see that the companies that you signed engagement letters for on behalf of your firm are listed as your clients – for federal ethics purposes, that is a sufficient enough nexus to trigger the need for a cooling off period. Your outside activity approval is also reflected in your recusal statement, too.

I've also noted that we'll be seeking a certificate of divestiture and when it is received, we'll reissue your recusal statement appropriately. On that note, I'm putting the finishing touches on that CD request, so we should have that sent to OGE by the end of the week if all goes according to plan.

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel | Ethics Office
Washington, D.C. |7348 WJCN
EPA Office: 202-564-1149

EPA Cell: 202-336-9101

| | |
|---|---|
| **From:** | Weaver, Susannah |
| **To:** | Clarke, Victoria; Fugh, Justina |
| **Cc:** | Conrad, Daniel; Keith, Jennie |
| **Subject:** | RE: Environmental Law! |
| **Date:** | Friday, August 13, 2021 2:26:36 PM |

---

Thanks Victoria. I haven't yet cleared it with Melissa, but will ask her when she is back next week and then get back to you. I believe this would be in my official capacity, and I understand the concerns around confidentiality.

---

**From:** Clarke, Victoria <clarke.victoria@epa.gov>
**Sent:** Friday, August 13, 2021 12:06 PM
**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Conrad, Daniel <conrad.daniel@epa.gov>; Keith, Jennie <Keith.Jennie@epa.gov>
**Subject:** RE: Environmental Law!

Hi Susannah!
You're planning to conduct this speaking engagement in your official capacity, correct? (It looks as though the requestor wants you to, in any event, since he references "the work of your office" as it relates to the geographic scope of the Clean Water Act.) If this is the case, have you cleared it with Melissa? If she's all right with you speaking in your official capacity, you'll be working with Dan Conrad in the Front Office. I have CC'd Dan, who can make sure the proper request forms are filled out.
From an ethics perspective, there's no problem with you speaking to Harvard – you have no recusal obligation as they're not a former employer or former client. However, I'll briefly remind you to be cognizant of your bar rules (confidentiality!) and your responsibilities under the standards of ethical conduct to not misuse your federal position, such as by sharing non-public or deliberative information. That said, you are allowed to use agency time and resources in planning, preparing, and conducting speaking engagements in your official capacity.
In the event that you cannot speak in your official capacity, then please let me know.

Victoria
Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel | Ethics Office
Washington, D.C. |7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

---

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Thursday, August 12, 2021 5:42 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
**Subject:** FW: Environmental Law!

Hi Justina and Victoria,
I received this invite to speak at a class at Harvard Law School in October. What do I need to do to clear it with ethics? Do you need any additional information?
Thanks,
Susannah

---

**From:** Susannah Weaver <(b) (6) [redacted]>
**Sent:** Thursday, August 12, 2021 5:38 PM

**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Subject:** Fwd: Environmental Law!

---------- Forwarded message ---------
From: **Lazarus, Richard** <lazarus@law.harvard.edu>
Date: Thu, Aug 12, 2021 at 4:29 PM
Subject: RE: Environmental Law!
To: Susannah Weaver <(b) (6) [redacted]>

How about WOTUS rule on Thursday, October 28. Class begins at 10:30 and we would plan on having you join us to talk about recent developments at EPA at around noon for a max of thirty minutes. Would that work on your end? Hope so!
In case it might work, I have attached a copy of the kind of formal invite letter that government agencies like to have.
Thanks for considering the possibility.
RIchard

| | |
|---|---|
| **From:** | Weaver, Susannah |
| **To:** | Clarke, Victoria; Fugh, Justina |
| **Subject:** | RE: financial disclosure |
| **Date:** | Friday, July 23, 2021 2:08:11 PM |

---

**From:** Clarke, Victoria <clarke.victoria@epa.gov>
**Sent:** Friday, July 23, 2021 12:59 PM
**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: financial disclosure

Thank you, Susannah!
I have a short counseling note/request of you, and a couple of questions based on my first pass review of your submitted financial disclosure report.
We'll do the questions first.

1. In Part 1, positions held outside the U.S. Government, I've added your position as a member of Georgetown University Law Center's Board of Visitors. What month in 2017 did you enter that position?

I joined in June 2017.

2. In Part 2, (b) (6) [redacted] I've gone ahead and added both assets for you, but I wanted to confirm that I have the right values and incomes for those assets.
   a. (b) (6) [redacted]

I don't know what it was when I entered it, but now it is around (b) (6) [redacted].
Ditto—it's now around (b) (6) [redacted]
**I have misunderstood something here because I have been operating under the assumption that (b) (6) [redacted]. Let me know if I am confused.

3. In Part 3, can you confirm for me that you don't have (b) (6) [redacted] floating about somewhere? You'd be surprised how many people forget!

(b) (6) [redacted] Is there a way to confirm other than my recollection?

4. For Part 8, you've listed (b) (6) [redacted]

Yes. (b) (6) [redacted]
And now for the counseling note:

- You will need to seek an outside activity approval from Justina for the Board of Visitors position with Georgetown University Law Center if you plan to continue in that role.
  - Note: We in OGC Ethics aren't asking you to resign from the role, but we will want you to let Melissa know (if she doesn't already) of your involvement on the Board.

It is listed on my resume so in that sense Melissa may be aware, but I haven't talked with her

specifically about it.

- The requirements for outside activity approval are set out in 5 C.F.R. 6401.103(b), but I'm including them below for ease of copy pasting:
    - **(b)** *Form and content of request.* The employee's request for approval of outside employment shall be submitted in writing to his or her Deputy Ethics Official. The request shall be sent through the employee's immediate supervisor (for the supervisor's information) and shall include:
        - **(1)** Employee's name, title and grade;
        - **(2)** Nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected;
        - **(3)** The name and business of the person or organization for which the work will be done (in cases of self-employment, indicate the type of services to be rendered and estimate the number of clients or customers anticipated during the next 6 months);
        - **(4)** The estimated time to be devoted to the activity;
        - **(5)** Whether the service will be performed entirely outside of normal duty hours (if not, estimate the number of hours of absence from work required);
        - **(6)** The employee's statement that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment;
        - **(7)** The basis for compensation (e.g., fee, per diem, per annum, etc.);
        - **(8)** The employee's statement that he or she has read, is familiar with, and will abide by the restrictions described in 5 CFR part 2635 and § 6401.102; and
        - **(9)** An identification of any EPA assistance agreements or contracts held by a person to or for whom services would be provided.
- It is pretty important that you ask for and get counseling from us on this position, as you do have a fiduciary role, which we need to remember for the purposes of 18 U.S.C. 208. Additionally, the Agency interacts frequently with law schools, including Georgetown – especially during the clerkship season!

So I'm assuming I should write this request and send it to Melissa, Justina, and you? Most of it seems easy (and I'm not compensated though when the meetings are not virtual they do provide food), but I'll need to ask about (9). Is that something someone at EPA can answer or should I ask the law school?

Thanks!

Victoria
Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel | Ethics Office
Washington, D.C. |7348 WJCN
EPA Office: 202-564-1149

EPA Cell: 202-336-9101

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Friday, July 16, 2021 2:43 PM
**To:** Clarke, Victoria <clarke.victoria@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: financial disclosure

For the (b) (6) [redacted].

**From:** Clarke, Victoria <clarke.victoria@epa.gov>
**Sent:** Friday, July 16, 2021 12:24 PM
**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: financial disclosure

Yes, the relative threshold levels can get tricky – especially when you're selling one asset, keeping another, etc.

Logistically -- (b) (6), (b) (5) [redacted]

For the CD – (b) (6) [redacted]?

For your recusal statement, I'll have language in there that accounts for the fact that you may be seeking a CD, but you'll still be recusing from SolarEdge, SunRun, and the semiconductor industry ((b) (6) [redacted]?). And then when you get the CD, we'll reissue the recusal statement.

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel | Ethics Office
Washington, D.C. |7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Friday, July 16, 2021 12:13 PM
**To:** Clarke, Victoria <clarke.victoria@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: financial disclosure

Hi Victoria,

Thanks. This is exactly why I emailed you first—to make sure I don't do anything nonsensical.

(b) (6) [redacted]. Let me know if I am still misunderstanding anything.

Thanks,

Susannah

**From:** Clarke, Victoria <clarke.victoria@epa.gov>
**Sent:** Friday, July 16, 2021 11:33 AM
**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: financial disclosure

Hi Susannah,
Thanks for submitting your 278! I'll take a look at it and get back to you if there are any changes/more information that I need.
With respect to the holdings…
(b) (6) [redacted]?

- (b) (6), (b) (5) [redacted]
- [redacted]

(b) (6), (b) (5) [redacted]

- [redacted]

Victoria
Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel | Ethics Office
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

---

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Friday, July 16, 2021 9:27 AM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
**Subject:** financial disclosure

Hi Justina and Victoria,
Thanks so much for your help with figuring out how to fill in these forms. I just filed my financial disclosure report and transaction report. Let me know if you have any questions for me about it or if there's anything I need to clarify.
With regard to my holdings that pose financial conflicts of interest, I want to let you know my current plan and make sure that (once complete, approved, etc.) it will address these conflicts.

1. (b) (6) [redacted]

2. (b) (6), (b) (5) [redacted]

[redacted] (and I will provide Victoria with the necessary info to get this started)

Does that sound OK? If so, I'll get the process going.

Thanks,

Susannah

(202) 819-6517 (mobile)

| | |
|---|---|
| **From:** | Weaver, Susannah |
| **To:** | Clarke, Victoria |
| **Subject:** | RE: question about recusal |
| **Date:** | Monday, October 04, 2021 5:04:10 PM |

---

Never mind—I printed it to pdf and that seems to work. I'm going to circulate it now. Thanks.

**From:** Weaver, Susannah
**Sent:** Monday, October 4, 2021 4:46 PM
**To:** Clarke, Victoria <clarke.victoria@epa.gov>
**Subject:** RE: question about recusal
Hi Victoria,
Can you send this back to me without the signature box. My Adobe seems to make me draw a signature box and then leaves yours in. Been on the phone with IT for about a half hour trying to figure out how to sign … I miss the days of using a pen.
Thanks,
Susannah

**From:** Clarke, Victoria <clarke.victoria@epa.gov>
**Sent:** Friday, October 1, 2021 2:02 PM
**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: question about recusal
Hi there! Yes – sorry, have been out of the office, but I am back! And I come bearing a revised recusal statement ready to be digitally signed and distributed.
Victoria
Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel | Ethics Office
Washington, D.C. |7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Wednesday, September 29, 2021 4:54 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
**Subject:** RE: question about recusal
Thank you!

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Wednesday, September 29, 2021 4:39 PM
**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
**Subject:** RE: question about recusal
Hi,
This note confirms that you are no longer recused from participating in a particular matter of general applicability affecting the semiconductor industry because you no longer own the conflicting assets. As currently written, your recusal says "[b]ased on my current level of financial ownership" but does include a reference to updating your recusal after divestiture. Victoria has been on a well deserved vacation but is back tomorrow (hooray!) so we'll add updating your resume to her list of things to do.

Cheers,
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Wednesday, September 29, 2021 4:22 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
**Subject:** question about recusal

Hi Justina and Victoria,

Am I still recused from matters related to the semiconductor industry? I've now divested the solar stocks and filed the periodic transaction report (on 9/16). Is there anything else that needs to happen for the recusal to lift? There's a meeting I'd like to attend tomorrow that I just learned relates to the semiconductor industry.

Thanks,
Susannah

**From:** Weaver, Susannah
**To:** Clarke, Victoria
**Subject:** RE: quick question
**Date:** Thursday, July 22, 2021 10:36:48 AM

---

Thank you Victoria!

---

**From:** Clarke, Victoria <clarke.victoria@epa.gov>
**Sent:** Thursday, July 22, 2021 10:36 AM
**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Subject:** RE: quick question

Hi Susannah,
No, there should be no problems with you selecting that fund.
Justina and I talked it over briefly while we were meeting with you to review your 278 initially, and when we looked at the (b) (6) [redacted]. After reviewing *that* index and related documentation, that criteria doesn't indicate that the fund concentrates on any one sector or industry (E.g., life sciences, banking, biotechnology, chemicals, utilities…), which is what makes sector funds problematic.

Victoria
Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel | Ethics Office
Washington, D.C. |7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

---

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Thursday, July 22, 2021 10:22 AM
**To:** Clarke, Victoria <clarke.victoria@epa.gov>
**Subject:** quick question

Hi Victoria,
We're now figuring out where to put the funds from last week's sales. Are there any potential recusal concerns with (b) (6) [redacted])?
Thanks,
Susannah

**From:** Weaver, Susannah
**To:** Clarke, Victoria; Fugh, Justina
**Subject:** RE: recusal question from Susannah Weaver
**Date:** Thursday, October 28, 2021 12:38:06 PM

---

Thank you Victoria! I really appreciate you running this down.

**From:** Clarke, Victoria <clarke.victoria@epa.gov>
**Sent:** Thursday, October 28, 2021 12:33 PM
**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: recusal question from Susannah Weaver

Hi Susannah,
You are **permitted** to attend this meeting.
Louise Kitamura in the Office of Water graciously provided the attached meeting materials, and from looking at them, this meeting is about 1) a matter of general applicability and 2) there are the requisite amount of bodies in the chairs. More specifically:

1. The purpose of the meeting is to "discuss perchlorate in drinking water." In looking through the draft proposed agenda, the topics are all broadly structured and range from health risks of perchlorate to maximum contaminant level goals both in the past and in the future. Those subjects would, for the purposes of this meeting, constitute a matter (or matters) of general applicability. So long as the meeting stays at that altitude and does not descend specifically into what EPA can do for the *parties* at the table with respect to any complaints or claims they have against the Agency, then this prong of the exception is satisfied.

2. There's approximately 10 named individuals that will attend, that represent the 6 following entities: NRDC (4 individuals), EDF (2 individuals), Environmental Action Network (1 individual), Healthy Babies Bright Futures (1 individual), Clean Water Action (1 individual), EarthJustice (1 individual). The *minimum* requirement is that, in addition to your former client EDF, there must be 4 other entities involved. There are 5 other entities than just EDF in attendance, so this prong of the exception is satisfied.

While I don't suspect this will be an issue in a virtual environment, please don't engage in any sidebar conversations with EDF at the meeting. Those sorts of one-on-one conversations with a former client (or employer) will trigger your recusal obligations.
Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel | Ethics Office
Washington, D.C. |7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

---

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Monday, October 25, 2021 12:53 PM
**To:** Clarke, Victoria <clarke.victoria@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: recusal question from Susannah Weaver

Thanks Victoria! Unfortunately I don't know who the individual is at OW and neither does Carrie Wehling (who forwarded me the invite). Thanks for looking into this!

**From:** Clarke, Victoria <clarke.victoria@epa.gov>
**Sent:** Monday, October 25, 2021 12:06 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Subject:** RE: recusal question from Susannah Weaver

Certainly, Justina! Thanks for flagging this!

Susannah, do you happen to know the individual in OW who sent you the invite or is otherwise the point of contact for this meeting? If not, no worries, I'll go poking around OW myself. I need to chat with this individual and get more information about the full details of the meeting and the attendees.

The reason being is Section 1, Paragraph 2 of the Biden Ethics Pledge prevents you from participating in any particular matter involving specific parties (including meetings!) that is directly and substantially related to your former employer or former clients (EDF, but who knows who else might be invited). The *exception* to this is if the meeting is about a matter of general applicability (e.g., a rulemaking or a policy decision) *and* is open to all interested parties (i.e., a multiplicity of parties).

So, if I can check both of those boxes, you can attend. If I can't, then you'll have to sit out the meeting.

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel | Ethics Office
Washington, D.C. |7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Monday, October 25, 2021 11:48 AM
**To:** Clarke, Victoria <clarke.victoria@epa.gov>
**Cc:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Subject:** recusal question from Susannah Weaver

Hi Victoria,

Susannah was invited to a meeting by OW (see below) but noticed that her former client (EDF) has also been invited. She wonders whether she may attend. Can you run the traps on this for her?

Susannah – because you are in OGC, Victoria Clarke is your deputy ethics official and, as it happens, OW is within her portfolio of offices. So she's the perfect contact for this question!

Thanks,

Justina

_____ note from Susannah follows _____

Hi Justina,

I was invited to the meeting below and I note that my former client EDF is a participant. What's the process for figuring out if I can attend?

Thanks,

Susannah

-----Original Appointment-----
**From:** Owscheduling <Owscheduling@epa.gov>
**Sent:** Monday, October 25, 2021 10:32 AM

**To:** Owscheduling; Fox, Radhika; Behl, Betsy; Nagle, Deborah; McLain, Jennifer L.; Guilaran, Yu-Ting; Burneson, Eric; Wehling, Carrie; Parikh, Pooja; Miller, GregoryG; Julian Gonzalez; (b) (6) [redacted]; Lynn Thorp; Tom Neltner; Maricel Maffini; Charlotte Brody; Sarah Fort; Erik Olson; Lauren Phillips; Brian Siu; Alexandra Stubblefield
**Cc:** Sabater, Juan; Skane, Elizabeth; Aguirre, Janita; Woods, Stacy; Penman, Crystal; Weaver, Susannah; Messier, Dawn
**Subject:** Meeting on Perchlorate with EPA
**When:** Thursday, November 4, 2021 3:30 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Microsoft Teams Meeting
-----Original Appointment-----
**From:** Owscheduling <Owscheduling@epa.gov>
**Sent:** Wednesday, October 20, 2021 10:14 AM
**To:** Owscheduling; Fox, Radhika; Behl, Betsy; Nagle, Deborah; McLain, Jennifer L.; Guilaran, Yu-Ting; Burneson, Eric; Wehling, Carrie; Parikh, Pooja; Miller, GregoryG; Julian Gonzalez; (b) (6) [redacted]; Lynn Thorp; Tom Neltner; Maricel Maffini; Charlotte Brody; Sarah Fort; Erik Olson; Lauren Phillips; Brian Siu; Alexandra Stubblefield
**Cc:** Sabater, Juan; Skane, Elizabeth; Aguirre, Janita; Woods, Stacy; Penman, Crystal
**Subject:** Meeting on Perchlorate with EPA
**When:** Thursday, November 4, 2021 3:30 PM-4:30 PM (UTC-05:00) Eastern Time (US & Canada).
**Where:** Microsoft Teams Meeting
NRDC, EarthJustice, EDF, Louisiana Environmental Action Network, Healthy Babies Bright Futures, Clean Water Action

---

# Microsoft Teams meeting

**Join on your computer or mobile app**
Click here to join the meeting
**Or call in (audio only)**
(b) (6) [redacted]
Phone Conference (b) (6) [redacted]
Find a local number | Reset PIN
By participating in EPA hosted virtual meetings and events, you are consenting to abide by the agency's terms of use. In addition, you acknowledge that content you post may be collected and used in support of FOIA and eDiscovery activities.
Learn More | Meeting options

---

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

| | |
|---|---|
| **From:** | Weaver, Susannah |
| **To:** | Clarke, Victoria |
| **Subject:** | RE: Recusal statement for review and CD Request Letter Draft |
| **Date:** | Friday, August 13, 2021 3:09:38 PM |
| **Attachments:** | 1. CD Employee Request Letter - Weaver - with digital signature.pdf |

---

Thanks! This one worked. Here you go.
Have a great weekend!

---

**From:** Clarke, Victoria <clarke.victoria@epa.gov>
**Sent:** Friday, August 13, 2021 2:44 PM
**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Subject:** RE: Recusal statement for review and CD Request Letter Draft

Is there no digital signature block on that CD request letter? Let's see if this one works – I must have saved it before adding the signature block.
Thank you for signing and distributing your recusal statement, too!

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel | Ethics Office
Washington, D.C. |7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

---

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Friday, August 13, 2021 2:36 PM
**To:** Clarke, Victoria <clarke.victoria@epa.gov>
**Subject:** RE: Recusal statement for review and CD Request Letter Draft

Thanks Victoria. I sent out the signed recusal statement and forwarded the email from (b) (6) I can't figure how to sign the CD letter, though—there doesn't seem to be a spot that permits me to do it.
I'm fine to deal with the CD next week. I hope you have a great weekend!

---

**From:** Clarke, Victoria <clarke.victoria@epa.gov>
**Sent:** Friday, August 13, 2021 11:43 AM
**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Subject:** RE: Recusal statement for review and CD Request Letter Draft

Hi Susannah!

- I've moved the signature block up for you in your recusal statement. Sign and distribute away!
- I have the prepared CD request letter. Go ahead and sign this when you forward your husband's email to me.

I'm also still looking at the (b) (6) [redacted]. I haven't forgotten about that task and will get my initial thoughts on it to you.
Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel | Ethics Office
Washington, D.C. |7348 WJCN

EPA Office: 202-564-1149
EPA Cell: 202-336-9101

---

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Thursday, August 12, 2021 5:50 PM
**To:** Clarke, Victoria <clarke.victoria@epa.gov>
**Subject:** RE: Recusal statement for review and CD Request Letter Draft

Hi Victoria,

Thanks for these. The CD looks fine. My husband's name is (b) (6) [redacted] and I will have him email me and forward that email to you.

For the recusal letter, am I supposed to digitally sign next to Melissa's name? That's where I'm seeing an option to do it.

Thanks,

Susannah

---

**From:** Clarke, Victoria <clarke.victoria@epa.gov>
**Sent:** Wednesday, August 11, 2021 12:22 PM
**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Subject:** Recusal statement for review and CD Request Letter Draft

Hi Susannah!

A couple of items for you from me today!

Recusal:

- Attached to this email is your recusal, which is ready for your digital signature. Please sign it and make sure that it gets distributed to everyone in the CC at the bottom of the recusal statement.

CD Request:

- I also have for you the draft "request" letter that will be a part of your CD package. It is a pretty standard and vanilla letter – not much for you to edit or change, though let me know if any of the facts are incorrect. I do need the (b) (6) [redacted]
- I will also need your spouse to send you an email, which you can then forward to me, which states the following:

  "(b) (6) [redacted]."
- I can then formalize the packet, have Justina give it a once over to make sure she concurs, and then I'll get the letter ready for your digital signature and will transmit everything to OGE.

Victoria

Victoria Clarke
Attorney-Advisor
U.S. Environmental Protection Agency
Office of General Counsel | Ethics Office
Washington, D.C. | 7348 WJCN
EPA Office: 202-564-1149
EPA Cell: 202-336-9101

**From:** Fugh, Justina
**To:** Weaver, Susannah
**Cc:** Clarke, Victoria
**Subject:** RE: UPDATED: outside activity determination, plus ethics reminder
**Date:** Tuesday, August 03, 2021 12:54:38 PM

---

Perfect, and THANKS! (b) (6) [redacted], but it was fun to see his name on the roster!
Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Tuesday, August 3, 2021 12:44 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Subject:** RE: UPDATED: outside activity determination, plus ethics reminder
Hi Justina,
Just wanted to confirm that my affiliation has been changed on the website:
https://www.law.georgetown.edu/alumni/alumni-leadership/board-of-visitors/members/
I'll be sure to connect with your cousin at the next meeting—small world!
Thanks,
Susannah

---

**From:** Fugh, Justina <Fugh.Justina@epa.gov>
**Sent:** Monday, August 2, 2021 5:46 PM
**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Subject:** RE: UPDATED: outside activity determination, plus ethics reminder
Thanks for the update and, as it happens, I had more than your outside activity request to deal with today. It's funny how ethics questions can run in cycles!
Happy Monday!
Justina

---

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Monday, August 2, 2021 5:21 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
**Subject:** Re: UPDATED: outside activity determination, plus ethics reminder
Dear Justina,
Thank you very much. I have contacted Georgetown and asked that my affiliation be changed. If I don't see it changed tomorrow, I will follow up. And I will let you know when it has been changed.
Best,
Susannah

On Aug 2, 2021, at 4:32 PM, Fugh, Justina <Fugh.Justina@epa.gov> wrote:

Sorry, having a bad day with typos. Here's the corrected approval for you, with cc's to the relevant people.

Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Fugh, Justina
**Sent:** Monday, August 2, 2021 4:09 PM
**To:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Cc:** Clarke, Victoria <clarke.victoria@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>
**Subject:** outside activity determination, plus ethics reminder

Hi Susannah,

Attached please find the approval of your outside activity to serve on the Board of Visitors for the Georgetown University Law Center, which contains a reminder about changing the GULC website. As I wrote to you earlier today, I noticed that the GULC board of visitors' website lists you solely reference to your EPA affiliation (see here). Please contact GULC immediately to have that identification changed. Because you serve in personal capacity, you cannot be referenced solely by your federal agency. Doing so is considered to be a misuse of position. You may instead be listed as "federal employee" or "personal capacity." Please confirm with me when the website has been changed.

Justina

Justina Fugh (she/her) | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

---

**From:** Weaver, Susannah <Weaver.Susannah@epa.gov>
**Sent:** Friday, July 30, 2021 12:49 PM
**To:** Fugh, Justina <Fugh.Justina@epa.gov>
**Cc:** Clarke, Victoria <clarke.victoria@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>
**Subject:** request for approval to remain on the Georgetown Law Board of Visitors

Hi Justina,

I understand that I need to get approval to remain on the Georgetown University Law Center's Board of Visitors pursuant to 5 C.F.R. 6401.103. Please consider this my request. Here is the required information:

**(1)** Employee's name, title and grade

Susannah Weaver, Senior Counselor at OGC, GS-15

**(2)** Nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected

I am currently a member of the Georgetown University Law Center's Board of Visitors. The Board provides counsel to the Dean of the Law Center, with a particular focus on: (a) strengthening the academic goals of the Law Center and improving its visibility, both

nationally and internationally; (b) addressing the concerns of alumni, students, faculty, parents, and friends of the Law Center; and (c) increasing and strengthening the financial resources of the Law Center. We typically have two meetings each year, which have been conducted remotely since spring 2020. I am not compensated for this role.
**(3)** The name and business of the person or organization for which the work will be done (in cases of self-employment, indicate the type of services to be rendered and estimate the number of clients or customers anticipated during the next 6 months)
Georgetown University Law Center
**(4)** The estimated time to be devoted to the activity
2-3 days per year.
**(5)** Whether the service will be performed entirely outside of normal duty hours (if not, estimate the number of hours of absence from work required)
I intend to use my annual leave to attend any meetings that occur during normal duty hours. I estimate that this would be no more than 2 days per year.
**(6)** The employee's statement that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment
I will not use any official duty time or Government property, resources, or facilities not available to the general public in connection with this role.
**(7)** The basis for compensation (e.g., fee, per diem, per annum, etc.)
There is no compensation. When we have in-person meetings, food is provided.
**(8)** The employee's statement that he or she has read, is familiar with, and will abide by the restrictions described in 5 CFR part 2635 and § 6401.102
I have read, am familiar with, and will abide by the restrictions described in 5 CFR part 2635 and § 6401.102.
**(9)** An identification of any EPA assistance agreements or contracts held by a person to or for whom services would be provided.
I am not aware of any EPA assistance agreements or contracts with the Georgetown University Law Center and did not find any on the EPA Active Contracts list (https://ofmpub.epa.gov/apex/activecontracts/f?p=123:2).
Please let me know if you need any additional information from me.
Thank you,
Susannah
Susannah Weaver
Senior Counselor
Environmental Protection Agency, Office of General Counsel
1200 Pennsylvania Ave. NW
Washington, DC 20460
(202) 564-1928 (office)
(202) 819-6517 (mobile)
<approval of outside activity - GULC typo corrected.pdf>

| | |
|---|---|
| **From:** | Weaver, Susannah |
| **To:** | Hoffer, Melissa; Chaudhary, Dimple; Engelman-Lado, Marianne; Payne, James (Jim); Packard, Elise; Conrad, Daniel; OGC HQ ADDs; Regional Counsels |
| **Cc:** | Clarke, Victoria |
| **Subject:** | Susannah Weaver recusal statement |
| **Date:** | Friday, August 13, 2021 2:34:53 PM |
| **Attachments:** | recusal - Susannah Weaver with digital signature (002).pdf |

---

Dear Melissa and all,

Please find attached my signed recusal statement. Let me know if you have any questions.

Best,

Susannah

Susannah Weaver

Senior Counselor

Environmental Protection Agency, Office of General Counsel

1200 Pennsylvania Ave. NW

Washington, DC 20460

(202) 564-1928 (office)

(202) 819-6517 (mobile)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

**MEMORANDUM**

SUBJECT: Recusal Statement

FROM: Susannah Weaver
Senior Counselor, Office of General Counsel

Susannah L. Weaver
Digitally signed by Susannah L. Weaver
Date: 2021.08.13 14:28:19 -04'00'

TO: Melissa Hoffer
Acting General Counsel

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed, as well as my own attorney bar obligations.

*OBLIGATIONS UNDER EXECUTIVE ORDER 13989*

Pursuant to Section 1, Paragraph 2 of Executive Order 13989, I understand that I am prohibited from participating in any particular matter involving specific parties in which a former employer or former client is a party or represents a party. Set forth in the charts below are my former employer and former clients identified in consultation with OGC/Ethics that have or may have environmental interests that could potentially arise with respect to my duties here at EPA.[1] I understand that my recusal with these entities will last for two years from the date that I joined federal service. This recusal will end on **June 27, 2023**.

| **Former Employer** | |
|---|---|
| Donahue, Goldberg, & Littleton, LLP | |
| **Former Clients** | |
| Adirondack Council | Google LLC |
| Advanced Micro Devices, Inc. | Hewlett Packard Enterprise Company |
| Amazon.com, Inc. | Public Health Law Center |
| Bates White LLC | SAP America, Inc. |
| Bloomberg L.P. | Square, Inc |
| Box, Inc. | Uber Technologies, Inc. |
| Environmental Defense Fund | Waymo, LLC |

[1] For any former client that is not listed, I understand that I am personally obliged not to participate in specific party matters involving that former client for the duration of my ethics obligations.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term "particular matters involving specific parties" is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term "open to all interested parties" means that the meeting should include a multiplicity of parties. If, for example, there is "a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client."[2] Should a question arise as to whether a specific forum qualifies as "open to all interested parties," then I will consult with OGC/Ethics.

*ATTORNEY BAR OBLIGATIONS*

In addition to the pledge restrictions involving my former employer and clients, I understand that I am bound by my bar rules and am obliged to protect the confidences of my former clients. I understand that I am restricted from switching sides in litigation in which I participated in or provided counsel or that is the same as or substantially related to the same specific party matter in which I previously participated personally and substantially, unless my bar provides for and I first obtain informed consent and coordinate with OGC/Ethics. Attached is a list of the cases in which I participated and from which I am recused for the entirety of my tenure at EPA.

*FINANCIAL CONFLICTS OF INTEREST*

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have been advised by OGC/Ethics that I have an imputed financial interest based on my position as a member of the Board of Visitors of Georgetown University Law Center. I have received approval from OGC/Ethics for my outside activity as a member of the Board of Visitors of Georgetown University Law Center, and I understand that the interests of the University are imputed to me under the financial conflict of interest statute. Therefore, I cannot participate personally and substantially in any particular matter that will have a direct and predictable effect on **Georgetown University** as a specific party or as a member of an affected class, unless I first obtain a written waiver.

---

[2] *See* Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

*Particular Matters Involving Specific Parties*

Given the value of my financial holdings, I am disqualified from participating personally and substantially in any particular matter that affects **SunRun** or **SolarEdge** as a specific party.

*Particular Matters of General Applicability*

I am also disqualified from participating personally and substantially in any particular matter of general applicability that is focused on the interests of any individual discrete and identifiable class of "persons" (identified as "sector" below). This prohibition extends to each class (or sector) individually. If a matter affects all sectors or if a particular matter affects a combination of sectors, including the one listed below, then I understand that I do not have a financial conflict of interest.

Based on my current level of financial ownership, I am disqualified from participating personally and substantially in any matter of general applicability that targets the **Semiconductors** sector.

*Certificate of Divestiture*

I intend to seek a certificate of divestiture and will update this recusal statement when my financial situation changes.

*DIRECTIVE AND CONCLUSION*

To avoid participating in any of the matters from which I am recused, please refer those matters to the attention of Jim Payne, Deputy General Counsel for Environmental Media and Regional Law Offices, without my knowledge or involvement. In the event that my circumstances change, e.g., my financial interests or my covered relationships, then I will consult with OGC/Ethics and update my recusal statement accordingly.

Attachment

cc: Dimple Chaudhary, Deputy General Counsel for Nationwide Resource Protection Programs
Marianne Engelman-Lado, Deputy General Counsel for Environmental Initiatives
Jim Payne, Deputy General Counsel for Environmental Media and Regional Law Offices
Elise Packard, Deputy General Counsel for Operations
OGC Associates and Directors
Regional Counsels
Daniel Conrad, Acting Associate Deputy General Counsel

Attachment

**LIST OF RECUSED CASES – Susannah Weaver**

| CASE NAME & CITATION | DESCRIPTION |
|---|---|
| *State of California v. EPA*, No. 21-1035 (and consolidated cases) (D.C. Cir.) | Challenge to Jan. 13, 2021 significant contribution rule |
| *Environmental Defense Fund v. EPA*, No. 4:21-cv-00003 (D. Mont.) | Challenge to Jan. 6, 2021 science transparency rule |
| *Environmental Defense Fund v. EPA*, No. 20-1360 (and consolidated cases) (D.C. Cir.) | Challenge to Sept. 15, 2020 rule to rule weakening emissions standards for volatile organic compounds from oil and gas sources |
| *State of California v. EPA*, No. 20-1357 (and consolidated cases) (D.C. Cir.) | Challenge to Sept. 14, 2020 rule to remove methane emissions standards and downstream standards for oil and gas sources |
| *Air Alliance Houston v. EPA,* No. 20-1268 (and consolidated cases) (D.C. Cir.) | Challenge to May 20, 2020 risk and technology review for air toxics from power plants |
| *American Academy of Pediatricians v. Wheeler*, No. 20-1221 (and consolidated cases) (D.C. Cir.) | Challenge to May 20, 2020 withdrawal of appropriate and necessary finding to regulate toxic pollution from power plants |
| *California v. EPA*, No. 19-17480 (9th Cir) | Suit for injunctive relief requiring the EPA to promulgate its federal landfill emissions plan |
| *Environmental Defense Fund v. EPA*, No. 19-1222 (and consolidated case) (D.C. Cir.) | Challenge to Aug. 26, 2019 rule to extend deadlines for implementing landfill emissions guidelines |
| *American Lung Ass'n v. EPA*, No. 19-1140 (and consolidated cases) (D.C. Cir.) | Challenge to July 8, 2019 rule rescinding the Clean Power Plan and promulgating the ACE rule |
| *State of Maryland v. EPA,* No. 18-1285 (and consolidated cases) (D.C. Cir.) | Challenge to Oct. 25, 2018 denial of section 126 petition |
| *State of California v. EPA*, No. 18-1139 (and consolidated cases) (D.C. Cir.) | Challenge to April 13, 2018 mid-term evaluation of vehicle emission standards |
| *State of California v. EPA*, 4:18-cv-03237 (N.D. Cal.) | Challenge to EPA's failure to fulfill its mandatory duty to implement landfill emission guidelines |
| *State of New York v. Pruitt*, No. 1:18-cv-00773 (D.D.C.) | Challenge to EPA's unreasonable delay in fulfilling its mandatory duty to issue oil and gas emission guidelines |
| *North Dakota v. EPA*, No. 17-1014 (and consolidated cases) (D.C. Cir.) | Challenge to denial of petition to reconsider CPP |
| *Chesapeake Bay Foundation v. Pruitt*, No. 1:17-cv-02939-JKB (and consolidated cases) (D. Md.). | Suit for injunctive relief regarding EPA's failure to take final action on petition filed by the Maryland Department of the Environment |
| *Truck Trailers Manufacturers Ass'n v. EPA*, No. 16-1430 (D.C. Cir.) | Challenge to Oct. 25, 2016 rule regulating, among other things, trailers |
| *NRDC v. EPA*, No. 16-1425 (D.C. Cir.) | Challenge to EPA's failure to regulate methane emissions in 2012 rule |
| *Nat'l Waste & Recycling Ass'n v. EPA*, Nos. 16-1371, 16-1372 (D.C. Cir.) | Challenge to Aug. 19, 2016 rule strengthening new source performance standards and emissions guidelines for landfills |
| *Murray Energy Corp. v. EPA*, No. 16-1127 (and consolidated cases) (D.C. Cir.) | Challenge to April 25, 2016 supplemental appropriate and necessary finding to regulate toxic pollution from power plants |
| *State of Wisconsin v. EPA*, No. 16-1406 (and consolidated cases) (D.C. Cir.) | Challenge to CASPR |
| *State of West Virginia v. EPA*, No. 15-1363 (and consolidated cases) (D.C. Cir.) | Challenge to Oct. 23, 2015 Clean Power Plan |
| *American Petroleum Inst. v. EPA*, No. 13-1108 (and consolidated cases) (D.C. Cir.) | Challenge to EPA's 2012-2016 rules regulating pollution from oil and gas sources |

| | |
|---|---|
| **From:** | Weaver, Susannah |
| **To:** | Hoffer, Melissa; Chaudhary, Dimple; Engelman-Lado, Marianne; Payne, James (Jim); Packard, Elise; Conrad, Daniel; OGC HQ ADDs; Regional Counsels |
| **Cc:** | Clarke, Victoria |
| **Subject:** | Susannah Weaver revised recusal statement |
| **Date:** | Monday, October 4, 2021 5:08:39 PM |
| **Attachments:** | recusal-Susannah Weaver revised signed.pdf |

Dear Melissa and all,

Please find attached my revised recusal statement. The only change is that I am no longer recused from matters affecting SunRun or SolarEdge, or the semiconductor industry more generally. Please let me know if you have any questions.

Thanks,
Susannah

---

**From:** Weaver, Susannah
**Sent:** Friday, August 13, 2021 2:35 PM
**To:** Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Engelman-Lado, Marianne <EngelmanLado.Marianne@epa.gov>; Payne, James (Jim) <payne.james@epa.gov>; Packard, Elise <Packard.Elise@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>; OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>; Regional Counsels <Regional_Counsels@epa.gov>
**Cc:** Clarke, Victoria <clarke.victoria@epa.gov>
**Subject:** Susannah Weaver recusal statement

Dear Melissa and all,

Please find attached my signed recusal statement. Let me know if you have any questions.

Best,

Susannah

Susannah Weaver
Senior Counselor
Environmental Protection Agency, Office of General Counsel
1200 Pennsylvania Ave. NW
Washington, DC 20460
(202) 564-1928 (office)
(202) 819-6517 (mobile)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

**MEMORANDUM**

SUBJECT: Revised Recusal Statement

FROM: Susannah Weaver
Senior Counselor

Susannah Weaver
Digitally signed by Susannah Weaver
Date: 2021.10.04 16:40:51 -04'00'

TO: Melissa Hoffer
Acting General Counsel

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This recusal statement supersedes the one I had previously issued August 13, 2021 and formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed, as well as my own attorney bar obligations.

*OBLIGATIONS UNDER EXECUTIVE ORDER 13989*

Pursuant to Section 1, Paragraph 2 of Executive Order 13989, I understand that I am prohibited from participating in any particular matter involving specific parties in which a former employer or former client is a party or represents a party. Set forth in the charts below are my former employer and former clients identified in consultation with OGC/Ethics that have or may have environmental interests that could potentially arise with respect to my duties here at EPA.[1] I understand that my recusal with these entities will last for two years from the date that I joined federal service. This recusal will end on **June 27, 2023**.

| **Former Employer** | |
|---|---|
| Donahue, Goldberg, & Littleton, LLP | |
| **Former Clients** | |
| Adirondack Council | Google LLC |
| Advanced Micro Devices, Inc. | Hewlett Packard Enterprise Company |
| Amazon.com, Inc. | Public Health Law Center |
| Bates White LLC | SAP America, Inc. |
| Bloomberg L.P. | Square, Inc |
| Box, Inc. | Uber Technologies, Inc. |
| Environmental Defense Fund | Waymo, LLC |

[1] For any former client that is not listed, I understand that I am personally obliged not to participate in specific party matters involving that former client for the duration of my ethics obligations.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term "particular matters involving specific parties" is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term "open to all interested parties" means that the meeting should include a multiplicity of parties. If, for example, there is "a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client."[2] Should a question arise as to whether a specific forum qualifies as "open to all interested parties," then I will consult with OGC/Ethics.

*ATTORNEY BAR OBLIGATIONS*

In addition to the pledge restrictions involving my former employer and clients, I understand that I am bound by my bar rules and am obliged to protect the confidences of my former clients. I understand that I am restricted from switching sides in litigation in which I participated in or provided counsel or that is the same as or substantially related to the same specific party matter in which I previously participated personally and substantially, unless my bar provides for and I first obtain informed consent and coordinate with OGC/Ethics. Attached is a list of the cases in which I previously participated and from which I am recused for the entirety of my tenure at EPA.

*FINANCIAL CONFLICTS OF INTEREST*

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have been advised by OGC/Ethics that I have an imputed financial interest based on my position as a member of the Board of Visitors of Georgetown University Law Center. I have received approval from OGC/Ethics for my outside activity as a member of the Board of Visitors of Georgetown University Law Center, and I understand that the interests of the University are imputed to me under the financial conflict of interest statute. Therefore, I cannot participate personally and substantially in any particular matter that will have a direct and predictable effect on **Georgetown University** as a specific party or as a member of an affected class, unless I first obtain a written waiver.

---

[2] *See* Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

*DIRECTIVE AND CONCLUSION*

To avoid participating in any of the matters from which I am recused, please refer those matters to the attention of Jim Payne, Deputy General Counsel for Environmental Media and Regional Law Offices, without my knowledge or involvement. In the event that my circumstances change, e.g., my financial interests or my covered relationships, then I will consult with OGC/Ethics and update my recusal statement accordingly.

Attachment

cc: Dimple Chaudhary, Deputy General Counsel for Nationwide Resource Protection Programs
Marianne Engelman-Lado, Deputy General Counsel for Environmental Initiatives
Jim Payne, Deputy General Counsel for Environmental Media and Regional Law Offices
Elise Packard, Deputy General Counsel for Operations
OGC Associates and Directors
Regional Counsels
Daniel Conrad, Acting Associate Deputy General Counsel

Attachment

**LIST OF RECUSED CASES – Susannah Weaver**

| CASE NAME & CITATION | DESCRIPTION |
|---|---|
| *State of California v. EPA*, No. 21-1035 (and consolidated cases) (D.C. Cir.) | Challenge to Jan. 13, 2021 significant contribution rule |
| *Environmental Defense Fund v. EPA*, No. 4:21-cv-00003 (D. Mont.) | Challenge to Jan. 6, 2021 science transparency rule |
| *Environmental Defense Fund v. EPA*, No. 20-1360 (and consolidated cases) (D.C. Cir.) | Challenge to Sept. 15, 2020 rule to rule weakening emissions standards for volatile organic compounds from oil and gas sources |
| *State of California v. EPA*, No. 20-1357 (and consolidated cases) (D.C. Cir.) | Challenge to Sept. 14, 2020 rule to remove methane emissions standards and downstream standards for oil and gas sources |
| *Air Alliance Houston v. EPA,* No. 20-1268 (and consolidated cases) (D.C. Cir.) | Challenge to May 20, 2020 risk and technology review for air toxics from power plants |
| *American Academy of Pediatricians v. Wheeler*, No. 20-1221 (and consolidated cases) (D.C. Cir.) | Challenge to May 20, 2020 withdrawal of appropriate and necessary finding to regulate toxic pollution from power plants |
| *California v. EPA*, No. 19-17480 (9th Cir) | Suit for injunctive relief requiring the EPA to promulgate its federal landfill emissions plan |
| *Environmental Defense Fund v. EPA*, No. 19-1222 (and consolidated case) (D.C. Cir.) | Challenge to Aug. 26, 2019 rule to extend deadlines for implementing landfill emissions guidelines |
| *American Lung Ass'n v. EPA*, No. 19-1140 (and consolidated cases) (D.C. Cir.) | Challenge to July 8, 2019 rule rescinding the Clean Power Plan and promulgating the ACE rule |
| *State of Maryland v. EPA,* No. 18-1285 (and consolidated cases) (D.C. Cir.) | Challenge to Oct. 25, 2018 denial of section 126 petition |
| *State of California v. EPA*, No. 18-1139 (and consolidated cases) (D.C. Cir.) | Challenge to April 13, 2018 mid-term evaluation of vehicle emission standards |
| *State of California v. EPA*, 4:18-cv-03237 (N.D. Cal.) | Challenge to EPA's failure to fulfill its mandatory duty to implement landfill emission guidelines |
| *State of New York v. Pruitt*, No. 1:18-cv-00773 (D.D.C.) | Challenge to EPA's unreasonable delay in fulfilling its mandatory duty to issue oil and gas emission guidelines |
| *North Dakota v. EPA*, No. 17-1014 (and consolidated cases) (D.C. Cir.) | Challenge to denial of petition to reconsider CPP |
| *Chesapeake Bay Foundation v. Pruitt*, No. 1:17-cv-02939-JKB (and consolidated cases) (D. Md.). | Suit for injunctive relief regarding EPA's failure to take final action on petition filed by the Maryland Department of the Environment |
| *Truck Trailers Manufacturers Ass'n v. EPA*, No. 16-1430 (D.C. Cir.) | Challenge to Oct. 25, 2016 rule regulating, among other things, trailers |
| *NRDC v. EPA*, No. 16-1425 (D.C. Cir.) | Challenge to EPA's failure to regulate methane emissions in 2012 rule |
| *Nat'l Waste & Recycling Ass'n v. EPA*, Nos. 16-1371, 16-1372 (D.C. Cir.) | Challenge to Aug. 19, 2016 rule strengthening new source performance standards and emissions guidelines for landfills |
| *Murray Energy Corp. v. EPA*, No. 16-1127 (and consolidated cases) (D.C. Cir.) | Challenge to April 25, 2016 supplemental appropriate and necessary finding to regulate toxic pollution from power plants |
| *State of Wisconsin v. EPA*, No. 16-1406 (and consolidated cases) (D.C. Cir.) | Challenge to CASPR |
| *State of West Virginia v. EPA*, No. 15-1363 (and consolidated cases) (D.C. Cir.) | Challenge to Oct. 23, 2015 Clean Power Plan |
| *American Petroleum Inst. v. EPA*, No. 13-1108 (and consolidated cases) (D.C. Cir.) | Challenge to EPA's 2012-2016 rules regulating pollution from oil and gas sources |