UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

March 1, 2021

OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: **Recusal Statement**

FROM: Tomás Elías Carbonell
Deputy Assistant Administrator for Stationary Sources

TO: Joseph Goffman
Acting Assistant 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 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, **Environmental Defense Fund**, is a party or represents a party. Under the terms of the Ethics Pledge, this recusal lasts for two years from the date that I joined federal service, or until January 20, 2023.

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 ethics rules, I understand that I have a covered relationship and a one-year cooling off period with any organization in which I was an active participant. Therefore, I am prohibited from participating personally and substantially in any particular matter involving specific parties in which the **Institute for Policy Integrity** (NYU School of Law) 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 lasts for one year after my resignation from this organization.

I have an uncompensated adjunct faculty position with Howard University School of Law, but I am not currently teaching. In the event that I decide to teach in the future, I will consult with OGC/Ethics as appropriate. Thus, I am also prohibited from participating personally and substantially in any particular matter involving specific parties in which the **Howard University School of Law** 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).

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 personally and substantially, unless my bar provides for and I first obtain informed consent and notify OGC/Ethics. Thus, I will not participate in the following matters:

CASE NAME:	CITATION:
State of California v. EPA	No. 4:18-cv-03237-HSG (N.D. Cal.)
Nat'l Waste and Recycling Assoc., *et al.* v. EPA, *et al.*	No. 16-1372 (D.C. Cir.)
Nat'l Waste and Recycling Assoc., *et al.* v. EPA, *et al.*	No. 16-1371 (D.C. Cir.)
Environmental Defense Fund v. EPA	No. 19-1222 (D.C. Cir.)
Gas Processors Association v. EPA	No. 15-1473 (D.C. Cir.)
American Petroleum Institute v. EPA	No. 15-1020 (D.C. Cir.)
American Petroleum Institute v. EPA	No. 13-1108 (D.C. Cir.)

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).

American Petroleum Institute v. EPA	No. 12-1405 (D.C. Cir.)
Natural Resources Defense Council, *et al*. v. EPA, *et al*.	No. 12-1409 (D.C. Cir.)
Natural Resources Defense Council, *et al*. v. EPA	No. 16-1425 (D.C. Cir.)
American Lung Association v. EPA	No. 19-1140 (D.C. Cir.)
Biogenic CO2 Coalition v. EPA, *et al*.	No. 15-1480 (D.C. Cir.)
State of North Dakota v. EPA	No. 15-1381 (D.C. Cir.)
Air Alliance Houston v. EPA	No. 20-1268 (D.C. Cir.)
Westmoreland Mining Holdings v. EPA	No. 20-1160 (D.C. Cir.)
American Academy of Pediatrics v. Wheeler	No. 20-1221 (D.C. Cir.)
Chesapeake Bay Foundation v. EPA	No. 13-1200 (D.C. Cir.)
Environmental Defense Fund, *et al*. v. EPA	No. 4:21-cv-00003-BMM-JTJ (D. Mont.)
California Communities Against Toxics, *et al*. v. EPA	No. 21-1024 (D.C. Cir.)

SCREENING ARRANGEMENT

In order to ensure that I do not participate in particular matters from which I am recused, I have asked the Chief of Staff, Ann Ferrio, to assist in screening EPA matters directed to my attention. All inquiries and comments involving my recusals should be directed to the Chief of Staff without my knowledge or involvement.

If the Chief of Staff determines I am recused, then she will take action or refer it for action or assignment to another, without my knowledge or involvement. In the event that the Chief of Staff is unsure whether an issue is a particular matter from which I am recused, then she will consult with OGC/Ethics for a determination.

UPDATE AS NECESSARY

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes to my screening arrangement, I will provide a copy of the revised recusal statement to you and OGC/Ethics.

cc: Elizabeth Shaw, Deputy Assistant Administrator
Alejandra Nunez, Deputy Assistant Administrator for Mobile Sources
Eunjung Kim, Special Assistant
Justina Fugh, Director, Ethics Office

From: Griffo, Shannon
To: Carbonell, Tomas
Subject: RE: 278 submission
Date: Tuesday, February 09, 2021 8:48:00 AM

Hi Tomás,

Yes, we've received your OGE-278. It's sitting in my queue to review and on my to do list for this week! I'm glad you mentioned your withdrawal from IPI. I'll likely reflect that in your 278 since we haven't certified it yet. But before I make any changes/edits to your form, I will check in with you. So stay tuned and I'll circle back with questions shortly -

Speaking of IPI, I wanted to follow-up with your ethics obligations in regards to this entity. As we discussed, your role on IPI's Advisory Board (which did not involve any fiduciary duties) would not be considered a "former employer" for purposes of the Biden Ethics Pledge. However, you do have a "covered relationship" and a one-year cooling off period with any organization in which you were an active participant under the federal impartiality provisions. This means that you are prohibited from participating personally and substantially in any particular matter involving specific parties in which **IPI is a party or represents a party**, unless you are first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d). This recusal lasts for one year from your resignation. And I'll be sure to include this in your recusal statement as well.

I wanted to also note that the "authorization" mentioned above is known as an impartiality determination, and allows employees to participate in matters that might raise impartiality concerns when the Agency's interest outweighs any impartiality concern. OGC/Ethics considers various factors as laid out by the impartiality regulations when making such a determination. So if a specific party matter arises involving IPI, and the Agency determines that it has a compelling reason for your participation as an EPA official, you can consult with OGC/Ethics about the possibility of an impartiality determination.

Oh and I mentioned that we were working on a process flowchart to assist Associates/Screeners etc. moving forward. It's still in review, but here is what Justina had drafted and sent forward to Melissa and Dimple in OGC. Once we get a "finalized" version, I'll make sure you have a copy.

1. Review the list of cases from which Melissa and Dimple are recused
    a. If the case is on their list, then do not discuss with that principal
    b. If the case is not on their list, proceed to step 2.
2. Look to see if their former employer (Melissa = Massachusetts, Dimple = NRDC) is a party or intervenor
    a. If yes, then do not discuss with that principal

i. Please note that, for Melissa, OGC/Ethics will soon issue an impartiality determination to permit her to work on NEW specific party matters with Massachusetts but we haven't yet done so.

    b. If no, then you may discuss with that principal
3. If the former employer files an *amicus* brief, then
    a. Ascertain whether Melissa or Dimple worked on that brief.

i. If yes, then do not discuss
ii. If not, then:

1. Do not discuss that brief with Melissa until after January 20, 2022 (unless OGC/Ethics advises otherwise)
2. Do not discuss that brief with Dimple until after January 20, 2023

Thanks,
Shannon

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

From: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Sent: Monday, February 08, 2021 5:05 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: 278 submission

Hi Shannon, hope you had a good weekend!
I wanted to quickly check in and see if you have received my OGE-278, which I submitted last Wednesday. Also, an update based on our conversation last week – I recently informed IPI that I would be withdrawing from the institute's advisory board. On my next review of the 278 I can add a note to reflect that change in status. Thanks,
Tomás

From:	Carbonell, Tomas
To:	Nunez, Alejandra; Griffo, Shannon
Cc:	Campbell, Ann
Subject:	RE: Administrator"s meeting with environmental groups tomorrow
Date:	Thursday, April 29, 2021 6:31:04 PM

Thank you Ale and Shannon!

From: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Sent: Thursday, April 29, 2021 6:08 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>
Subject: RE: Administrator's meeting with environmental groups tomorrow

I should have copied Ann in this communication. My apologies.

From: Nunez, Alejandra
Sent: Thursday, April 29, 2021 5:55 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: RE: Administrator's meeting with environmental groups tomorrow

Thank you very much, Shannon. I just checked in with the OA about this. It does look like the meeting will cover matters of general applicability. The topics they want to discuss are clean energy and vehicles, at a very high level.
Many thanks for your guidance.

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Thursday, April 29, 2021 4:59 PM
To: Nunez, Alejandra <Nunez.Alejandra@epa.gov>
Cc: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: Re: Administrator's meeting with environmental groups tomorrow

Hi Ale,

I can't tell what the subject matter of the meeting is, but the topic is likely a matter of general applicability (rule or policy) or even broader "matters." And there are several participants representing diverse interests (organizations with distinct missions and various perspectives). So as long as it's not about a specific party matter, then yes, this meets the exception in the Ethics Pledge and you may both attend despite the presence of your former employers.

Thanks,
Shannon

Sent from my iPhone

On Apr 29, 2021, at 3:56 PM, Nunez, Alejandra <Nunez.Alejandra@epa.gov> wrote:

Hi Shannon,
I hope this message finds you well. Tomas and I (along with others) just received an invitation to join Administrator Regan tomorrow morning (11 AM) in a roundtable with the CEOs of several environmental organizations, which include our former employers. I believe we would be allowed to attend (per the rules we had discussed earlier), but still wanted to flag this for you.
Many thanks.
Ale (and Tomas)

List of NGO attendees:

- John Podesta, Center for American Progress – CAC Co-Chair
- Fred Krupp, Environmental Defense Fund – CAC Co-Chair
- Margie Alt, Climate Action Campaign – facilitates conversation
- Deb Brown, American Lung Association
- Collin O'Mara, National Wildlife Federation
- Peggy, Shepard, WE ACT for Environmental Justice
- Abbie Dillen, Earthjustice
- Wendy Wendlandt, Environment America
- Kathleen Welch, Corridor Partners
- Kathy Rest, Union of Concerned Scientists
- Mike Brune, Sierra Club
- Mitch Bernard, Natural Resources Defense Council

From: Carbonell, Tomas
To: Griffo, Shannon
Subject: RE: Draft Recusal Statement for your Review
Date: Tuesday, March 02, 2021 9:57:28 AM

Ok, thanks – I did share the draft with Ann to make sure she was comfortable with the screening provisions, but will share the final as well. Best,
Tomás

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Tuesday, March 2, 2021 9:29 AM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: RE: Draft Recusal Statement for your Review
Yes on all of those please. And Ann (if she already doesn't have a copy). I'll send it over to OGC/ARLO.
Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Sent: Tuesday, March 02, 2021 8:33 AM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Draft Recusal Statement for your Review
Got it, thanks. I will send it to Justina – assume I should send it to Joe, Ale, Betsy and Eunjung as well? Anyone else?

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Tuesday, March 2, 2021 8:26 AM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: RE: Draft Recusal Statement for your Review
Looks good. I went ahead and converted it so you can circulate a pdf copy. Thanks!
Shannon Griffo
Office of General Counsel, Ethics Office
U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Sent: Monday, March 01, 2021 8:37 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Draft Recusal Statement for your Review
Hi Shannon, hope you had a good weekend! Please find the signed copy attached – can you confirm that this format will work? Best,
Tomás

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Friday, February 26, 2021 9:35 AM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>

Subject: RE: Draft Recusal Statement for your Review

You can either hand sign at the top by your name (include a date) or insert a digital signature there. Whatever is easiest. Attached are instructions for eSignature, but I can also help if you run into any issues. Just make sure you've got OAR letterhead on the top as well!

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

From: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Sent: Friday, February 26, 2021 9:28 AM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Draft Recusal Statement for your Review

Thank you Shannon! I will confirm with Ann on our screening arrangement; otherwise this looks good to me. Will send a signed copy ASAP. Is there a specific format I need to use for the digital signature?

Best,
Tomás

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Thursday, February 25, 2021 4:23 PM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: Draft Recusal Statement for your Review

Hi Tomás,

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 moved your adjunct faculty position to the impartiality section. Since it's uncompensated, it wouldn't be a financial conflict of interest. Instead you'll have a "covered relationship" with the law school. I said you'd consult with OGC/Ethics if you decide to teach in the future – mainly because that'll mean you need to get outside activity approval pursuant to EPA's Supplemental Ethics Regulation. I also listed Ann as your screener because I think that's what you said indicated previously. But if that's changed, go ahead and revise that section.

Please review and let me know if you have any comments or concerns. Once the recusal is ready for signature, you'll want to put it on OAR letter head, then sign it. If you need assistance inserting a digital signature, just let me know. And once it's signed, please be sure to send Justina a copy.

Thanks,
Shannon

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

From: Griffo, Shannon
To: Carbonell, Tomas
Subject: RE: Ethics follow-up about your voicemail
Date: Monday, April 12, 2021 4:05:00 PM

Sounds good. Thanks for the update.

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

From: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Sent: Monday, April 12, 2021 3:00 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Ethics follow-up about your voicemail

Thanks Shannon – after I called you, I learned more about the meeting request and determined that it had to do with litigation in which EDF is a party. As a result, I've recused myself from the discussion. Best,

Tomás

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Monday, April 12, 2021 2:55 PM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: Ethics follow-up about your voicemail

Hi Tomás,

I got your voicemail but looks like I missed your window to chat. I was on leave earlier today and only working a few hours this afternoon. I've also got to sign off at 4:30. But I'll be available tomorrow with the exception of 10:30-12 and 3-4.

That being said, I'd need to take a closer look at the facts surrounding the meeting, invitation etc. We'd need to know what hat the attorneys would be wearing during the meeting - representative of your former employer or in their own air expert/firm capacity. But then do they have a history of speaking on behalf of both entities? The affiliation needs to be clear, and we'd need to know what capacity they would be participating.

Feel free to respond by email if it's easier, or you can give me a ring in the morning.

Thanks,
Shannon

Shannon Griffo
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U.S. Environmental Protection Agency
(202) 564-7061
Griffo.Shannon@epa.gov

From: Fugh, Justina
To: Carbonell, Tomas
Subject: RE: Ethics orientation
Date: Thursday, January 21, 2021 8:53:00 AM

Hi,
WELCOME! You're already scheduled for your initial ethics briefing today at 2pm, but we have more to discuss for sure! We need to work through your recusal issues under the new Biden Ethics Pledge and your bar restrictions. Can you talk this morning?
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: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Sent: Thursday, January 21, 2021 8:47 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Ethics orientation

Dear Justina,

Good morning! I just began my service at EPA yesterday afternoon, and am writing to see if we could schedule an ethics training discussion at your earliest convenience. Would you be available over the next couple of days?

Look forward to meeting you,

Tomás Carbonell

Sent from my iPhone

From:	Carbonell, Tomas
To:	Griffo, Shannon
Subject:	RE: Follow-up from OGC/Ethics
Date:	Monday, February 01, 2021 2:12:01 PM

Will do, thanks!

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Monday, February 1, 2021 12:07 PM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: RE: Follow-up from OGC/Ethics

Of course. You can let Thierry know that my calendar is up to date, and she can go ahead and send a scheduler.

Shannon Griffo
Office of General Counsel, Ethics Office
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(202) 564-7061
Griffo.Shannon@epa.gov

From: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Sent: Sunday, January 31, 2021 1:25 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Follow-up from OGC/Ethics

Dear Shannon,

Thank you very much for this detailed information and for reaching out to Shanika.

I'd really like to ask a few follow up questions regarding the topics you raised below particularly re IPI. Can we find 30 min to connect over the next few days? My staff assistant, Thierry Kabanda, can assist us in finding a convenient time if that would be helpful.

Thanks again and hope you had a good weekend,

Tomás

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Friday, January 29, 2021 4:38 PM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: Follow-up from OGC/Ethics

Hi Tomas,

I wanted to follow-up on a few things from our conversation earlier this week:

1. **CAAAC**: We reached out to Shanika Whitehurst to make sure she knew you had joined EPA. She said she'd check in with FACMD and work with you to make sure everything is taken care of and recognized.
2. **Howard University**: I believe Justina counseled you on outside positions, but if you end up teaching again, then you should seek prior outside activity approval. And I can help you with that process. In the meantime, for your 278, you should note that you're not currently teaching, but hold the position.
3. **IPI:** You currently serve on the Advisory Board (no fiduciary role), but you weren't sure if you could continue to serve on the Board. You'll recall Justina talked a lot during your new employee ethics training about personal capacity versus official capacity, and the importance of staying in the right lane. We should have another discussion to sort through this more, but

something to think about if you want to continue to serve on the Board - maybe you can find out if you could do this as part of your official duties? I noticed the website mentions the board is made up of "prominent leaders in government, business, and policy." Does anyone else serve in their official government capacity? But that is a question for management as to whether it can considered part of your official duties, consistent with your office's mission and workload. Not sure who would make that call – Dan Utech? You'd also need permission from NYU to serve in your official capacity. Below is a chart about personal versus official capacity, but let's chat more about this one:

PERSONAL CAPACITY (may need prior outside activity approval per EPA's supplemental regs)	**OFFICIAL CAPACITY** (up to management as to whether participation can be considered part of official duties, consistent with office mission and workload)
On own time, no reference at all to EPA position or title. Cannot use EPA email or phone for contact information. Cannot use subordinates.	Still can't vote or serve in a fiduciary role, but can use subordinates, email, EPA time.
Will have an impartiality issue and will not be able to work on any specific party matter that involves the entity.	No federal ethics issues with the entity, but may still have some "organizational" conflicts or appearance concerns with serving so closely with one organization over others.

4. **Pledge Question**: You asked about a certain matter that arose in your office in which your former employer had filed an objection/response in opposition. I've looked more into the matter you mentioned, and I want to make sure I gave you clear counsel and understood your question correctly.

   Pursuant to Paragraph 2 of the Biden Pledge, you cannot participate in any specific party matter in which EDF **is a party or represents a party** for two years. You also cannot attend any meeting nor have any communication with EDF unless the communication relates to a particular matter of general applicability and participation in the event is open to all interested parties. This recusal period on any specific party matter (e.g., litigation, contract, grants, speaking engagement) lasts until after January 20, 2023. Note that these ethical restrictions for purposes of the Ethics Pledge apply only to particular matters involving specific parties, not to particular matters of general applicability (e.g., most rulemakings) or even broader "matters" (climate change; GHG). And EDF needs to be a party to the specific party matter. So while you can ethically work on rulemakings or other matters where EDF is not a party, you are aware of your attorney bar obligations. And you shouldn't participate in any meetings, discussions or decisions that relate to any of the specific comments filed by your former employer, especially if you were involved with those comments/responses while at EDF. However, you could still work on the matter itself, so long as EDF isn't an actual party.

Well that's a lot for a Friday afternoon! Have a great weekend and we'll find a time to chat more next week.

Thanks,

Shannon

Shannon Griffo

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

From: Carbonell, Tomas
To: Griffo, Shannon
Subject: RE: Follow-up on your 278
Date: Tuesday, February 23, 2021 3:31:09 PM

Thank you Shannon!

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Tuesday, February 23, 2021 3:31 PM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: RE: Follow-up on your 278

Hi Tomás
Quick update on your recusal statement – I finished the draft but I'm waiting for Justina's feedback on one thing. As soon as I hear back from her, I'll send it your way for review.
Thanks
Shannon

Shannon Griffo
Office of General Counsel, Ethics Office
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Griffo.Shannon@epa.gov

From: Griffo, Shannon
Sent: Friday, February 19, 2021 3:34 PM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: RE: Follow-up on your 278

It ended up being a super short week for me given the holiday and winter weather (b) (6)). So no you haven't missed anything! But I should have it to you early next week. Apologies for the delay.
Thanks
Shannon

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

From: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Sent: Friday, February 19, 2021 2:49 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Follow-up on your 278

Hi Shannon, thanks again for all of your help with this process. I saw that my 278 was certified earlier this week. I wanted to make sure I haven't missed anything – have you already sent me a draft recusal statement? Best
Tomás

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Friday, February 12, 2021 11:54 AM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Subject: RE: Follow-up on your 278

Thanks for the additional clarification about note 1. So for Part 3 (Your Employment Agreements and Arrangements), filers need to report any future employment agreements, even if it's an "informal arrangement." We know that your intention is to withdraw from teaching, but it appears you haven't yet done so. That being the case, I do think you need to report the lingering arrangement in Part 3 and add a footnote. So this is what I propose
Part 1: Keep the Outside Position and footnote as you had it. "Uncompensated adjunct faculty position. Last taught a class in Fall 2020. Not currently teaching at the time of this filing."
Part 3: Add "Howard University School of Law; Washington, District of Columbia; Arrangement with Howard University School of Law to teach." And in the footnote we'd put the same thing again: "Uncompensated adjunct faculty position. Last taught a class in Fall 2020. Not currently teaching at the time of this filing." I just need to know the date that your arrangement to be adjunct faculty began with Howard. Month and year please.
Reporting aside, the focus now is how do we address your conflict with Howard in your recusal statement. If it's a "former employer" under the Ethics Pledge, then you have that two year cooling off period. But if you have an open ended arrangement, then you will have financial conflict of interest issues (18 U.S.C. § 208). Again, since you haven't notified Howard yet, I'm inclined to put Howard under your financial COI section. This means that you cannot work on any specific party matters that involve Howard as a specific party, nor can you work on particular matters of general applicability (e.g., a grant proposal to which all colleges might apply if Howard is an expected applicant).
Let me know if you agree with those reporting changes related to Howard. I'll also make those edits laid out below, including general names for IRAs and I'll switch all your bank accounts to "US domestic banking institution #1"....#2 etc. And next week I should be able to get you a draft recusal statement for your review!
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: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Sent: Friday, February 12, 2021 8:38 AM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: Follow-up on your 278

Hi Shannon, thank you! I'd be happy for you to enter these changes in on my behalf, these seem pretty straightforward (with the possible exception of note 1, please see below). Please see my notes / responses to each item below.

1.	3	Howard University School of Law - Washington, District of Columbia	(02/10/21, Griffo, Shannon) Revise endnote to explain no current "employment agreement/arrangement" in place with Howard - otherwise you'd have to report this as an employment arrangement in Part 3. "...Not currently teaching, and no arrangement to teach future course at the time of this filing." Hi Shannon, I want to make sure this is an accurate statement. Before I came to EPA, Howard had anticipated I would be co-teaching the environmental externship course again in Fall 2021 – although there is no formal agreement in place as far as I can recall (the only contract I have with Howard covered Fall 2020). I was in touch with Howard and my fellow course instructor this week about my plans, and I'm almost certain I will withdraw from teaching this fall given the demands of my schedule (I plan to remain as a listed member of the adjunct faculty, assuming Howard and EPA are fine with this). However, I have not given formal notice about my plans for this fall. Can you please offer guidance on how to reflect this in the 278?
1.	4	Institute for Policy Integrity, New York University School of Law - New York City, New York	(02/10/21, Griffo, Shannon) Confirm resignation then change end date to 2/2021. Sounds good.
2.	5	(b) (6) IRA	(02/10/21, Griffo, Shannon) You don't need to report names of IRAs. You can overreport this if you want, or label them as IRA #1, IRA #2, IRA #3 and #4 (for spouse's two IRAs). Thank you for flagging. I would prefer to use the more generic labels for our IRAs, as you suggest.
4.	1	Environmental Defense Fund	(02/10/21, Griffo, Shannon) Even if two different positions, you can combine this into one entry here. Also need to add a brief description of duties. This can be very simple, such as "provided legal and counseling services." Thank you. Totally fine to combine my two positions at EDF during the reporting period into one entry. I suggest this description: "Responsible for litigation, regulatory and policy advocacy, and legal and policy analysis and counsel"
6.	4	US bank Acct #2 (TC)	(02/10/21, Griffo, Shannon) Just noting that I changed to "US bank" - lowercase. Because apparently there is actually a bank called "US Bank." The other option is to say "US domestic banking institution." I would also remove the initials for #4 and 5 for privacy reasons. Also changed EIF to N/A. Thanks – "US domestic banking institution" seems less likely to cause confusion. Do I need to similarly change the label for my other bank account?
6.	6.13	(b) (6)	(02/10/21, Griffo, Shannon) Is that the correct value? If so, it appears to be under the reporting threshold unless you received more than $200 in income? Delete? I checked this account again and it has barely enough in it to cover a lunch at a DC food truck – fine to delete
6.	6.15	(b) (6) CDs	(02/10/21, Griffo, Shannon) I would shroud the bank name here and say "US domestic banking institution" or "US bank." And recommend deleting the endnote. Sounds good – thanks!

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

From: Fugh, Justina
To: Carbonell, Tomas
Cc: Clarke, Victoria; Griffo, Shannon
Subject: RE: List of conflicts
Date: Monday, January 25, 2021 4:48:00 PM
Attachments: List of Cases for Recusal.docx

Hi,

Thanks! I'm letting you know that, in the division of labor, I've asked Shannon Griffo to be your ethics point of contact. She was on vacation the week that Victoria and I spoke to you but, like Victoria, she's extremely capable and organized. My task as a supervisor is really to just get out of my staff's way as they are all superb. Shannon can also help you with your public financial disclosure report if you run into questions.

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: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Sent: Monday, January 25, 2021 3:17 PM
To: Clarke, Victoria <clarke.victoria@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
Subject: List of conflicts

Hi Justina and Victoria,

Hope you had a good weekend! As requested in our meeting last week, please find attached a list of cases in which I was personally and substantially involved while at EDF and which I must recuse myself from in order to avoid conflicts of interest. I'd be happy to discuss if you have any questions or need further information. Please note that this list does not include other specific party matters involving EDF where I must recuse myself in order to comply with impartiality requirements and/or the Biden ethics pledge.

Thanks!

Tomás

Tomás Carbonell – List of Cases for Recusal (Conflicts of Interest)

Case	Court	EDF Role
State of California. v. EPA, 4:18-cv-03237-HSG	NDCal	Plaintiff Intervenor
Nat'l Waste and Recycling Assoc. et al v EPA, et al, 16-1372	DC Cir	Resp Intervenor (for EPA)
Nat'l Waste and Recycling Assoc. et al v EPA et al, 16-1371	DC Cir	Resp Intervenor (for EPA)
Environmental Defense Fund v EPA, 19-1222	DC Cir	Petitioner
Gas Processors Association v EPA, 15-1473	DC Cir	Resp Intervenor (for EPA)
American Petroleum Institute v EPA, 15-1020	DC Cir.	Resp Intervenor (for EPA)
American Petroleum Institute v EPA, 13-1108	DC Cir.	Petitioner & Resp Intervenor
American Petroleum Institute v EPA, 12-1405	DC Cir.	Resp Intervenor
Natural Resources Defense Council et al v EPA, et al, 12-1409	DC Cir.	Petitioner
Natural Resources Defense Council et al v EPA, 16-1425	DC Cir.	Petitioner
American Lung Association v EPA, 19-1140	DC Cir	Petitioner

Biogenic CO2 Coalition v EPA, et al, 15-1480	DC Cir	Respondent Intervenor
State of North Dakota v. EPA, 15-1381	DC Cir	Respondent Intervenor
Air Alliance Houston v EPA, 20-1268	DC Cir	Peitioner
Westmoreland Mining Holdings v EPA, 20-1160	DC Cir	Respondent Intervenor
American Academy of Pediatrics v. Wheeler, 20-1221	DC Cir	Petitioner
Chesapeake Bay Foundation v. EPA, 13-1200	DC Cir	Respondent Intervenor
Environmental Defense Fund et al. v. EPA, 4:21-cv-00003-BMM-JTJ	D. Mont.	Petitioner
California Communities Against Toxics et al v. EPA, 21-1024	DC Cir	Petitioner

From: Fugh, Justina
To: Carbonell, Tomas
Cc: Clarke, Victoria; Griffo, Shannon
Subject: RE: List of conflicts
Date: Monday, January 25, 2021 9:55:00 PM

Hi,

I'm not a drinker, but I hear that a glass of wine and a sense of humor help. Seriously, if you run into trouble, check out the user's guide (there's a left hand menu bar and the magic word is "help") or send us an email. We can peek at your progress before you even submit the 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: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Sent: Monday, January 25, 2021 5:22 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: List of conflicts

Excellent! Great to meet you, Shannon. Please let me know if you need anything else on the conflicts front.

I received the invitation to Integrity and expect I'll be spending a very fun weekend exploring it Best, Tomás

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From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, January 25, 2021 4:49 PM
To: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Cc: Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: RE: List of conflicts

Hi,

Thanks! I'm letting you know that, in the division of labor, I've asked Shannon Griffo to be your ethics point of contact. She was on vacation the week that Victoria and I spoke to you but, like Victoria, she's extremely capable and organized. My task as a supervisor is really to just get out of my staff's way as they are all superb. Shannon can also help you with your public financial disclosure report if you run into questions.

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: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Sent: Monday, January 25, 2021 3:17 PM
To: Clarke, Victoria <clarke.victoria@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
Subject: List of conflicts

Hi Justina and Victoria,
Hope you had a good weekend! As requested in our meeting last week, please find attached a list of cases in which I was personally and substantially involved while at EDF and which I must recuse myself from in order to avoid conflicts of interest. I'd be happy to discuss if you have any questions or need further information. Please note that this list does not include other specific party matters involving EDF where I must recuse myself in order to comply with impartiality requirements and/or the Biden ethics pledge.
Thanks!
Tomás

From: Fugh, Justina
To: Carbonell, Tomas
Cc: Griffo, Shannon
Subject: RE: Recusal statement
Date: Tuesday, March 02, 2021 1:19:00 PM

Thanks, Tomás! Shannon reports that you are an exceptional client, so that makes our work easier!

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: Carbonell, Tomas <Carbonell.Tomas@epa.gov>
Sent: Tuesday, March 02, 2021 10:25 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: Recusal statement

Hi Justina,

Hope you are doing well. With great thanks to Shannon for her help in crafting this, please find attached my signed recusal statement. Best,

Tomás

From: Carbonell, Tomas
To: ethics
Subject: Signed ethics pledge - Tomas Carbonell
Date: Saturday, January 23, 2021 9:14:50 PM
Attachments: Biden Ethics Pledge for digital signature (002).pdf

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Please find attached my signed ethics pledge. Thanks!
Tomás

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.

Carbonell, Tomas Digitally signed by Carbonell, Tomas
Date: 2021.01.23 20:45:13 -05'00'

_____ _____, 20_____

Signature Date

Name (Type or Print): _____

From:	Fugh, Justina
To:	Arroyo, Victoria; Carbonell, Tomas; Cassady, Alison; Chaudhary, Dimple; Fine, Philip; Harris, Sincere; Hoffer, Melissa; Katims, Casey; Lucey, John; Utech, Dan
Subject:	Welcome (really) to the wonderful world of public financial disclosure reporting!
Date:	Monday, January 25, 2021 12:58:00 AM
Attachments:	Advisory - 278 and 278T reporting obligations January 2021 digitally signed.pdf reporting periods for 278s.docx When to Report Transactions on the OGE 278 and Part 7 - November 2020.docx

Hi there,

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 we'll 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 2/19/21. 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

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

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 Report on the OGE 278-T?	Annual and/or Termination Report 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.

The reporting periods for the OGE Form 278e vary depending on the type of report being filed.

Part	Report Information for the Following Period…			
	Nominee, New Entrant, and Candidate	**Annual**	**Termination**	**Annual / Termination**
1. Filer's Positions Held Outside United States Government	Preceding Two Calendar Years to Filing Date	Preceding Calendar Year to Filing Date	Current Calendar Year to Term Date (in addition, the preceding calendar year if an Annual report for that year is required but has not yet been filed)	Preceding Calendar Year to Term Date
2. Filer's Employment Assets & Income and Retirement Accounts	Preceding Calendar Year to Filing Date[1]	Preceding Calendar Year	Same as Part 1	Same as Part 1
3. Filer's Employment Agreements and Arrangements	As of Filing Date	Preceding Calendar Year to Filing Date	Same as Part 1	Same as Part 1
4. Filer's Sources of Compensation Exceeding $5,000 in a Year	Preceding Two Calendar Years to Filing Date (n/a for Candidates)	N/A – Leave this Part blank	N/A – Leave this Part blank	N/A – Leave this Part blank
5. Spouse's Employment Assets & Income and Retirement Accounts	Preceding Calendar Year to Filing Date[1]	Preceding Calendar Year	Same as Part 1	Same as Part 1
6. Other Assets and Income	Preceding Calendar Year to Filing Date[1]	Preceding Calendar Year	Same as Part 1	Same as Part 1
7. Transactions	N/A – Leave this Part blank	Preceding Calendar Year[2]	Same as Part 1[2]	Same as Part 1[2]
8. Liabilities	Preceding Calendar Year to Filing Date[1]	Preceding Calendar Year	Same as Part 1	Same as Part 1
9. Gifts and Travel Reimbursements	N/A – Leave this Part blank	Preceding Calendar Year[3]	Same as Part 1[3]	Same as Part 1[3]

1. For example, if today is March 3, 2019, the reporting period would run from January 1, 2018, to March 3, 2019. When valuing assets and liabilities, the filer may choose any date that is fewer than 31 days before the filing date.
2. Filers do not need to include any period when they were not a public financial disclosure filer or an employee of the United States Government.
3. Filers do not need to include any period when they were not an employee of the United States Government.

Extensions Do Not Change the Reporting Period
The reporting period is tied to a report's original due date and is unaffected by any extensions. For example, a New Entrant report was originally due December 14, 2019. The filer received a 30-day extension and filed January 8, 2020. The Part 2 reporting period would start on January 1, 2018, and end on December 14, 2019.

From:	Fugh, Justina
To:	Harris, Sincere; Utech, Dan; Cassady, Alison; Hoffer, Melissa; Hamilton, Lindsay; Chaudhary, Dimple; Adhar, Radha; Fox, Radhika; Enobakhare, Rosemary; Fine, Philip; Katims, Casey; Arroyo, Victoria; Lucey, John; Goffman, Joseph; Carbonell, Tomas
Cc:	OGC Ethics; Payne, James (Jim)
Subject:	your ethics obligations ... briefing materials, references and the pledge
Date:	Friday, January 22, 2021 2:04:00 PM
Attachments:	Biden Ethics Pledge for digital signature.pdf Ethics Briefing Packet for Political Appointees.pdf

Hi there,

Thank you all for attending your initial ethics briefing on Thursday, January 21, 2021. All of us in OGC/Ethics appreciate your attentiveness and interest. Attached is the briefing material we promised you that includes information about your transaction reporting obligations, the form to use for notification of negotiation for non-federal employment, a handy Hatch Act chart, and a one-pager on embedding ethics in your calendaring process. The packet also includes a pdf of the Biden Executive Order on "Ethic Commitments" for your reference. And I have attached separately the Biden Ethics Pledge for you to sign digitally and return to ethics@epa.gov.

So what about your financial disclosure report? Well, I'm not ready for you to work on that if you haven't yet started. I need to set up new accounts for you using your EPA email addresses, then will send you a new email with instructions. I know that some of you already started your reports that were assigned to your personal email address, which is fine. That information is saved and will be transferred over to your new accounts under your EPA email addresses. Try to find something to occupy your time over the next day or so (ha!), and then you can spend a leisurely and frustrating time with the public financial disclosure report a bit later, once you get the email from me. Each of you will have a contact on the OGC/Ethics team to help you navigate your form and any ethics concerns you may have. Our contact information is included on the first page of your briefing material. We are all always just a call or an email away.

Happy Friday!

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

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): _____

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

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 Report on the OGE 278-T?	Annual and/or Termination Report 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 Ethic 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.

From: Griffo Shannon
To: Fugh Justina
Subject: RE: 278 follow-up question
Date: Friday February 12 2021 10:40:00 AM

Agreed (b) (5), (b) (6) [redacted]

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: Friday February 12 2021 10 31 AM
To: Griffo Shannon <Griffo.Shannon@epa.gov>
Subject: RE 278 follow-up question

Hi

(b) (6), (b) (5) [redacted]

Justina

From: Griffo Shannon <Griffo.Shannon@epa.gov>
Sent: Friday February 12 2021 9 25 AM
To: Fugh Justina <Fugh.Justina@epa.gov>
Subject: 278 follow-up question

I m close to certifying Tomás' 278. We just have one outstanding question to resolve. Below is my comment and his response. (b) (6), (b) (5) [redacted]

I d appreciate your thoughts since we talked about it earlier this week. Thanks!

1.	3	Howard University School of Law - Washington District of Columbia	(02/10/21, Griffo, Shannon) Revise endnote to explain no current "employment agreement/arrangement" in place with Howard - otherwise you'd have to report this as an employment arrangement in Part 3. "...Not currently teaching, and no arrangement to teach future course at the time of this filing." Hi Shannon I want to make sure this is an accurate statement. Before I came to EPA Howard had anticipated I would be co-teaching the environmental externship course again in Fall 2021 – although there is no formal agreement in place as far as I can recall (the only contract I have with Howard covered Fall 2020). I was in touch with Howard and my fellow course instructor this week about my plans and I m almost certain I will withdraw from teaching this fall given the demands of my schedule (I plan to remain as a listed member of the adjunct faculty assuming Howard and EPA are fine with this). However I have not given formal notice about my plans for this fall. Can you please offer guidance on how to reflect this in the 278?

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

From: Griffo, Shannon
To: Schramm, Daniel
Subject: RE: Recusal question re Tomas Carbonell
Date: Monday, April 19, 2021 1:19:00 PM

Hi Dan,

I have availability between 3-4:30 today. Just let me know what time works best for you.

Thanks!
Shannon

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

From: Schramm, Daniel <Schramm.Daniel@epa.gov>
Sent: Monday, April 19, 2021 1:00 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: Recusal question re Tomas Carbonell

Shannon – we were asked to check a potential recusal issue for Tomas Carbonell in OAR Immediate Office. Would you have a moment to touch base today? I have availability any time after 3 pm. Thank you!

Daniel Schramm
U.S. EPA Office of General Counsel
(202) 564-3377
schramm.daniel@epa.gov

I am an EPA LGBTQ+ Ally
Pronouns: He/Him/His

The contents of this message may be subject to the attorney-client, work-product, or deliberative process privileges.

From: Fugh, Justina
To: Griffo, Shannon
Subject: RE: Request for Ethics Screening for Tomas Carbonell
Date: Wednesday, April 28, 2021 4:17:40 PM

Hi,

I agree that (b) (5) [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: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Wednesday, April 28, 2021 3:06 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: FW: Request for Ethics Screening for Tomas Carbonell

(b) (5) [redacted]

[redacted] Agreed?

Shannon Griffo

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

From: Campbell, Ann <Campbell.Ann@epa.gov>
Sent: Wednesday, April 28, 2021 1:30 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Request for Ethics Screening for Tomas Carbonell

Good afternoon Shannon. We received the 2 attached meeting requests for Tomas. Both requests indicate that EDF will be participating in the discussions. In one instance EDF is one of 5 organizations expected to engage in the meeting. In the second, EDF is one of 24 organizations expected to participate in the discussion. Both meetings purport to discuss aspects of our regulations pertaining to the power sector. Please let me know if you need any additional information and if think it is ok for Tomas to participate in each of these meetings.

Thank you,

Ann (Campbell) Ferrio
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 566 1370

From: Fugh, Justina
To: Griffo, Shannon
Subject: RE: Tomas Carbonell follow-up
Date: Thursday, January 28, 2021 12:16:00 PM

(b) (5), (b) (6) [redacted]

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Thursday, January 28, 2021 12:05 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Tomas Carbonell follow-up

Yesterday Tomas and I had a long conversation. I know you spoke with him last week so I wanted to check in on 3 things that I said I'd follow-up on for him:

(b) (6), (b) (5) [redacted]

(b) (6), (b) (5) [redacted]

Feel free to give me a ring if it's easier to chat by phone!
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
To: Griffo, Shannon
Subject: FW: Tomas Carbonell
Date: Thursday, January 28, 2021 3:05:00 PM
Attachments: image001.jpg

FYI

From: Whitehurst, Shanika <whitehurst.shanika@epa gov>
Sent: Thursday, January 28, 2021 3:04 PM
To: Fugh, Justina <Fugh.Justina@epa gov>
Subject: RE: Tomas Carbonell

Hi Justina…

Let me check-in with FACMD. Either way I will work with him to make sure it is officially recognized.

Shanika

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, January 28, 2021 1:54 PM
To: Whitehurst, Shanika <whitehurst.shanika@epa gov>
Subject: Tomas Carbonell

Hi there,

My name is Justina Fugh, and I'm the director of EPA's Ethics Office. I just wanted to be sure that you noticed that Tomas Carbonell is now an EPA political appointee. See email from the Chief of Staff:

> **Tomás Elias Carbonell, Deputy Assistant Administrator for Stationary Sources, Office of Air and Radiation**
> Since 2012, Tomás Carbonell has held a number of positions at the Environmental Defense Fund (EDF), most recently as Senior Counsel and Director of Regulatory Policy for EDF's U.S. Clean Air program. His work included leading EDF's litigation and regulatory advocacy in defense of the Clean Power Plan and carbon pollution standards for new, modified and reconstructed power plants; defending Clean Air Act protections for hazardous air pollution from power plants and industrial sources; and advocacy in defense of EPA's use of rigorous health science and economic analysis. From 2008 until 2012, Tomás was an Associate at Van Ness Feldman, LLP, where he counseled diverse clients on federal legal and regulatory matters related to climate change, clean energy, and environmental and electricity regulation. He has a J.D. from Yale University, degrees in Environmental Change and Management and Development Economics from the University of Oxford, and bachelors' degrees in Chemical Engineering, Economics, and Multidisciplinary Studies from North Carolina State University.

I believe that he has been serving on an advisory committee group or workgroup for EPA's CAA Advisory Committee. He'll need to resign (or you can kick him off since he no longer fits whatever category you needed). Do you need a formal resignation letter from him?

Justina

Justina Fugh | Director, Eth cs Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Cl nton Federal Build ng | Wash ngton, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: MassMailer <massmailer@epa.gov>
Sent: Thursday, January 21, 2021 7:15 PM
To: MassMailer <massmailer@epa.gov>
Subject: Message from the Chief of Staff

Dear Colleagues,

First, allow me to introduce myself. I'm Dan Utech, and it is my privilege to join the EPA team as the incoming Chief of Staff.

As you know, President Biden has nominated Michael Regan, Secretary of the North Carolina Department of Environmental Quality, to be EPA Administrator. While we await Secretary Regan's confirmation, I am grateful that Jane Nishida will be serving as Acting Administrator for the agency, providing us with steady leadership.

Yesterday, President Biden signed an Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, which states that: "it is the policy of my Administration to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental jus ice and the creation of the well-paying union jobs necessary to deliver on these goals." EPA will be at the heart of this work, and we will be guided by science as we move to achieve these goals and address other threats to public health and the environment.

President Biden also signed an Executive Order On Advancing Racial Equity and Support for Underserved Communities Through The Federal Government. In addition to providing a framework for advancing equity, it revokes the EO 13950-Combating Race and Sex Stereotyping.

In the coming days and weeks, we will be building out our leadership team. At the end of this email, please find an updated list of current and acting leaders as well as a list of the incoming appointees who onboarded this week. As we and other members of the new team get up and running, we look forward to learning from you and beginning to work together

I know that the work of EPA relies on the dedicated professionals who carry the agency's mission forward from one Administration to the next. Thank you for your ongoing service to EPA and our country, and for your efforts to protect Americans' health and our environment.

Finally, I want to acknowledge that we begin this transition during the COVID-19 pandemic. I want to assure you that your health and safety is our top priority. As a first step in that regard, yesterday President Biden signed an Executive Order requiring masks and physical distancing in all federal buildings. This is not a change in telework status but rather a measure to further protect those whose work requires them to be on site.

Thank you in advance for bearing with us as we onboard amidst these unprecedented circumstances. I am honored to be working alongside you.

As we look to our shared work ahead, please take a few minutes to view this brief video message from President Biden to hear his values and commitment in his own words.

Sincerely,
Dan Utech
Chief of Staff

Current and acting leadership:
Acting Administrator: Jane Nishida

OCFO: David Bloom
OAR: Joseph Goffman
OW: Radhika Fox
OLEM: Barry Breen
OCSPP: Michal Freedhoff (as of 1/25)
ORD: Jennifer Orme-Zavaleta
OGC: Melissa Hoffer
OECA: Larry Starfield
OITA: Mark Kasman
OMS: Donna Vizian
OP: Victoria Arroyo
OCIR: Robin Richardson
OPEEE: Rosemary Enobakhare
OPA: Lindsay Hamilton
R1: Deb Szaro
R2: Walter Mugdan
R3: Diana Esher
R4: John Blevins
R5: Cheryl Newton
R6: David Gray
R7: Ed Chu
R8: Deb Thomas
R9: Deb Jordan
R10: Michelle Pirzadeh

Members of the incoming EPA leadership team who onboarded this week:

Radha Adhar, Deputy Associate Administrator for Congressional Affairs

Radha Adhar joins EPA from the Office of Senator Tammy Duckworth where she served as Senior Policy Advisor for Energy, Environment and Science. In 2016 and 2017, Radha was an Advisor to the Jobs Strategy Council in the Office of the Secretary at the U.S. Department of Energy. She has also worked at the Sierra Club and the Natural Resources Defense Council, focusing on the Beyond Coal Campaign and the 2012 Earth Summit. Radha holds a M.S.in Energy Policy and Climate Change Science from Johns Hopkins University and a B.S.in Biology from the University of North Carolina at Chapel Hill.

Victoria Arroyo, Associate Administrator for Policy

Vicki Arroyo returns to EPA after having served as Executive Director of the Georgetown Climate Center for 12 years, leading work on climate law and policy and supporting leading states and cities in their efforts to address and prepare for climate change. Previously she served at the Pew Center on Global Climate Change as Vice President for Policy Analysis and General Counsel where she directed Pew's policy analysis, science, adaptation, economics, and U.S. policy programs for a decade and was Managing Editor of the Center's book, Climate Change: Science, Strategies and Solutions. She was recently Chair of the Executive Committee of the Transportation Research Board of the National Academies of Sciences, Engineering, and Medicine and has served on numerous other boards and committees advising the National Science Foundation, the National Center for Atmospheric Research, the U.S. Energy Information Administration, and the California Air Resources Board. Vicki previously served in two offices at EPA, the Office of Air and Radiation and the Office of Research and Development, where she reviewed development of standards under the Clean Air Act. Vicki also served as Policy Director for the Louisiana Department of Environmental Quality, drafting legislation that reduced toxic air pollution by 50% and linking tax breaks to firms' environmental records. She was elected to the American College of Environmental Lawyers in 2018 and holds a B.S. in biology from Emory and a M.P.A. from Harvard and a J.D. from Georgetown.

Tomás Elias Carbonell, Deputy Assistant Administrator for Stationary Sources, Office of Air and Radiation

Since 2012, Tomás Carbonell has held a number of positions at the Environmental Defense Fund (EDF), most recently as Senior Counsel and Director of Regulatory Policy for EDF's U.S. Clean Air program. His work included leading EDF's litigation and regulatory advocacy in defense of the Clean Power Plan and carbon pollution standards for new, modified and reconstructed power plants; defending Clean Air Act protections for hazardous air pollution from power plants and industrial sources; and advocacy in defense of EPA's use of rigorous health science and economic analysis. From 2008 until 2012, Tomás was an Associate at Van Ness Feldman, LLP, where he counseled diverse clients on federal legal and regulatory matters related to climate change, clean energy, and environmental and electricity regulation. He has a J.D. from Yale University, degrees in Environmental Change and Management and Development Economics from the University of Oxford, and bachelors' degrees in Chemical Engineering, Economics, and Multidisciplinary Studies from North Carolina State University.

Alison Cassady, Deputy Chief of Staff for Policy

Alison Cassady most recently served as the Deputy Staff Director for the U.S. House of Representatives, Select Committee on the Climate Crisis, where she managed a team of lawyers and scientists to conceptualize, draft and deliver a congressional policy roadmap for achieving net zero emissions by 2050 and building a clean energy economy that values workers and advances environmental justice. From 2017 – 2019 she was the Managing Director of the Energy and Environment Team at the Center for American Progress, providing strategic planning and managerial support to a team working on climate change policy, public lands conservation, and ocean protection. Alison also served on the House Committee on Energy and Commerce and Committee on Oversight and Government Reform. She holds a Master of Public Affairs from Indiana University School of Public and Environmental Affairs and a B.S. in Foreign Service from Georgetown University School of Foreign Service.

Dimple Chaudhary, Deputy General Counsel for Nationwide Resource Protection Programs

Dimple Chaudhary joins EPA after serving as Deputy Litigation Director at the Natural Resources Defense Council. Her work included litigation and advocacy to protect communities from drinking water contamination and exposure to toxics. Dimple was lead counsel for community groups in Flint, Michigan, in a case brought to address lead contamination in the city's drinking water, which led to a settlement requiring the replacement of all Flint's lead service lines within three years. Prior to joining NRDC, she was an associate at WilmerHale and a law clerk for the Honorable Carol Bagley Amon of the United States District Court for the Eastern District of New York. She holds a bachelor's degree from Harvard University, a master's degree in urban planning from the London School of Economics, and a J.D. from Columbia Law School.

Rosemary Enobakhare, Associate Administrator for Public Engagement and Environmental Education

Rosemary Enobakhare returns to EPA where she served as the Deputy Associate Administrator for Public Engagement and Environmental Education, leading the agency's community outreach and strategic engagement plans. Since then, she has been the Director of Campaigns at The Hub Project, developing and managing large-scale advocacy campaigns that shift the conversation around top progressive policies. She also worked for two years as the Campaign Director at the Clean Water for All Campaign, serving as he principal point of contact for stakeholders and overseeing all aspects of the campaign's daily operations. Rosemary is a graduate of Spelman College with a degree in Economics.

Philip Fine, Principal Deputy Associate Administrator for Policy

Dr. Fine joins EPA after a 15-year career at the South Coast Air Quality Management District in Southern California. He most recently served as the Deputy Executive Officer for the Planning, Rule Development & Area Sources Division, where he oversaw all activities of the Division, including development of State Implementation Plans and Air Quality Management Plans, strategies and regulations for air pollution control, meteorology and forecasting, air quality evaluation, air toxics risk assessment, emissions inventories, socioeconomic analyses, transportation programs, and enforcement for area sources. Prior to this role, Dr. Fine's previous responsibilities at South Coast AQMD included oversight of ambient air monitoring, laboratory services, quality assurance, and source testing. Dr. Fine served on the California Air Resources Board's legislatively mandated Research Screening Committee, and has also served on several EPA Clean Air Scientific Advisory Committee expert panels. Before joining the South Coast AQMD, Dr. Fine was a Research Assistant Professor at the University of Southern California, Los Angeles where he taught courses and conducted extensive research on particulate pollution, air monitoring technologies, and exposure assessment. He has over 50 peer-reviewed scientific publications to date. He received his Ph.D. from the California Institute of Technology in Environmental Science & Engineering, and his bachelor's degree in Mechanical Engineering and Materials Science & Engineering from the University of California, Berkeley.

Radhika Fox, Principal Deputy Assistant Administrator, Office of Water
Prior to her appointment at EPA, Radhika Fox was the Chief Executive Officer of the US Water Alliance, a national nonprofit organization advancing policies and programs that build a sustainable water future for all. She has more than 20 years of experience in developing, policies, programs and issue-based advocacy campaigns on the most salient water issues facing the nation including climate change, affordability and innovative finance, water infrastructure investment, equity, and the evolution of the One Water movement. Previously, Radhika directed policy and government affairs for the San Francisco Public Utilities Commission, which is responsible for providing 24/7 water, wastewater, and municipal power services to millions of Bay Area residents. She also served as the Federal Policy Director at PolicyLink, where she coordinated the organization's policy agenda on a wide range of issues, including infrastructure investment, transportation, sustainable communities, economic inclusion, and workforce development. Radhika has a M.A. in City and Regional Planning from the University of California, Berkeley, and a B.A. in Religion and Philosophy from Columbia University.

Michal Ilana Freedhoff, Principal Deputy Assistant Administrator for Chemical Safety and Pollution Prevention
Michal Ilana Freedhoff joined the Senate Environment and Public Works Committee as its Minority Director of Oversight in February 2017. She has more than twenty years of government experience, beginning in 1996 in then-Congressman Ed Markey's office as a Congressional Science and Engineering fellow after receiving a Ph.D. in physical chemistry at the University of Rochester. She has also served on the staffs of the House Science Committee, the House Select Committee on Energy Independence and Global Warming, the House Energy and Commerce Committee and the House Natural Resources Committee. Her legislative work includes the fuel economy provisions in the 2007 Energy Independence and Security Act, a law requiring the creation of an online database of dangerous consumer product safety defects, the 2016 re-authoriza ion of the Toxic Substances Control Act, and 2019 legislation to address PFAS contamination. She lives in Bethesda, MD with her husband and four children.

Joseph Goffman, Principal Deputy Assistant Administrator, Office of Air and Radiation
Joe Goffman returns to EPA after serving from 2009 – 2017 as the Associate Assistant Administrator for Climate and Senior Counsel in the Office of Air and Radiation, where he provided policy and legal counsel on a wide range of climate policy and Clean Air Act regulatory and implementation issues and rulemakings. Since 2017 he has served as the Executive Director of the Environmental and Energy Law Program at Harvard Law School where he led a team of attorneys and communications specialists providing information and analysis to stakeholders, government decision makers and the media, and offering innovative responses on emerging issues in he areas of federal, state and municipal energy and electricity law and environmental and administrative law as well as in selected areas of corporate law. Joe also worked on the U.S. Senate Committee on Environment and Public Works as the Democratic Chief Counsel and Majority Senior Counsel. He holds B.A. and J.D. degrees from Yale University.

Lindsay Hamilton, Associate Administrator for Public Affairs
Lindsay Hamilton comes to EPA from Climate Nexus, a communications non-profit, where she was senior director of national media strategy. She also spent time as the chief spokesperson for The George Washington University, the chief of staff and a vice president with the Center for American Progress, and she served in roles in both the U.S. House of Representatives and the and the U.S. Senate. Early on in her career, she worked for ABC News. Lindsay earned a B.A. in international affairs and political science from The George Washington University. She earned her master's degree from the Columbia University School of International and Public Affairs. She is originally from Omaha, Nebraska.

Sinceré Harris, White House Liaison
Sinceré Harris joins EPA with years of senior-level experience in developing strategies to define, communicate and achieve political goals. Since 2015 she has served as the Executive Director of the Pennsylvania Democratic Party, where she was at the forefront of successful statewide coordinated campaigns, approving and managing multi-million dollar coordinated budgets, and led the formation of the 2020 organizing team. In 2020, Sinceré was named the Pennsylvania Senior Advisor for Joe Biden for President, including advising a team of over 200 on digital organizing, voter protection, political and coalition building, and communications. She previously worked as the Assistant Deputy for Legislative Affairs for the Commonwealth of Pennsylvania. Sinceré has a degree in Psychology from Temple University.

Melissa Hoffer, Principal Deputy General Counsel
Prior to joining EPA, Melissa Hoffer was with he Massachusetts Attorney General's Office where she served as the Chief of the Energy and Environment Bureau and oversaw the work of the Bureau's attorneys on matters including prosecuting civil and criminal enforcement of environmental laws, energy policy, ratepayer advocacy, defensive cases, and affirmative advocacy, including litigation in support of EPA's Mercury and Air Toxics Standards. In 2020, Melissa was inducted as a Fellow into he American College of Environmental Lawyers; she has received a 2020 Meritorious Service Award from the National Association of Attorneys General, a Massachusetts Lawyers Weekly Top Women of Law award in 2013, and a Boston Bar Association President's award in 2007. Melissa served for over five years as a vice president of Conservation Law Foundation and director of its Healthy Communities and Environmental Justice Program, and director of its New Hampshire Advocacy Center. Melissa practiced at WilmerHale for many years where her focus was environmental law and litiga ion. She holds a J.D. from Northeastern University School of Law, an M.Ed. from the University of Massachusetts, and a B.A. from Hampshire College with a focus on education.

Casey Katims, Deputy Associate Administrator for Intergovernmental Affairs
Casey Katims most recently served as Director of Federal and Inter-State Affairs for Washington Governor Jay Inslee, working as his primary advisor on federal policy issues and directing the state of Washington's engagement with Congress, the White House, federal agencies, fellow governors' offices and various other stakeholders in D.C. Prior to this role, he spent five years as a policy advisor in the U.S. House of Representatives for Rep. Suzan DelBene, developing bills and amendments on a range of issues and helping manage her responsibilities on the House Ways and Means Committee. Casey has a degree in Political Science from Vassar College and grew up in Edmonds, Washington.

John Lucey, Special Assistant to the Administrator
John Lucey joins EPA from the North Carolina Department of Environmental Quality (NCDEQ), starting as a Legislative Analyst in 2015. He has served since 2019 as the Chief Strategy Officer, helping create and manage the strategic implementation of both North Carolina's Clean Energy Plan and Risk and Resiliency Plan. He also provided guidance to the Department on significant State initiatives including the Duke Energy Coal Ash Settlement, the North Carolina Environmental Justice and Equity Board and the Chemours Consent Order. John holds a B.A. in Political Science from North Carolina State University and an Associate of Arts degree from Central Piedmont Community College.

Dan Utech, Chief of Staff
Dan Utech has over 20 years of experience in the federal environmental and energy sectors., including as a Presidential Management Fellow in 1997/1998 with assignments at EPA, the National Oceanic and Atmospheric Administration and the U.S. Forest Service. From 2014 – 2017 he served at the White House Domestic Policy Council, including as Deputy Assistant to the President for Energy and Climate Change, where he led the White House and cross-governmental teams to implement and coordinate communications for President Obama's Climate Action Plan, oversaw the Administration's energy and climate change strategy, and promoted the President's agenda in Congress. Dan also served as Senior Advisor to the Secretary at the U.S. Department of Energy, where his responsibilities included budget development and management of key initiatives such as nuclear waste. Prior to his federal agency experience, Dan was Senior Advisor to Senator Hillary Rodham Clinton, advising the Senator on all energy and environmental issues, including climate change, clean diesel, and energy efficiency, as well as air and water quality, toxic substances and endangered species. He has been a lecturer at the Yale School of Forestry and Environmental Studies, from which he received an M.E.S. degree. He also holds degrees from the Yale School of Management and Amherst College.

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From: Griffo, Shannon
To: Fugh, Justina
Cc: Clarke, Victoria
Subject: Recusal Statement question
Date: Tuesday, February 23, 2021 8:39:00 AM
Attachments: Tomás Carbonell draft recusal statement 2_22_21.docx

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Since Tomás' recusal will be the first one out the door, I wanted to check in on two things before I send it to him for review:

1. Justina - (b) (5) [redacted]
2. (b) (5) [redacted] Justina, are you good with this?

Thanks!

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

From: Griffo, Shannon
To: Fugh, Justina; Clarke, Victoria
Subject: Updated recusal statement for Tomas
Date: Thursday, February 25, 2021 3:35:00 PM
Attachments: Tomás Carbonell draft recusal statement 2_25_21.docx

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Based on Justina's comments, here is the updated recusal statement for Tomas. Victoria, we've made some minor changes to the Screening Arrangement section – mainly to designate the screener by position first (then name). Once Justina takes a look at the template, I'll make sure these edits are reflected on there. Oh and I added a reference to LA-21-05 (2/23/21) to the footnote since it also identifies past OGE guidance which we can continue to rely.

I reviewed Ferne's comments but didn't feel like I had to make any substantial changes to Tomas' recusal. I'll go ahead and send it to him for review.

Thanks to you both!

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

From: Fugh, Justina
To: Srinivasan, Gautam
Cc: Marks, Matthew; Griffo, Shannon; Clarke, Victoria
Subject: RE: Tomas Carbonell, formerly of EDF
Date: Tuesday, March 02, 2021 10:08:00 AM

Hi Gautam,
We don't get recusal statements signed until after the appointee submits his/her financial disclosure report, which Tomas did. Other appointees ask for extensions to file their reports, which is perfectly appropriate and understandable, but it means we don't have a recusal statement to share for any of the OGC deputies. Victoria Clarke, copied here, is the ethics POC for Marianne. We'll talk today about what we have regarding her former employer and former clients to share. You'll recall that Marianne's actual start with EPA was later than the others, so her timeline for us is a little delayed.
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: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Tuesday, March 02, 2021 9:47 AM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>; Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>
Subject: RE: Tomas Carbonell, formerly of EDF

Thanks much!

Is there a recusal statement for Marianne?

++++++++++++++++++++++++++++
(202) 564-5647 (o)
(202) 695-6287 (c)

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Tuesday, March 2, 2021 9:44 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>; Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>
Subject: RE: Tomas Carbonell, formerly of EDF

And here is the recently signed recusal statement for Tomás.

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: Monday, January 25, 2021 5:00 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: Tomas Carbonell, formerly of EDF

Hi Gautam,
Tomás Carbonell is the Deputy Assistant Administrator for Stationary Sources in OAR. He has worked at the Environmental Defense Fund since July 2012. His most recent position has been as Senior Counsel and Director of Regulatory Policy, and he was the Director of Regulatory Policy and Lead Attorney from 2016 to 2020. Attached is the list of cases still pending at EPA that he worked on personally and substantially and from which he will be recused for his entire tenure at EPA. In addition, under the Biden ethics pledge, he is also recused from working on any specific party matter in which EDF is a party or represents a party, even if he didn't work on that matter himself. The Biden pledge further says that he can't attend any meeting or engage in any communication with EDF as part of his official duties unless the subject matter of the meeting a particular matter of general applicability AND the meeting itself is "open to all interested parties," which we interpret as at least 5 entities representing diverse interests.

Shannon Griffo, copied here, is the ethics POC for Tomás in case you have additional questions or concerns or can't reach me.
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:	Griffo, Shannon
To:	Fugh, Justina; Srinivasan, Gautam
Cc:	Marks, Matthew
Subject:	RE: Tomas Carbonell, formerly of EDF
Date:	Tuesday, March 02, 2021 9:44:00 AM
Attachments:	Recusal Stmt_TEC 03_01_21 Signed.pdf

And here is the recently signed recusal statement for Tomás.
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: Monday, January 25, 2021 5:00 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Marks, Matthew <Marks.Matthew@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: Tomas Carbonell, formerly of EDF

Hi Gautam,
Tomás Carbonell is the Deputy Assistant Administrator for Stationary Sources in OAR. He has worked at the Environmental Defense Fund since July 2012. His most recent position has been as Senior Counsel and Director of Regulatory Policy, and he was the Director of Regulatory Policy and Lead Attorney from 2016 to 2020. Attached is the list of cases still pending at EPA that he worked on personally and substantially and from which he will be recused for his entire tenure at EPA. In addition, under the Biden ethics pledge, he is also recused from working on any specific party matter in which EDF is a party or represents a party, even if he didn't work on that matter himself. The Biden pledge further says that he can't attend any meeting or engage in any communication with EDF as part of his official duties unless the subject matter of the meeting a particular matter of general applicability AND the meeting itself is "open to all interested parties," which we interpret as at least 5 entities representing diverse interests.
Shannon Griffo, copied here, is the ethics POC for Tomás in case you have additional questions or concerns or can't reach me.
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: Campbell, Ann
Cc: Griffo, Shannon
Subject: FW: Ethics Advice - T Carbonell
Date: Tuesday, April 27, 2021 12:10:00 PM
Attachments: EPA external meeting request - Sierra Club major sources reclassification (1).docx
20210423 Meeting with Sierra Club - Reclassification.docx

Hi Ann,
I can appreciate that OAR was surprised by the fact that EDF appeared on the virtual meeting unexpectedly and that, at the time, the EPA participants were surprised and unsure what to do. I also appreciate that you've suggested alternative paths forward for them and, even better, will be strengthening your invitation template to underscore that the meeting organizers can't forward the links but instead will have to confirm attendees with EPA.

In this case, the subject of the meeting was not focused on any specific party matter but rather on matters of general applicability and there were more than five "fannies in the seats" that represented diverse interests. This note confirms my oral advice last week that Tomas's continued attendance in the meeting, even with the unexpectedly appearance of his former employer, did not cause him to violate his ethics pledge commitments. Although several of the entities are environmental NGOs, they are not directly regulated by EPA and do not operate in lockstep. We distinguish them from, say, companies in the oil and gas sector that are directly regulated by EPA and part of the same litigation group united against EPA regulations.
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: Campbell, Ann <Campbell.Ann@epa.gov>
Sent: Friday, April 23, 2021 4:14 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Ethics Advice - T Carbonell

Justina, I am writing on behalf of Tomas to seek your advice on an issue that just arose. We had a meeting on the calendar for today, organized by the Sierra Club, in which Tomas was expected to participate. Sierra Club provided information as requested through our meeting request form, including expected meeting participants (attached). EDF, an entity identify in Tomas' recusal, was not listed as participating in the meeting. However, without our knowledge, EDF was invited to the meeting and joined today's call, along with 7 other entities

(Sierra Club, NRDC, Earthjustice, California Air Resources Board, the California Attorney General's Office, Powell Environmental Law and the Environmental Integrity Project) (see attached). Tomas remained on the call. The group discussed regulation under section 112 of the Clean air Act, specifically regulation that would allow major sources of hazardous air pollutants to reclassify as "area" sources.

I am seeking your advice regarding Tomas' ethical obligations as it pertains to his participation in this meeting. Thank you.

Ann (Campbell) Ferrio
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 566 1370

Date: April 23, 2021

Meeting: Meeting with Sierra Club re: Major Resources Classification

Rule(s) Discussed:

Reclassification Rule – reversing is necessary, especially for EJ communities

Wherum memo needs to be rescinded

PTE Enforcement – EPA rescinded incorrectly, instead there needs to be federal enforcement and criteria outlined

Written Materials? Yes**/ No**

Name	Organization	Email
Joseph Goffman	EPA/OAR	Goffman.Joseph@epa.gov
Tomas Carbonell	EPA/OAR	Carbonell.Tomas@epa.gov
Eunjung Kim	EPA/OAR	Kim.Eun@epa.gov
David Cozzie	EPA/OAR	Cozzie.David@epa.gov
Jodi Howard	EPA/OAR	Howard.Jodi@epa.gov
Pat Drupp	Sierra Club	(b) (6)
Sanjay Narayan	Sierra Club	(b) (6)
Emily Davis	NRDC	(b) (6)
John Walke	NRDC	(b) (6)
James Pew	Earthjustice	(b) (6)
Kathleen Riley	Earthjustice	(b) (6)
Terry Mcguire	Earthjustice	(b) (6)
Patrick Anderson	Environmental Integrity Project	(b) (6)
Eric Schaeffer	Environmental Integrity Project	(b) (6)

Keri Powell	Powell Environmental Law	(b) (6) [redacted]
Dena Adler	EDF	(b) (6) [redacted]
Wesley Dyer	CARB	(b) (6) [redacted]
Craig Segall	CARB	(b) (6) [redacted]
Kelly Welchans	California AG	(b) (6) [redacted]
Michelle Komlenic	CARB	(b) (6) [redacted]

External Meeting Request Form for Tomas Carbonell

Today's Date: 3/10/21

Requesting Organization: Sierra Club, Earthjustice, NRDC

Title of the Meeting: Reclassification of major sources

Purpose: To discuss reclassification of major sources of hazardous air pollution under section 112 of the Clean Air Act

Background: We would like to discuss the potential regulation that would allow major sources of hazardous air pollutants to reclassify as "area" sources and thereby escape compliance with maximum achievable technology standards under section 112 of the Clean Air Act.

Is this meeting related to ongoing litigation: A petition for review of EPA's Major Source Reclassification rule is currently held in abeyance before the D.C. Circuit. We do not intend to discuss the particulars of that litigation.

Earliest possible date for the meeting: 3/22

Last possible date for the meeting: 4/9

Is the meeting urgent and if so, why:

Requested Time Length: 60 min

Have you met with anyone within EPA: We have not discussed these issues with anyone outside of OAQPS

Invitees: Tomas Carbonell and team

External Participants: Sierra Club - Patrick Drupp, Sanjay Narayan; Earthjustice - Terry McGuire, James Pew, Kathleen Riley; NRDC--John Walke, Emily Davis

Teleconference Required: EPA's choice

Video Conference Required: EPA's choice

Point of Contact for the Meeting: Patrick Drupp

Please email this form back to OAR_Invitations@epa.gov

From: Campbell, Ann
To: Griffo, Shannon
Cc: Fugh, Justina
Subject: RE: Request for Ethics Screening for Tomas Carbonell
Date: Thursday, April 29, 2021 1:24:20 PM

Thanks so much for your advice Shannon. I will keep a close eye on the participants list for all meeting request, but particularly the second meeting request given your advice. Our goal is to lock down all the participants for every meeting once calendared, but certainly within a week of the meeting for just this reason.

Thanks again,

Ann (Campbell) Ferrio
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 566 1370

From: Griffo, Shannon <Griffo.Shannon@epa.gov>
Sent: Thursday, April 29, 2021 1:18 PM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: RE: Request for Ethics Screening for Tomas Carbonell

Hi Ann,

We see no issues with the second meeting – the subject of the meeting appears to be a matter of general applicability (rule), and I'd say there is a diversity of interests among the various organizations who will be present (3 EDF participants out of 19 total). However, the first one needs a closer look. The subject matter is also about a matter of general applicability, and there's arguably a diversity of interests among the organizations. They all have their own distinct missions and wish to share their various perspectives during the meeting. What gives me pause though is how many representatives from EDF 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 Tomas' former employer. There should be +4 for each individual representing EDF. 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 EDF participants is 4:1. For this meeting, 2 out of the 10 participants listed are from EDF, which means there is +4 for each EDF representative. So based on that, this meeting meets the exception found within the Ethics Pledge and Tomas could attend. But you need to be mindful that if the participant list changes, this analysis could also change. I note that the request says "the exact participant list may vary depending on when the meeting is scheduled but expect the group to include…" (b) (5) [redacted]

That being said, we definitely appreciate your close attention to these types of requests! I'd recommend (b) (5) [redacted]

(b) (5) [redacted] You can circle back with us if you continue to notice this.

Thanks,
Shannon

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

From: Campbell, Ann <Campbell.Ann@epa.gov>
Sent: Wednesday, April 28, 2021 1:30 PM
To: Griffo, Shannon <Griffo.Shannon@epa.gov>
Cc: Fugh, Justina <Fugh.Justina@epa.gov>
Subject: Request for Ethics Screening for Tomas Carbonell

Good afternoon Shannon. We received the 2 attached meeting requests for Tomas. Both requests indicate that EDF will be participating in the discussions. In one instance EDF is one of 5 organizations expected to engage in the meeting. In the second, EDF is one of 24 organizations expected to participate in the discussion. Both meetings purport to discuss aspects of our regulations pertaining to the power sector. Please let me know if you need any additional information and if think it is ok for Tomas to participate in each of these meetings.

Thank you,

Ann (Campbell) Ferrio
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 566 1370

From:	Campbell, Ann
To:	Griffo, Shannon
Cc:	Fugh, Justina
Subject:	Request for Ethics Screening for Tomas Carbonell
Date:	Wednesday, April 28, 2021 1:30:29 PM
Attachments:	Meeting request by NRDC EDF Sierra Club CATF CAELP. and Hansel 4 26 2021.docx External meeting request_ strengthening the MATS rule to EPA.docx

Good afternoon Shannon. We received the 2 attached meeting requests for Tomas. Both requests indicate that EDF will be participating in the discussions. In one instance EDF is one of 5 organizations expected to engage in the meeting. In the second, EDF is one of 24 organizations expected to participate in the discussion. Both meetings purport to discuss aspects of our regulations pertaining to the power sector. Please let me know if you need any additional information and if think it is ok for Tomas to participate in each of these meetings.

Thank you,

Ann (Campbell) Ferrio
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 566 1370

External Meeting Request Form for Joe Goffman

Today's Date:
4/26/21

Requesting Organization:
Earthjustice, on behalf of:
Environmental Defense Fund
NAACP
Sierra Club
Earthjustice
Environmental Integrity Project
Environmental Law and Policy Center
Clean Air Task Force
Downwinders at Risk
Clean Air Council
Montana Environmental Information Council
Air Alliance Houston
Environment America
U.S. Public Interest Research Group
American Academy of Pediatrics
American Lung Association
American Public Health Association
Physicians for Social Responsibility
Southern Environmental Law Center
Chesapeake Bay Foundation
Natural Resources Defense Council
Natural Resources Council of Maine
Citizens for Pennsylvania's Future
Conservation Law Foundation
The Ohio Environmental Council

Title of the Meeting:
Strengthening the MATS Rule

Purpose:
To discuss priorities for strengthening the MATS rule, and to share data that show the need to strengthen the rule.

Background:
As a category, coal- and oil-burning power plants are the worst industrial polluters in the U.S. Although the MATS rule secured major reductions in power plants' emissions of mercury and acid gases, MATS was less successful in reducing emissions of non-mercury metals and hazardous organics. Power plants continue to emit very large quantities of toxic metals like lead, cadmium, and manganese, and their emissions of arsenic

and selenium still exceed the combined emissions of every other industrial category put together. Power plants also continue to emit many hazardous organic pollutants like benzene, which are toxic to humans in small quantities.

Power plants contribute to the disproportionate pollution burdens borne by Black communities, Indigenous communities, and other communities of color. The population living within three miles of coal- and oil-fired power plants is made up disproportionately of people of color. And people who consume self-caught fish as a significant part of their diet, increasing their exposure to methylmercury and other toxics, are disproportionately likely to be Black or Indigenous, or to belong to other racial and ethnic minority groups. Strengthening the MATS rule can therefore be an important part of fulfilling the Biden-Harris administration's commitment to advancing environmental justice.

Pursuant to President Biden's Executive Order "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis," EPA is currently reviewing the Trump administration's rulemaking addressing the MATS rule, 85 Fed. Reg. 31,286 (May 22, 2020). The Trump administration's rulemaking both revoked the "appropriate and necessary" finding for the MATS rule and finalized a risk and technology review that failed to adopt any improvements to the rule—despite compelling evidence that more stringent standards using available controls can better protect public health and save lives. Our groups urge EPA, as part of its ongoing review, to reconsider both components of the Trump administration's rulemaking. In addition to restoring the "appropriate and necessary" finding, EPA by August 2021 should announce its intent to reopen the flawed risk and technology review, and, if the agency determines that it is warranted under the Clean Air Act, move expeditiously to strengthen the MATS rule.

EPA should promptly move forward to restore the "appropriate and necessary" finding and strengthen MATS without delay. EPA should consider at least the following improvements to ensure that communities are protected from hazardous air pollution:

- Tighten the limit on filterable particulate matter (a surrogate for hazardous metals like arsenic, lead, cadmium, and chromium) to better reflect the pollution levels that power plants can achieve with current technology. Compliance data demonstrates that power plants with many different types of installed controls are achieving filterable particulate matter emissions that are well below the level of the current standard.
- Establish numeric pollution limits for hazardous organic pollutants like benzene, formaldehyde, and dioxins, to ensure that efforts to control such pollution through tune-ups and good combustion practices are truly effective.
- Require continuous emissions monitors, which are now in widespread use, for emissions of filterable particulate matter and hydrochloric acid to ensure that pollution limits are met at all times.
- Close the loophole that allows plants to avoid complying with numeric pollution limits during an extended startup period.
- Tighten the limit on mercury for low-rank coal units and, for other coal-burning units, review compliance data and technological developments related to the control of mercury and acid gases and require pollution reductions reflecting current technology.

Earliest possible date for the meeting:
5/3/21

Last possible date for the meeting:
5/31/21

Is the meeting urgent and if so, why?
Yes. In light of EO 13990, Sec. 2, iv, EPA needs to promptly determine the scope and timing of its work on the MATS rule, and our groups have information and perspectives that should be taken into account.

Requested Time Length:
90 minutes

Invitees:
Michael Regan, Administrator
Joseph Goffman, Acting Assistant Administrator, Office of Air and Radiation
Peter Tsirigotis, Director, Office of Air Quality Planning and Standards
Matthew Tejada, Director, Office of Environmental Justice

External Participants:
Neil Gormley, Earthjustice
Terry McGuire, Earthjustice
John Walke, Natural Resources Defense Council
Jacqui Patterson, National Association for the Advancement of Colored People
Sanjay Narayan, Sierra Club
Pat Drupp, Sierra Club
Bakeyah Nelson, Air Alliance Houston
Dena Adler, Environmental Defense Fund
Rama Zakaria, Environmental Defense Fund
Sean Donahue, Environmental Defense Fund
Ann Weeks, Clean Air Task Force
Hayden Hashimoto, Clean Air Task Force
Ann Jaworski, Environmental Law & Policy Center
Patton Dycus, Environmental Integrity Project
Derf Johnson, Montana Environmental Information Center
Mike Landis, Environment America & U.S. Public Interest Research Group
Deborah Murray, Southern Environmental Law Center
Spencer Gall, Southern Environmental Law Center
Peter Heisler, Center for Applied Environmental Law and Policy

Teleconference Required?
Yes

Video Conference Required?
Yes

Point of Contact for the Meeting:
Terry McGuire, Earthjustice, tmcguire@earthjustice.org

External Meeting Request Form for OAR

Today's Date: April 26, 2021

Requesting Organization: Natural Resources Defense Council, Environmental Defense Fund, Sierra Club, Clean Air Task Force, Center for Applied Environmental Law and Policy and Peter Hansel.

Title of the Meeting: Meeting to share various perspectives on climate pollution and conventional pollution standards for the power sector.

Purpose: To discuss perspectives on potential for new climate and conventional pollution standards for the power sector.

Background: The organizations have various perspectives on new standards for both carbon pollution and conventional pollutants and wish to discuss those perspectives with the leadership of the Office of Air and Radiation. The organizations plan to identify some shared goals and discuss topics for which they have not reached a common position.

Is this meeting related to ongoing litigation: No.

Earliest possible date for the meeting: May 3, 2021.

Last possible date for the meeting: We would prefer to meet by May 24, 2021.

Is the meeting urgent and if so, why: We believe that it will be most useful if we can meet with the Office of Air and Radiation by May 24th in order to share our various perspectives with the Office.

Requested Time Length: 1 hour.

Have you met with anyone within EPA: The groups have meet with EPA staff on a variety of topics, including pollution standards for the power sector.

Invitees: Joe Goffman, Tomas Carbonell and any additional staff they identify.

External Participants (to include email addresses):

The exact participant list may vary depending on when the meeting is scheduled but we expect the group to include:

Pete Hansel, (b) (6)

David Doniger, (b) (6)
Ben Longstreth, (b) (6)

Vicki Patton, (b) (6)
Ben Levitan, (b) (6)

Joanne Spaulding, (b) (6)
Andres Restrepo, (b) (6)

Conrad Schneider, (b) (6)
Jay Duffy, (b) (6)

Kristin Brainerd, (b) (6)

Teleconference Required: If no video conference is available, a teleconference is required.

Video Conference Required: A video conference would be preferred.

Point of Contact for the Meeting: Ben Longstreth, (b) (6)

Please email this form back to OAR_Invitations@epa.gov

From: Fugh, Justina
To: Campbell, Ann
Cc: Clarke, Victoria; Griffo, Shannon
Subject: RE: Seeking Ethics Screening re IMEO meeting Thursday a.m.
Date: Tuesday, April 27, 2021 10:12:00 AM

Hi Ann,
I've copied Shannon Griffo on this note as she's the person who was working with Tomas on his financial disclosure report. The short answer is that Tomas can attend this meeting, but we appreciate how careful you're being in vetting the attendees. What you've indicated is that Steve Hamburg, while an EDF employee, will be representing UNEP instead of the interests of EDF. Besides, the topic under discussion is likely a matter of general applicability and there are several participants representing diverse interests. Again, Tomas may attend this meeting.
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: Campbell, Ann <Campbell.Ann@epa.gov>
Sent: Tuesday, April 27, 2021 8:56 AM
To: Fugh, Justina <Fugh.Justina@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: Seeking Ethics Screening re IMEO meeting Thursday a.m.

Justina, Victoria,

Tomas has been invited to join a meeting organized by DOE with representatives of the special envoy's office, the State Department, the European Commission and the United Nations Environment Programme (UNEP) on Thursday morning. We learned today that one of the participants for UNEP will be Steve Hamburg, who is an EDF employee. We are not sure what his relationship is to UNEP, except perhaps that he is serving as an advisor on the proposal that is the subject of the meeting, rather than participating in his capacity as an EDF employee. Is this a meeting Tomas is able to participate in?

Thank you,

Ann (Campbell) Ferrio
Chief of Staff
EPA/Office of Air and Radiation
Office: 202 566 1370

From: Heullant, Jennifer <(b) (6)>
Sent: Monday, April 26, 2021 12:30 PM
To: Light, Andrew <(b) (6)>; Carbonell, Tomas <Carbonell.Tomas@epa.gov>; (b) (6)
Cc: Volz, Joshua (b) (6)>; McKearin, Josh <(b) (6)>; Nicholas, Kyle (USEU) (b) (6)>; Swanson, Frances <(b) (6)>
Subject: UNEP IMEO Briefing Material and EC and UNEP Participants for April 29th Meeting

All,

Attaching an IMEO briefing provided by UNEP ahead of Thursday's meeting. Below is a list of participants from the EC and UNEP:

EC: Ditte Juul-Jorgensen, Tomasz Jerzyniak, Brendan Devlin, Dagmara Koska, Jamie Kern, Dinko Raytchev, Joanna Pessemier, +1 from DG-Clima (Senior-level, yet to be confirmed)

UNEP IMEO Team: Mark Radka, Manfredi Caltagirone, Roland Kupers, Steve Hamburg, and potentially additional UNEP staff.

From USG:

- DOE: Andrew Light plus IA/FE staff
- EPA: Tomas Carbonell plus staff
- State: Jonathan Pershing, Trigg Talley (TBC), Anna Shpitsberg plus staff

- Jennifer

Jennifer N. Heullant, MBA
U.S. Department of Energy
Office of International Affairs
Office: 202-586-6771