

GAO

Fact Sheet for the Ranking Minority
Member, Committee on Commerce,
House of Representatives

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CONFLICT-OF- INTEREST CONTROLS

Documented Recusal Obligations of Top Political Appointees in DOE and EPA



General Government Division

B-259424

March 7, 1995

The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

Dear Mr. Dingell:

The principal purpose of this fact sheet is to identify the extent of and the bases for the promises made by 41 Senate-confirmed political appointees in the Department of Energy (DOE) and the Environmental Protection Agency (EPA) to disqualify themselves from certain agency matters to avoid conflicts between their personal interests and their governmental responsibilities. (Such disqualifications are referred to as “recusals” in federal conflict-of-interest regulations.) We have also identified the extent to which these individuals took other remedial actions to address actual or potential conflicts of interest. About half of the appointees (20) were the last incumbents in the Senate-confirmed positions during the administration of President Bush and are referred to in this report as Bush appointees. The other half (21), referred to as Clinton appointees, were serving in the administration of President Clinton at the end of 1993.

Our specific objectives were to document:

- the extent to which nominees to Senate-confirmed positions in DOE and EPA promised to recuse themselves from official government matters during the two administrations, including any changes between administrations in the frequency of occurrence of documented recusal promises or obligations;
- the bases cited in agency records for the recusal obligations of the appointees, including a description of the recusal obligations made by each nominee; and
- the extent to which appointees with nominee recusal obligations had also documented taking other remedial actions to comply with criteria governing their participation in official government matters, i.e., divestitures of financial interests, agency waivers of statutory participation prohibitions, and any recusal obligations following Senate confirmation.

Background

Each presidential nominee confirmed by the Senate must undergo a conflict-of-interest analysis by both the employing agency and the Office of

Government Ethics (OGE).¹ These analyses involve review and approval of a public financial disclosure report filed by the nominee and the preparation of opinion letters by agency ethics officials certifying that there are no unresolved conflicts of interest under applicable laws and regulations.

To address any actual or potential conflicts that have been identified, federal ethics law requires the nominee to enter into an ethics agreement. An ethics agreement, according to OGE, describes the actions that a nominee has agreed to take to resolve conflicts of interest, including recusals when the need may arise, divestitures of financial interests, waivers of participation restrictions, and resignations from outside positions.

Criteria for Documenting Recusal Obligations

Statutory criteria governing how an obligation to recuse should be documented originated from a 1983 amendment to the Ethics in Government Act of 1978 (Sec. 9 of P.L. 98-150, Nov. 11, 1983, codified at 5 U.S.C. App. 6, Sec. 110). These criteria require presidential appointees and other filers of public financial disclosure reports to put in writing those subjects to which the recusal obligation will apply and the process for determining whether the individual must recuse himself or herself in a specific instance.²

Under regulations and guidance implementing this statutory provision, OGE considers a copy of the recusal statement with details on the matters covered and method of enforcement as satisfactory evidence of the appointee's fulfillment of an ethics agreement containing a recusal obligation. The law requires that these recusal statements be prepared within the time prescribed by the ethics agreement or not later than 3 months after the date of the agreement if no date is specified. OGE has determined that the day a presidential appointee is confirmed is the day an ethics agreement becomes effective and considers any agreements containing a recusal obligation to be delinquent if the appointee has not approved a recusal statement more than 90 days after confirmation. Although the appointee is responsible for approving and executing the

¹OGE was established by the Ethics in Government Act of 1978 and is responsible for providing overall direction of executive branch policies related to the prevention of conflicts of interest by officers and employees of the executive branch.

²In contrast, recusals for the majority of federal employees who do not file public financial disclosure reports need not be in writing. Recusals for these employees are to be accomplished simply by their not participating in matters that could affect their financial interests. Agency ethics officials or supervisors, however, have the discretionary authority under OGE regulations to request notifications of a recusal in writing, or an employee may voluntarily elect to put a recusal in writing.

recusal statement, such statements are typically prepared by agency ethics officials.

As part of the recusal execution process, a “screening official” is to be designated in the recusal statement to help identify any disqualifying matters that may arise, and a “referral official” is to be designated to act in place of the appointee on any particular disqualifying matters. However, neither the appointee nor the screening or referral official is required by law or OGE regulation to notify anyone of the appointee’s actions to recuse from specific matters. Neither OGE nor the agencies maintain comprehensive data on the specific agency matters that individual appointees did not participate in because of their recusal obligations.

Legal Bases Cited for Types of Remedial Actions Taken to Resolve Identified Conflicts

Table 1 gives a brief description of the key legal bases cited in agency records for the various types of remedial actions taken by the Senate-confirmed appointees in DOE or EPA to resolve situations identified as an actual or potential conflict of interest. As shown in the table, several of these legal requirements were either repealed or added during the administrations of both Presidents Bush and Clinton.

Table 1: Key Legal Bases Cited for Types of Remedial Actions

Source	Description
Executive branch laws and regulations	
18 U.S.C. 208 (basic statute effective since 1962, last amended in 1989 with passage of Ethics Reform Act of 1989)	Participation restriction: Prohibits executive branch employees from participating “personally and substantially” in an official capacity in any “particular matter” in which, to their knowledge, they or any person whose interests are imputed to them under this statute has a “financial interest,” if the particular matter will have a “direct and predictable effect” on that interest.
	Waiver authority: The appointing official or authorized agency designee may grant an individual waiver when a determination is made that the “interest [in the matter] is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect” from the appointee. Where practicable, agencies are required to consult with OGE prior to granting the waiver.

(continued)

Source	Description
Executive Order 12674 (as modified by E.O. 12731), Principles of Ethical Conduct for Government Officers and Employees (Effective April 12, 1989)	Appearance recusal authority: Established a set of principles of ethical conduct for all executive branch employees that included the general requirement that "Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this order."
Subpart D, 5 C.F.R. 2635, Conflicting Financial Interests (effective February 3, 1993)	Financial interest recusals: Provides for the recusal from participation in particular matters that will have a direct and predictable effect on the appointee's direct or imputed financial interests. This subpart is the key regulation implementing the statutory prohibition in 18 U.S.C. 208.
Subpart E, 5 C.F.R. 2635, Impartiality in Performing Official Duties (effective February 3, 1993)	Appearance recusals based on personal and business relationships: Provides for (1) recusal from participation in particular matters involving specific parties where the appointee's work is likely to have a direct and predictable effect on the financial interests of a member of his or her household, or a person with whom he or she has a "covered relationship," and if the appointee determines that a reasonable person with knowledge of all the relevant facts would question his or her impartiality in the matter; and (2) recusal for 2 years from participating in any particular matter beginning on the date of receipt of an extraordinary payment (with a value in excess of \$10,000) from a former employee.
Subpart F, 5 C.F.R. 2635, Seeking Other Employment (effective February 3, 1993)	Future employment recusals: Provides for recusal from participating in particular matters involving a prospective or other employer when the appointee's work would have a direct and predictable effect on the financial interests of a person with whom the appointee has an arrangement concerning future employment or is negotiating employment.
DOE-specific laws and congressional policy	
Section 606 of the Department of Energy Organization Act (Pub. L. 95-91, Aug. 4, 1977) (Repealed by Section 3161(a) of Pub. L. 103-160, Nov. 30, 1993.) (Suspended from Dec. 1, 1989, through May 31, 1991, by Section 507 of Pub. L. 101-194, Nov. 30, 1989, and Section 815(a)(4) of Pub. L. 101-510, Nov. 5, 1990.)	Recusal requirement: Required newly appointed "supervisory employees" who were formerly employed by an "energy concern" from participating for a period of 1 year from certain departmental proceedings involving the individual's former employer.

(continued)

Source	Description
	Waiver authority: The Secretary of Energy was authorized to waive this recusal requirement when exceptional hardship would result, or when in the national interest. Any such waivers were to be in writing by the Secretary.
Section 602 of the Department of Energy Organization Act (Pub. L. 95-91, Aug. 4, 1977)	Divestiture requirement: Prohibits “supervisory employees” of DOE from knowingly receiving compensation from, holding any official relation with, owning stocks or bonds of, or having any pecuniary interest in any “energy concern.”
	Waiver authority: The Secretary of Energy is authorized to waive this divestiture requirement when exceptional hardship would result, or when the interest is a pension, insurance, or other vested interest. Certain information regarding such waivers must be published in the Federal Register.
United States Senate Committee on Energy and Natural Resources Recusal Policy (effective May 6, 1993)	Recusal requirement: This policy was adopted by the Committee to “make applications of recusals consistent” for presidential nominees to positions requiring the Committee’s confirmation. As a condition of appointment, each nominee is required to recuse himself or herself in writing from participation in certain matters involving former employers or service relationships for either the duration of their service in office, or a period of 1 year.
EPA-specific laws	
Section 318 of the Clean Air Act (42 U.S.C. 7618(c) and (d)) (Repealed by Section 108(q) of Pub. L. 101-549, Nov. 15, 1990.)	Divestiture requirement: EPA officials occupying certain positions of a regulatory or policymaking nature were prohibited from (1) having any official or contractual relationship with certain specified groups related to air quality or (2) having financial interests determined by the Administrator of EPA to be inconsistent with EPA employment.

Data Limitations

The recusal obligations we identify in this fact sheet may not account for every recusal obligation entered into by the appointees whose records we examined. OGE regulations do not require appointees to notify agency ethics officials of recusal obligations made following their Senate confirmation, nor are agency ethics officials required to maintain data on these recusals. The ethics agreement tracking system maintained by OGE is

limited to agreements made by the appointee during the nomination and confirmation process.

While the data presented in this fact sheet may not represent the entire scope of recusal obligations of the appointees whose records we examined, the data reflect all the written obligations of the appointees made that were recorded in DOE, EPA, and/or OGE records at the time of our review. Unlike the data in OGE's tracking system, our data also include as separate recusal obligations any temporary recusal obligations pending divestiture or waiver of financial interests. We established a cutoff date of December 31, 1993, for recording the recusal obligations made by the Clinton appointees whose records we examined.

Also, in interpreting data in this fact sheet on the extent of nominee recusal obligations, it is important to recognize that the key objective being sought through the recusal obligations is the appointee's nonparticipation in any particular disqualifying matter. In this regard, a recusal statement is meant to serve primarily as a tool for assisting in the implementation of ethics agreements during the appointee's term in office and also to serve as an announcement of the appointee's intent to not participate if disqualifying matters arise. However, the nonexistence of a written recusal statement does not affect the legal obligation of appointees to not participate if other matters arise in which they have a conflict of interest. This legal obligation begins at the time of federal appointment and extends until termination of appointment, or until the appointee no longer has the conflict of interest or is granted a waiver.

Results

We reviewed the financial disclosure records of 54 presidential appointees in DOE and EPA for evidence of any promises made by them to disqualify themselves from any governmental matters due to an actual or potential conflict of interest. Forty-one appointees, or 76 percent, made documented recusal obligations as a result of the nomination and confirmation process. More specific summary data on the recusal obligations of the 41 appointees are presented in table 2. Among other things, the data show that EPA and DOE had about the same percentage of appointees with nominee recusal obligations (74 percent in EPA, or 17 of 23 appointees, and 77 percent, or 24 of 31 appointees in DOE).

Table 2: Summary of Nominee Recusal Obligations of Top Political Appointees in DOE and EPA During the Bush and Clinton Administrations

	Number of Bush administration appointees (Dec. 1992)		Number of Clinton administration appointees (Dec. 1993)		Totals
	DOE	EPA	DOE	EPA	
Number of presidential appointee positions requiring Senate confirmation	21	15	20	13	69
Number of positions vacant or nominee data not available	4	2	6	3	15
Number of filled positions with data available on nominee ethics agreements	17	13	14	10	54
Number of above appointees with nominee recusal obligations (as of 12/31/93)	12	8	12	9	41

Source: GAO analysis of agency and OGE financial disclosure records.

Overall, we found a total of 124 nominee recusal obligations documented in the financial disclosure records maintained by the agencies on the 41 Senate-confirmed appointees in DOE and EPA included in our review. The single most frequently cited basis for these obligations was the criminal conflict of interest statute, 18 U.S.C. 208, or its key implementing regulation, which accounted for 46 (37 percent) of the 124 obligations. Appearance-based obligations accounted for the remaining nominee recusal obligations. Agency ethics officials cited different reasons for the appearance-based obligations. In order of frequency of occurrence, we have categorized them as follows:

- General agency and appointee discretion (30 nominee recusal obligations): This category consists of (1) 18 recusal obligations that cited general appearance concerns before OGE's standard-of-conduct regulation became effective in February 1993, and (2) 12 recusal obligations based on EPA's practice of having certain nominees make recusal obligations for the duration of their tenure. The financial disclosure records we reviewed generally did not indicate whether these recusal obligations were initiated by the appointee or agency ethics officials.

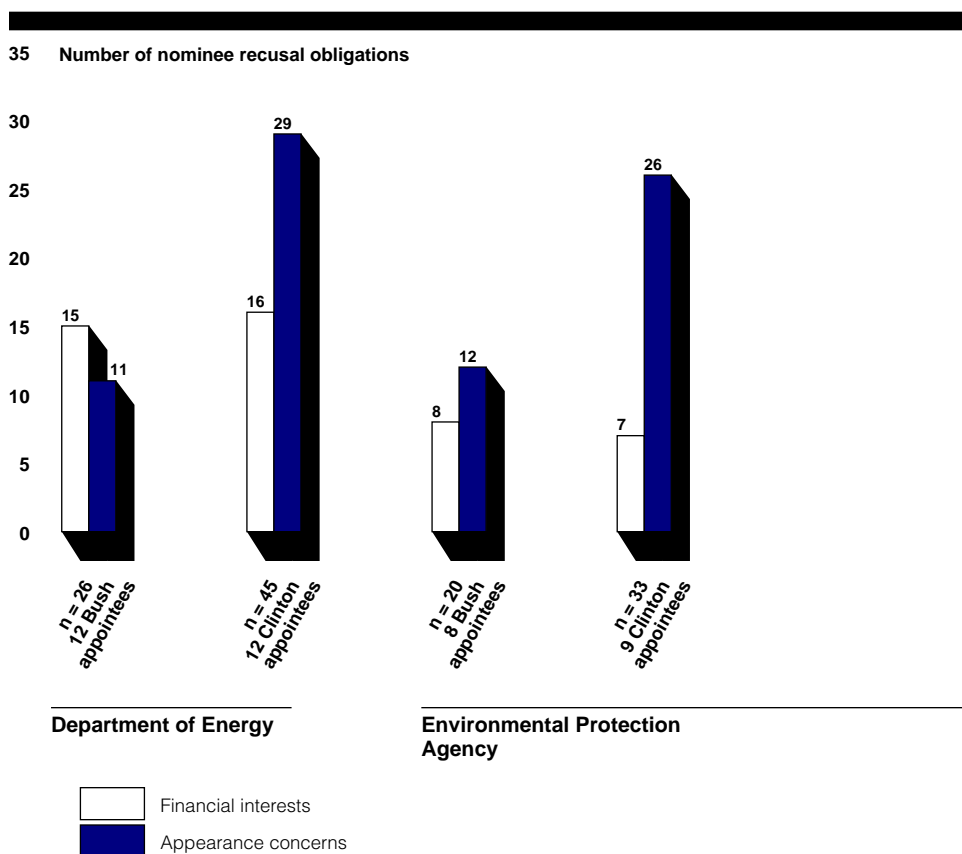
- Mandatory recusal under DOE-specific restrictions (29 nominee recusal obligations): This category consists of (1) 18 recusal obligations made to comply with a recusal policy established by the Senate Energy and Natural Resources Committee in May 1993, and (2) 11 recusal obligations required of DOE appointees by a DOE-specific statute that was repealed in November 1993.
- Agency and appointee discretion under the appearance standard of OGE's regulation (5 C.F.R. 2635.502) (17 nominee recusal obligations): Under this standard, every executive branch employee is obligated to consider and address the appearance implications of participating in agency matters with former employers. This standard provides a maximum 1-year period from the last day of former employment in which the employee is required to consider recusal from a former employer. Using the process established in OGE's regulation, the employee and agency ethics official have the discretion to (1) decide whether the circumstances would raise questions of impartiality significant enough to warrant recusal and (2) establish the period of time the recusal obligation is to remain in effect.
- Mandatory recusal under the extraordinary payment standard of OGE's regulation (5 C.F.R. 2635.503) (two nominee recusals of DOE appointees): Under this standard any employee who receives an extraordinary payment greater than \$10,000 from a former employer is required to recuse from agency matters involving the entity for a period of 2 years from the date the payment is received, unless granted a waiver.

Appendixes I through IV categorize the individual nominee recusal obligations we found documented in the financial disclosure records of each of the 41 appointees according to the bases cited by agency ethics officials for these obligations. In addition, these appendixes identify other restrictions governing participation in government matters that were determined to be applicable to each appointee, including divestitures, waivers of participation restrictions, and any recusals made following Senate confirmation that we observed in the records maintained by the agencies and OGE.

As shown in figure 1, the proportion of nominee recusal obligations addressing financial interests versus appearance concerns associated with a nominee's personal or business relationships changed between the Bush and Clinton appointees. Although the number of recusal obligations addressing conflicts involving continuing financial interests in each agency remained about the same, the number of appearance-based obligations by Clinton appointees was more than double those obligations of the Bush

appointees in each of the two agencies (2.6 times in DOE, and 2.2 times in EPA).

Figure 1: General Types of Conflicts of Interest Addressed by Nominee Recusal Obligations of 41 Presidential Appointees in DOE and EPA (1989-1993)



Source: GAO analysis of DOE, EPA, and OGE financial disclosure records.

DOE Appointees

Overall, 24 nominees to DOE Senate-confirmed positions during the administrations of Presidents Bush and Clinton documented a total of 78 recusal obligations to address an actual or potential conflict of interest under applicable restrictions to their participation in governmental matters. A total of 268 organizational entities were cited as the subjects of the 78 recusal obligations. Table 3 provides specific information on the frequency in which DOE records cited the key legal bases for each type of nominee recusal obligation and the related number of involved entities.

Table 3: Documented Nominee Recusal Obligations of 24 Nominees to Senate-Confirmed Positions in DOE

Bases for type of remedial action	Bush appointees			Clinton appointees		
	Number of appointees	Number of nominee obligations	Number of entities involved	Number of appointees	Number of nominee obligations	Number of entities involved
To address 18 U.S.C. 208 financial interests	10	15	42	10	16	52
Waiver of 18 U.S.C. 208	2	3	3	2	3	3
To address appearance concerns before uniform standards-of-conduct regulation	4	6	32	NA	NA	NA
To address appearance concerns under uniform standards-of-conduct regulation (5 C.F.R. 2635.505 or 2635.503)	NA	NA	NA	4	5	6
To address concerns under recusal policy of the Senate Energy and Natural Resources Committee (DOE specific)	NA	NA	NA	9	18	58
To comply with section 606 of the DOE Organization Act (appearance concerns related to prior employers) (DOE specific)	4	5	10	3	6	61
Waiver of section 606, DOE Act	1	1	1	0	0	0
Total recusal-related	12	30	88	12	48	180

Note: The number of nominee recusal obligations of each of these 24 appointees ranged from 1 to 7 obligations.

Source: GAO analysis of OGE and DOE financial disclosure records.

There were 29 total recusal obligations based on DOE-specific requirements. Of these, most (18) resulted from DOE's implementation of a recusal policy established by the Senate Energy and Natural Resources Committee in May 1993. These obligations dealt solely with concerns about appearance of conflicts of interest related to the appointee's prior employment and service relationships. Such appearance-type recusal obligations had also been addressed by section 606 of the DOE Act until it was repealed on November 30, 1993. In fact, section 606 accounted for the remaining six DOE-specific recusal obligations by the Clinton appointees and all five of the DOE-specific recusal obligations by Bush appointees.

It should be noted that the Senate Committee recusal policy is more restrictive in dealing with appearance concerns than either OGE's current uniform standards of conduct or the repealed DOE Act provisions. First, the

Senate Committee policy requires recusal from certain matters related to former employers without providing for the possibility of a waiver. Both the uniform standards of conduct and the DOE Act provided specific waiver authority. Second, the Senate Committee policy requires recusals involving specific matters in which the nominee participated personally and substantially to last for the duration of his or her service in DOE. Similar recusals based on either the uniform standards of conduct or the DOE Act are or were for a 1-year period.

As summarized in table 4, divestitures were used as a conflict-of-interest remedy by 14 of the 24 appointees. Because each of the appointees had also entered into at least one recusal obligation, the divestiture-related actions shown in table 4 represent remedial actions in addition to the recusal remedies. Of these divestiture-related actions, 11 were taken to comply with the divestiture requirement of section 602 of the DOE Organization Act. This requirement prohibits certain DOE employees, including Senate-confirmed presidential appointees, from owning stock or having interests in an “energy concern,” whether or not the situation presents an actual or apparent conflict of interest with the employee’s duties. In an April 1994 report to Congress,³ DOE concluded that this requirement “...is obsolete, overly broad, and unnecessary, and should be repealed.” The report, among other things, stated that this divestiture requirement was an absolute proscription that prohibited every covered DOE employee from holding any interests in energy concerns and regardless of whether or not the ownership of an energy concern interest would create either an actual or an apparent conflict of interest with respect to the employee’s duties.

³Report to the Congress As Required by Section 3161 of the National Defense Authorization Act for Fiscal Year 1994 (DOE’s Office of General Counsel, April 1994)

Table 4: Documented Divestiture-Related Obligations of 24 Nominees to Senate-Confirmed Positions in DOE

Bases for type of remedial action	Bush appointees			Clinton appointees		
	Number of appointees	Number of nominee obligations	Number of divested or waived interests	Number of appointees	Number of nominee obligations	Number of divested or waived interests
To comply with 18 U.S.C. 208	2	2	2	1	2	14
To address appearance concerns	1	1	1	0	0	0
To comply with section 602 of the DOE Organization Act (DOE specific)	5	6	21	4	5	21
Waiver of section 602, DOE Act	2	2	2	4	4	4
A requirement of Senate confirmation	1	1	1	0	0	0
Total divestiture-related	8	12	27	6	11	39

Note: The number of nominee divestitures made by each of these 24 appointees ranged from 1 to 25 divestitures.

Source: GAO analysis of OGE and DOE financial disclosure records.

Specific information on the remedial obligations of each DOE appointee is presented in appendixes I and II.

EPA Appointees

Overall, 17 nominees to EPA Senate-confirmed positions during the administrations of Presidents Bush and Clinton documented a total of 61 nominee recusal obligations to address an actual or potential conflict of interest under applicable restrictions to their participation in governmental matters. A total of 252 organizational entities were cited as the subjects of the 61 recusal obligations. Table 5 provides specific information on the frequency in which EPA records cited the key legal bases for each type of nominee recusal obligation and the related number of involved entities. Unlike DOE, EPA has no recusal obligations based on agency-specific statutes or Senate confirmation committee requirements.

Table 5: Documented Nominee Recusal Obligations of 17 Nominees to Senate-Confirmed Positions in EPA

Bases for type of remedial action	Bush appointees			Clinton appointees		
	Number of appointees	Number of nominee obligations	Number of entities involved	Number of appointees	Number of nominee obligations	Number of entities involved
To address 18 U.S.C. 208 financial interests	6	8	7	5	7	56
Waiver of 18 U.S.C. 208	1	2	2	6	6	50
To address appearance concerns before uniform standards-of-conduct regulation	7	12	45	NA	NA	NA
To address appearance concerns under uniform standards-of-conduct regulation on covered relationships (5 C.F.R. 2635.502)	NA	NA	NA	8	14	46
EPA practice in addressing "other" appearance concerns under uniform standards-of-conduct regulation (5 C.F.R. 2635.502(a)(2))	NA	NA	NA	9	12	46
Total recusal-related	8	22	54	9	39	198

Note: The number of nominee recusal obligations made by each of these 17 appointees ranged from 2 to 6 obligations.

Source: GAO analysis of OGE and EPA financial disclosure records.

There were 26 recusal obligations addressing appearance concerns made by the Clinton appointees and 12 appearance-type recusal obligations made by 7 Bush appointees before OGE's uniform standards of conduct became effective in February 1993. Of the 26 obligations by Clinton appointees, 14 addressed appearance concerns related to covered relationships under the uniform standards-of-conduct regulation. The remaining 12 recusal obligations involved former employment relationships of nine appointees, all but three of whom were attorneys.

As a matter of practice, EPA generally treated attorneys restrictively. EPA nominees who were attorneys coming from public interest groups, state governments, and law firms were required to recuse themselves for the duration of their EPA service from matters in which they personally and substantially participated as employees with these groups, states, or firms.

Such “permanent” recusal obligations are not specifically required by OGE’s appearance standard. As previously noted, every executive branch employee is obligated to consider and address the appearance implications of participating in agency matters with former employers for a maximum 1-year period from the last day of former employment. Using the process established in OGE’s regulation, the employee and agency ethics official have had the discretion to (1) decide whether the circumstances would raise questions of impartiality significant enough to warrant recusal and (2) establish the period of time for which the recusal obligation is to remain in effect.

In providing us their views on the results of our analysis, EPA ethics officials pointed out that their practice of recusing attorneys from participation in “specific party” matters in which they participated before government service was based not only on OGE’s regulation but also on the rules of the American Bar Association (ABA). They said that the ABA model rules of professional conduct provide that, unless specifically authorized, lawyers serving as public officers or employees shall not participate in a matter in which they participated personally and substantially while in private practice.

As shown in table 6, the EPA Bush appointees in our review made few divestiture obligations. A statutory divestiture requirement that was applicable to three Bush appointees included in our review was repealed in November 1990. This provision, Section 318 of the Clean Air Act, had prohibited EPA officials occupying certain positions of a regulatory or policymaking nature from having any official or contractual relationship with certain specified groups related to air quality. The provision barred EPA employees from participation in professional societies, which EPA regarded as an excessive restriction. In recommending repeal of Section 318, EPA’s Office of General Counsel said it largely duplicated the criminal conflict of interest statute, 18 U.S.C. 208, and EPA’s regulatory “appearance” standards.

Table 6: Documented Divestiture-Related Obligations of 17 Nominees to Senate-Confirmed Positions in EPA

Bases for type of remedial action	Bush appointees			Clinton appointees		
	Number of appointees	Number of nominee obligations	Number of divested interests	Number of appointees	Number of nominee obligations	Number of divested interests
To comply with 18 U.S.C. 208	1	1	5	7	10	30
To comply with section 318 of the Clean Air Act (repealed in Nov. 1990)	3	3	4	NA	NA	NA
Total divestiture-related	3	4	9	7	10	30

Note: The number of nominee divestitures made by each of these 17 appointees ranged from 1 to 17 obligations.

Source: GAO analysis of OGE and DOE financial disclosure records.

Specific information on the remedial obligations of each EPA appointee is presented in appendixes III and IV.

Scope and Methodology

Information in this fact sheet was drawn primarily from the financial disclosure records of the appointees maintained by OGE and the designated agency ethics officials at DOE and EPA. We supplemented the agency records with the views of agency ethics officials in instances where the basis for a specific recusal obligation was unclear from the records. Appendix V provides a description of the purpose and scope of each type of record we examined for each appointee included in our review, including a description of related regulatory criteria.

To determine the extent to which nominees in the two agencies made obligations to recuse themselves from official government matters, we took the following steps:

- We generally defined the population as those appointees who were serving in Senate-confirmed positions at the end of the administration of President Bush in December 1992 and the end of the first year of the administration of President Clinton in December 1993. To this group, we added eight appointees serving in the Bush administration who were the last incumbents serving in the positions because their positions were vacant in December 1992 (four appointees in DOE and four in EPA). We included these appointees in order to get the widest possible representation of Senate-confirmed positions in both agencies for which nominee data was

available. Nominee data were not available for the appointees filling the positions of Inspector General at DOE and EPA or for two Bush appointees filling other positions (the Director of the Office of Alcohol Fuels in DOE and the Assistant Administrator for External Affairs in EPA). Because these four appointees had been in office for more than 6 years, their nominee or new entrant records were routinely disposed of in accordance with OGE regulations.

- We reviewed the financial disclosure records of each appointee in the population for evidence of any recusal obligation made related to the appointee's nomination and confirmation. We completed a data collection instrument to uniformly describe from the records certain characteristics of each appointee's recusal or other participation obligations. Among other things, we gathered data on the nature of the continuing financial interests or personal and business relationships that were viewed as an actual or potential conflict of interest requiring a remedial action.
- We then used the data obtained to determine how often nominee recusal obligations were documented by appointees in the two administrations. For purposes of our analysis, we considered any recusal obligation that agency records or ethics officials had identified a distinct basis for as a single obligation regardless of how many entities, matters, or subjects may have been covered by the recusal obligation. The appendixes present specifically what we considered a single recusal obligation for each appointee we examined.

To determine the bases cited for the recusal obligations of the appointees, we included in our data collection instrument a description of the recusal obligations made by each nominee and the basis cited in the records reviewed. As previously noted, we supplemented the agency records with the views of agency ethics officials in instances where records did not clearly establish the basis. Thus, the bases cited represent the views of DOE and EPA ethics officials.

To determine the extent to which appointees with nominee recusal obligations had also taken other remedial actions to comply with criteria governing their participation in official government matters, we included in our data collection instrument an identification of divestitures of financial interests, agency waivers of statutory participation prohibitions, and instances where appointees created recusal obligations after the Senate confirmation process. The recusal obligations occurring after Senate confirmation are presented in the appendixes under the "other" remedial action category. We did not include remedial actions involving resignations from outside employment that are governed by different

criteria. According to OGE, Senate-confirmed political appointee have traditionally been forbidden by the White House from continuing any outside positions with for-profit entities, and the White House has allowed positions with nonprofit entities to continue only after a case-by-case review.

We did our work at the DOE, EPA, and OGE headquarters in Washington, D.C., from June 1993 to July 1994 in accordance with generally accepted government auditing standards.

Agency Views

We discussed information in this fact sheet with the designated agency ethics officials in DOE and EPA in January 1995 and with OGE officials, including OGE's General Counsel and Associate Director of the Office of Program Assistance and Review, in October 1994. They provided suggestions for improving the clarity and accuracy of our analyses, which we incorporated where appropriate.

OGE officials expressed the view that the practice of Senate-confirmed political appointees documenting their recusal obligations is a legitimate tool for the prevention of conflicts of interest. In particular, OGE views written recusal statements as helping to make appointees more sensitive to circumstances that would require actual recusal and considers such statements to be an important mechanism for protecting the appointee from charges of conflict of interest.

Both DOE and OGE officials offered suggestions to improve our summary accounting of the recusal and divestiture obligations of the presidential appointees. In response to their comments, we revised the summary tables in the letter and appendixes to provide specific information on the number of nongovernmental entities involved in the recusal and divestiture obligations. As a result, our summary tables now account for three characteristics of the recusal obligations. For example, as shown in table 4, the documented nominee recusal obligations and other remedial actions of 12 Bush appointees in DOE are accounted for by (1) the number of appointees for whom agency records cited a specific basis for recusal from any disqualifying matters, (2) the number of different times that specific basis was cited for these appointees in one or more written recusal statements, and (3) the total number of nongovernmental entities whose financial interests were the subject of each specific recusal basis.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this fact sheet until 30 days from its issue date. At that time, we will send copies to the Chairman and Ranking Minority Member of the Senate Committees who were principally involved in confirming the DOE and EPA appointees included in our review. In addition, we will send copies to the Secretary of Energy, Administrator of EPA, Director of OGE, and other interested parties. We will also make copies available to others on request.

The major contributors to this fact sheet are listed in appendix VI. Please contact me on (202) 512-5074 if you or your staff have any questions.

Sincerely yours,

A handwritten signature in black ink that reads "Nancy R. Kingsbury". The signature is written in a cursive style with a large, stylized "N" and "K".

Nancy Kingsbury
Director
Federal Human Resource Management
Issues

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Abbreviations

DAEO	Designated agency ethics official
DOE	Department of Energy
EPA	Environmental Protection Agency
OGE	Office of Government Ethics

Documented Recusal Obligations of Top Bush Administration DOE Officials

The Department of Energy (DOE) had 21 positions that required Senate confirmation of presidential appointments. Table I.1 lists these DOE positions, the names of the incumbents during President Bush's administration whose financial disclosure records we reviewed at the Office of Government Ethics (OGE) in August 1993 and at DOE in October 1993, and the 12 appointees whom we found had executed recusal statements related to their nomination to the Senate-confirmed positions. All but four of the appointees listed in table I.1 were serving at the end of the Bush administration in 1992.

Appendix I
Documented Recusal Obligations of Top
Bush Administration DOE Officials

Table I.1: Top DOE Officials in the Bush Administration With Nominee Recusal Statements

Senate-confirmed position	Incumbent records reviewed	Nominee recusal statement
Secretary	James D. Watkins	Yes-1989
Deputy Secretary	W. Henson Moore	Yes-1989
Under Secretary	John C. Tuck	None required
Administrator-Energy Information Administration	Calvin A. Kent	Yes-1990
Administrator-Economic Regulatory Administration ^a	Chandler L. van Orman	Yes-1987
Asst. Sec.-Congressional and Intergovernmental Affairs	Gregg Ward	Yes-1991
Asst. Sec.-Conservation and Renewable Energy	J. Michael Davis	Yes-1989
Asst. Sec.-Defense Programs	Richard A. Claytor	Yes-1990 and 1991
Asst. Sec.-Environment, Safety and Health	Paul L. Zeimer	Yes-1990
Asst. Sec.-Environmental Restoration and Waste Management	Leo P. Duffy	Yes-1991
Asst. Sec.-Fossil Energy ^a	Robert H. Gentile	None required
Asst. Sec.-International Affairs and Energy Emergencies ^a	John J. Easton Jr.	Yes-1989
Asst. Sec.-Nuclear Energy	William H. Young	None required ^b
Chief Financial Officer	Vacant	-
Director-Office of Alcohol Fuels ^a	David M. Lindahl	Nominee data not available
Director-Office of Civilian Radioactive Waste Management	John W. Bartlett	Yes-1990
Director-Office of Energy Research	William Happer	Yes-1991
Director-Office of Minority Economic Impact	Melva G. Wray	None required
General Counsel	John J. Easton, Jr.	None required
Inspector General	John C. Layton	Nominee data not available
Deputy Inspector General	Vacant	

^aBecause this position was vacant on December 31, 1992, we included the last incumbent of the position in this analysis.

^bWhile OGE viewed a proposed recusal as an ethics agreement for this nominee, the recusal was not subsequently executed because an agency-specific statute that was the basis for the recusal had been suspended. Thus, the need to execute the recusal was no longer necessary, according to a DOE letter to OGE dated April 30, 1990.

Source: GAO analysis of financial disclosure records on file at OGE and DOE.

Outcome of DOE's Application of Participation Restrictions

As shown in table I.1, 12 of the 17 Bush appointees whose financial disclosure records we reviewed had made obligations to recuse themselves from certain official DOE matters as part of their nomination to the Senate-confirmed position. Among other things:

- The 12 appointees with recusal obligations represent 71 percent of the 17 incumbents in Senate-confirmed positions for whom financial disclosure data was available on their nominations to the positions at OGE during our work. All but 2 of the 12 appointees were serving at the end of the Bush administration in 1992.
- There were 10 types of recusal or divestiture obligations that were applicable to these 12 DOE Bush administration appointees. In total, there were 30 obligations related to recusals and 12 to divestitures. The 30 recusal-related obligations involved a total of 88 organizational entities, and the 12 divestiture-related obligations involved a total of 27 organizational entities.
- The three most frequently occurring types of remedial obligations were recusals to comply with 18 U.S.C. 208, recusals to address appearance concerns, and divestitures to comply with legislation applicable to only DOE employees (section 602 of the DOE Organization Act).

Table I.2 identifies the frequency of occurrence of each of the 10 types of remedial obligations.

Appendix I
Documented Recusal Obligations of Top
Bush Administration DOE Officials

Table I.2: Outcome of DOE's Application of Participation Restrictions to 12 Top Political Appointees Serving in the Bush Administration

Basis for type of remedial action	Number of applicable appointees	Number of nominee obligations	Number of entities involved
Recusal-related:	12	30	88
To comply with 18 U.S.C. 208	10	15	42
To address appearance concerns (no specific criteria cited)	4	6	32
To comply with section 606 of the DOE Organization Act	4	5	10
Waiver of 18 U.S.C. 208	2	3	3
Waiver of section 606 of the DOE Act	1	1	1
Divestiture-related:	8	12	27
To comply with section 602 of the DOE Organization Act	5	6	21
To comply with 18 U.S.C. 208	2	2	2
Waiver of section 602 of the DOE Act	2	2	2
A requirement of Senate confirmation	1	1	1
To address appearance concerns	1	1	1
Total	12	42	115

Source: GAO analysis of financial disclosure records on file at OGE and DOE.

Case History Summaries

For the 12 Bush appointees in DOE with nominee recusal agreements on file with OGE, the following case histories summarize information from the financial disclosure records maintained at either OGE or DOE by the designated agency ethics official (DAEO). We selected information that would provide an overview of the outcome of DOE's entire application of restrictions governing participation in official government matters by Bush appointees. Beyond individual recusals, we identified when DOE used divestitures or waivers to resolve a conflict situation or concern. We summarized the underlying conflict situation or concern that the specific remedial action addressed. We generally categorized the conflict situation or concern as involving a continuing financial interest or a personal/business relationship. While many of the appointees had more than one paid or uncompensated position before Senate confirmation, we selected the previous employer that appeared to be the principal source of the appointee's recusal obligations. (App. V provides further details on the

Appendix I
Documented Recusal Obligations of Top
Bush Administration DOE Officials

general types of DOE records we examined for each appointee and a description of related regulatory criteria.)

Secretary of Energy

Appointee: James D. Watkins
Previous employer: Members of Boards of several private corporations or organizations (federal service included the U.S. Navy)

Conflict situation/concern	Divestiture basis			Recusal basis				
	DOE Act Sec.602	Waiver of DOE Act-602	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	DOE Act Sec.606	Waiver of DOE Act-606	Appearance concern
Continuing financial interest								
Mutual stock fund holdings (energy concern)	Divest							
Personal/business relationship								
Former energy concern employer (Board of Directors at Philadelphia Electric)						Recuse (duration) ^a		
Former employer (Board of Advisors at Ford Aerospace)								Recuse (duration) ^b
Other								
Negotiating for employment with seven entities				Recuse				

^aThe appointee executed the recusal for the "duration of my employment with the Department;" however, the DAEO ethics advice stated the DOE act required recusal "for a period of one year from the termination of his employment with Philadelphia Electric Company."

^bThe appointee made this recusal obligation on his own initiative according to a DOE ethics official (included in the executed recusal statement, but not addressed in DAEO ethics advice to nominee).

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Documented Recusal Obligations of Top
Bush Administration DOE Officials

**Deputy Secretary of
Energy**

Appointee: W. Henson Moore
Previous employer: Law firm of Sutherland, Asbill & Brennan

Conflict situation/concern	Divestiture basis				Recusal basis				
	DOE Act Sec.602	Waiver of DOE Act-602	18 U.S.C. 208	Appearance concern	18 U.S.C. 208	Waiver, 18 U.S.C. 208	DOE Act-606	Waiver of DOE Act-606	Appearance concern
Continuing financial interest									
Spouse's direct ownership of Exxon common stock				Divest					
Spouse's interest in a trust holding Exxon common stock					Recuse (unless waived)	Waiver ^a (8/4/89)			
A particular matter that arose with Exxon						Waiver ^a (12/12/91)			
Personal/business relationship									
Any matter directly relating to award of Strategic Petroleum Reserve contract in which he gave legal services									Recuse ^b
Any particular matter involving former law firm as a specific party									1-Year recuse
Any particular matter involving any of 26 former legal clients									1-Year recuse

^aFirst waiver covered oil and gas industry generally; second waiver covered Exxon specifically.

^bAlthough the basis for this recusal was a general appearance concern according to DOE ethics officials, DOE records also cited a rule of professional conduct of the Louisiana State Bar as a factor in the decision to recuse. DOE said, however, that it has no responsibility for interpreting such state bar rules for private attorneys entering federal service.

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Documented Recusal Obligations of Top
Bush Administration DOE Officials

**Administrator, Energy
Information
Administration**

Appointee: Calvin A. Kent
Previous employer: Professor, Baylor University

Conflict situation/concern	Divestiture basis			Recusal basis				
	DOE Act Sec.602	Waiver of DOE Act-602	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	DOE Act Sec.606	Waiver of DOE Act-606	Appearance concern
Continuing financial interest								
Holdings in two energy concerns (Ashland Oil ^a and Norfolk Southern Corporation)	Divest			Recuse (before divest)				
Holdings in four U.S. firms (two of which represent spousal interests)				Recuse				
Tenured position at Baylor University (an energy concern) (leave of absence)		Waiver		Recuse				
Personal/business relationship								
None								

^aEthics advice said that despite being a small holding paying less than \$20 per year, divestiture was necessary.

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Documented Recusal Obligations of Top
Bush Administration DOE Officials

**Administrator,
Economic Regulatory
Administration (ERA)**

Appointee: Chandler L. van Orman (Recess appointment) (Nominated by President Reagan)

Previous employer: Deputy Administrator, ERA

Conflict situation/concern	Divestiture basis			Recusal basis				
	DOE Act Sec.602	Waiver of DOE Act-602	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	DOE Act Sec.606	Waiver of DOE Act-606	Appearance concern
Continuing financial interest								
Interests in four companies (IBM, Schlumberger, Foster Wheeler Corp., & Fairchild Industries)				Recuse				
Personal/business relationship								
Member of National Boating Safety Advisory Council								Recuse

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Documented Recusal Obligations of Top
Bush Administration DOE Officials

**Assistant Secretary
for Congressional
Affairs**

Appointee: Gregg Ward
Previous employer: Vice-President of External Affairs, American
Institute of Architects

Conflict situation/concern	Divestiture basis			Recusal basis				
	DOE Act Sec.602	Waiver of DOE Act-602	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	DOE Act Sec.606	Waiver of DOE Act-606	Appearance concern
Continuing financial interest								
Interests in two firms: Laidlaw Inc. and Law Office of Deborah Steelman (spouse)				Recuse				
Holdings in a nonenergy concern, Noxso Corporation (coal pollution control)			Divest					
Personal/business relationship								
Matters personally involved with two former energy concern employers (Duke Power Co. and Gulf States Utilities)						1-Year recuse		

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Documented Recusal Obligations of Top
Bush Administration DOE Officials

**Assistant Secretary,
 Conservation and
 Renewable Energy**

Appointee: Jon M. Davis
Previous employer: President, Glowcore Colorado Inc.

Conflict situation/concern	Divestiture basis			Recusal basis				
	DOE Act Sec.602	Waiver of DOE Act-602	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	DOE Act Sec.606	Waiver of DOE Act-606	Appearance concern
Continuing financial interest								
President and owner of Glowcore, a commercial mechanical engineering firm engaging in heating, ventilation, and air conditioning products			Divest ^a	Recuse (until divest)				
Personal/business relationship								
None								
Other								
Five incumbent recusals (negotiating future employment) dated within 6 months of departure from DOE				Recuse				

^aWhile DOE had determined that a recusal could have satisfied requirements of 18 U.S.C. 208, the appointee chose to divest his interests in this firm according to DOE ethics officials.

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Documented Recusal Obligations of Top
Bush Administration DOE Officials

**Assistant Secretary,
 Defense Programs**

Appointee: Richard A. Claytor
Previous employer: Principal Deputy Assistant Secretary for Nuclear
 Energy

Conflict situation/concern	Divestiture basis			Recusal basis				
	DOE Act Sec.602	Waiver of DOE Act-602	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	DOE Act Sec.606	Waiver of DOE Act-606	Appearance concern
Continuing financial interest								
Holdings in three energy concerns (Exxon, Freeport McMoran, and American Electric Power Company)	Divest			Recuse (before divest)				
AT&T stock holdings	The Senate Armed Services Committee required divestiture			Recuse (before divest) ^a				
Holdings in U.S. West Inc. (nature of business not described)				Recuse				
Personal/business relationship								
None								

^aWhile DOE had determined the AT&T holdings did not constitute a disqualifying financial interest under 18 U.S.C. 208, the appointee subsequently agreed to execute a recusal covering AT&T "in view of his stock ownership." DOE had contractual relations with AT&T, but none of these contracts were with the Office of Defense Programs.

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 Documented Recusal Obligations of Top
 Bush Administration DOE Officials

Assistant Secretary
 for Environment,
 Safety and Health

Appointee: Paul L. Ziemer
 Previous employer: Professor, Purdue University

Conflict situation/concern	Divestiture basis			Recusal basis				
	DOE Act Sec.602	Waiver of DOE Act-602	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	DOE Act Sec.606	Waiver of DOE Act-606	Appearance concern
Continuing financial interest								
Leave of absence from Purdue University				Recuse				
Personal/business relationship								
None								

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Documented Recusal Obligations of Top
Bush Administration DOE Officials

**Assistant Secretary,
Environmental
Restoration and Waste
Management**

Appointee: Leo P. Duffy
Previous employer: Westinghouse (also Director, Office of
Environmental Restoration and Waste Management just before
confirmation)

Conflict situation/concern	Divestiture basis			Recusal basis				
	DOE Act Sec.602	Waiver of DOE Act-602	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	DOE Act Sec.606	Waiver of DOE Act-606	Appearance concern
Continuing financial interest								
Stock in Boeing (an energy concern)	Divest							
Holdings in three companies (Rockwell, AT&T, Bell Telephone)				Recuse				
Vested interests in pension and retirement plans and deferred compensation from Westinghouse (an energy concern)		Waiver ^a			Waiver ^a			
Personal/business relationship								
None								

^aThese two waivers were initially granted by the Secretary of Energy when the appointee was a Special Assistant to the Secretary, but the waivers were reaffirmed by the DAEO during the confirmation process as sufficient to cover his service as Assistant Secretary.

**Assistant Secretary
for International
Affairs and Energy
Emergencies**

Appointee: John J. Easton, Jr.
Previous employer: Law firm of Miller, Eggleston and Rosenberg, Ltd.

Conflict situation/concern	Divestiture basis			Recusal basis				
	DOE Act Sec.602	Waiver of DOE Act-602	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	DOE Act Sec.606	Waiver of DOE Act-606	Appearance concern
Continuing financial interest								
None								
Personal/business relationship								
Any private discussions of official business matters with former law firm employment and one client (Champlain Pipeline Company)								1-Year recuse
Any departmental proceeding related to legal services provided to a former energy concern client (Green Mountain Power Corp)						1-Year recuse		

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Documented Recusal Obligations of Top
Bush Administration DOE Officials

**Director, Office of
Civilian Waste
Management**

Appointee: John W. Bartlett
Previous employer: Manager, The Analytic Sciences Corporation

Conflict situation/concern	Divestiture basis			Recusal basis				
	DOE Act Sec.602	Waiver of DOE Act-602	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	DOE Act Sec.606	Waiver of DOE Act-606	Appearance concern
Continuing financial interest								
Common stock holdings in previous employer and interest in profit-sharing retirement fund				Recuse				
Personal/business relationship								
None								
Other								
To avoid an appearance of a conflict in the award of a management and operating contract (incumbent recusal following Senate confirmation)								Recuse ^a

^aThe appointee was not required to execute this incumbent recusal but did so on his own initiative according to DOE ethics officials.

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Documented Recusal Obligations of Top
Bush Administration DOE Officials

**Director, Office of
Energy Research**

Appointee: William Happer
Previous employer: Professor, Princeton University

Conflict situation/concern	Divestiture basis			Recusal basis				
	DOE Act Sec.602	Waiver of DOE Act-602	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	DOE Act Sec.606	Waiver of DOE Act-606	Appearance concern
Continuing financial interest								
Holdings in 13 energy concerns	Divest			Recuse (before divest)				
Common stock holdings in four nonenergy concerns				Recuse				
Tenured position at Princeton University (an energy concern)	Divest/ resign							
Personal/business relationship								
Any Departmental matter involving three former energy concern employers (Princeton, University of California, Schlumberger-Doll Laboratories)						1-Year recuse		
Matters personally involved for 5 prior years with former energy concern employers						1-Year recuse	Partial waiver ^a	
Other								
Negotiating employment with six entities				Recuse				

^aCertain matters were excluded from the waiver (thus continuing the participation prohibition), including Departmental proceedings related to the Physics Department at Princeton.

Documented Recusal Obligations of Top Clinton Administration DOE Officials

The Department of Energy (DOE) had 20 positions that required Senate confirmation of presidential appointments during the first year of President Clinton's administration. Table II.1 lists these DOE positions, the names of the incumbents whose financial disclosure records we reviewed at the Office of Government Ethics (OGE) in December 1993 and at DOE in March 1994, and the 12 appointees whom we found had executed recusal statements related to their nominations to the Senate-confirmed positions. All these appointees were serving at the end of the first year of the Clinton administration in 1993.

Table II.1: Top DOE Officials in the Clinton Administration With Nominee Recusal Statements as of December 31, 1993

Senate-confirmed position	Incumbent records reviewed	Nominee recusal statement
Secretary	Hazel R. O'Leary	Yes
Deputy Secretary	William H. White	Yes
Under Secretary	Vacant - person nominated but not confirmed as of 12/31/93	
Administrator, Energy Information Administration	Jay E. Hakes	Yes
Administrator, Economic Regulatory Administration	Vacant	
Assistant Secretary, Congressional, Intergovernmental and International Affairs	William J. Taylor III	Yes
Assistant Secretary, Energy Efficiency and Renewable Energy	Christine A. Ervin	Yes
Assistant Secretary, Defense Programs	Victor H. Reis	Yes
Assistant Secretary, Domestic and International Energy Policy	Susan F. Tierney	Yes
Assistant Secretary, Environment, Safety and Health	Tara J. O'Toole	None on file as of 12/31/93
Assistant Secretary, Environmental Restoration and Waste Management	Thomas P. Grumbly	Yes
Assistant Secretary, Fossil Energy	Vacant	
Assistant Secretary, Human Resources Administration	Archer L. Durham	None required
Chief Financial Officer	Vacant	

(continued)

Appendix II
Documented Recusal Obligations of Top
Clinton Administration DOE Officials

Senate-confirmed position	Incumbent records reviewed	Nominee recusal statement
Director, Office of Civilian Radioactive Waste Management	Daniel A. Dreyfus	Yes
Director, Office of Energy Research	Martha A. Krebs	Yes
Director, Office of Minority Economic Impact	Corlis S. Moody	Yes
Director, Office of Nuclear Energy	Vacant	
General Counsel	Robert R. Nordhaus	Yes
Inspector General	John Layton (carryover from previous administration)	Nominee data not available

Source: GAO analysis of OGE and DOE financial disclosure records of top political appointees serving during first year of President Clinton's administration.

Outcome of DOE's Application of Participation Restrictions

As shown in table II.1, as of the end of 1993, 12 of the 14 Clinton appointees whose financial disclosure records we reviewed had made obligations to recuse themselves from certain official DOE matters as part of their nomination and confirmation to the DOE positions. Among other things:

- The 12 appointees with recusal obligations represent 86 percent of the 14 DOE political appointees who were Senate confirmed at the end of 1993 and for whom nominee ethics agreement data were available.
- There were 8 types of recusal or divestiture obligations that were applicable to the 12 DOE Clinton administration appointees. In total, there were 48 obligations related to recusals and 11 related to divestitures. The 48 recusal-related obligations involved a total of 180 organizational entities, and the 11 divestiture-related obligations involved a total of 39 organizational entities.
- The 3 most frequently occurring types of remedial obligations were recusals to address appearance concerns under the May 1993 recusal policy of the Senate Energy and Natural Resources Committee (16 obligations), recusals to comply with a criminal conflict-of-interest statute (18 U.S.C. 208) (16 obligations), and recusals to comply with agency-specific legislation (section 606 of the DOE Act) (6 obligations).

Table II.2 identifies the frequency of occurrence of each of the eight types of remedial obligations.

Table II.2: Outcome of DOE's Application of Participation Restrictions to 12 Top Political Appointees Serving in the Clinton Administration

Basis for type of remedial action	Number of applicable appointees	Number of nominee obligations	Number of entities involved
Recusal-related:	12	48	180
To address appearance concerns under recusal policy of the Senate Energy and Natural Resources Committee	9	18	58
To comply with 18 U.S.C. 208	10	16	52
To address appearance concerns under executive branch-wide standards of conduct (5 C.F.R. 2635.502 and 2635.503)	4	5	6
To comply with section 606 of the DOE Organization Act	3	6	61
Waiver of 18 U.S.C. 208	2	3	3
Divestiture-related:	6	11	39
To comply with section 602 of the DOE Organization Act	4	5	21
Waiver of section 602 of the DOE Organization Act	4	4	4
To comply with 18 U.S.C. 208	1	2	14
Total	12	59	219

Source: GAO analysis of financial disclosure records on file at OGE and DOE.

Case History Summaries

For the 12 Clinton appointees in DOE with nominee recusal agreements on file with OGE, the following case histories summarize information from the financial disclosure records maintained at either OGE or DOE by the designated agency ethics official (DAEO). We selected information that would provide an overview of the outcome of DOE's entire application of restrictions governing participation in official government matters of Clinton appointees at the end of 1993. Beyond individual recusals, we identified when DOE used divestitures or waivers to resolve a conflict situation or concern. We summarized the underlying conflict situation or concern that the specific remedial action addressed. We generally categorized the conflict situation or concern as involving a continuing financial interest or a personal/business relationship. While many of the

Appendix II
Documented Recusal Obligations of Top
Clinton Administration DOE Officials

appointees had more than one paid or uncompensated position before Senate confirmation, we selected the previous employer that appeared to be the principal source of the appointee's recusal obligations. (App. V provides further details on the general types of DOE records we examined for each appointee and a description of related regulatory criteria.)

Secretary of Energy

Appointee: Hazel R. O'Leary
Previous employer: Northern States Power Company

Conflict situation/concern	Divestiture basis			Recusal basis				
	DOE Act Sec. 602	Waiver of DOE Act-602	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C 208	DOE Act Sec.606	Appearance - 5 C.F.R. 2635	Appearance - Senate policy
Continuing financial interest								
Seven energy concern holdings	Divest			Recuse/ until divest				
Holdings in an energy concern gifted to a son (not minor or dependent)	Divest							
Interests in Eastman Kodak, General Public Utilities, and Minnesota Mining & Manufacturing				Recuse				
Survivor benefits and deferred compensation from an energy concern (General Public Util.)		Waiver 1/21/93			Waiver 8/08/93			
Personal/business relationship								
Former energy employer (Northern States Power)						1-Year recuse		
Matters personally involved for 5 prior years with above employer						1-Year recuse		
Other								
Extraordinary payment from Northern States Power Co.							2-Year recuse	

Appendix II
Documented Recusal Obligations of Top
Clinton Administration DOE Officials

**Deputy Secretary of
Energy**

Appointee: William H. White
Previous employer: Law firm of Susman Godfrey, L.L.P.

Conflict situation/concern	Divestiture basis			Recusal basis				
	DOE Act Sec.602	Waiver of DOE Act-602	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	DOE Act Sec.606	Appearance - 5 C.F.R. 2635	Appearance concern- Senate
Continuing financial interest								
Spousal interest in Browning-Ferris Industries; other interests in Eastman Kodak, IBM, Mead Corp.				Recuse ^a				
Personal/business relationship								
Any of 16 former legal clients						1-Year recuse		
Matters personally involved for 5 prior years with 23 former legal clients						1-Year recuse		
Any of five entities for which appointee served as officer, director, trustee or general partner just before DOE service								Recuse
Any matter raising questions of impartiality due to employment with any of above five entities								1-Year recuse
Other								
Extraordinary payment from former law firm (Susman Godfrey, L.L.P.)							2-Year recuse	

^aEthics agreement also cited a May 1993 recusal policy of the confirmation committee as the basis for this recusal.

Adminsitrator, Energy Information Administration

Appointee: Jay E. Hakes
Previous employer: Adjunct Professor at Florida State University

Conflict situation/concern	Divestiture basis			Recusal basis				
	DOE Act Sec.602	Waiver of DOE Act-602	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	DOE Act Sec.606	Appearance - 5 C.F.R. 2635	Appearance - Senate policy
Continuing financial interest								
Spouse employment by Florida State University				Recuse				
Personal/business relationship								
Matters personally involved as employee of Florida State University								Recuse
Any matter raising questions of impartiality due to Florida State employment								1-year Recuse

Appendix II
Documented Recusal Obligations of Top
Clinton Administration DOE Officials

**Assistant Secretary,
Congressional,
Intergovernmental,
and International
Affairs**

Appointee: William J. Taylor III
Previous employer: Law firm of Hutcheson and Grundy, L.L.P.

Conflict situation/concern	Divestiture basis			Recusal basis				
	DOE Act Sec.602	Waiver of DOE Act-602	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	DOE Act Sec.606	Appearance - 5 C.F.R. 2635	Appearance - Senate policy
Continuing financial interest								
Spouse's mineral royalty interest				Recuse ^a				
Personal/business relationship								
Matters personally involved as an officer, director, or employee in nine entities, including former law firm								Recuse
Any matter raising questions of impartiality due to employment relationship with any of above nine entities								1-Year recuse

^aEthics agreement also cited a May 1993 recusal policy of the confirmation committee as the basis for this recusal.

Assistant Secretary, Energy Efficiency and Renewable Energy

Appointee: Christine A. Ervin
Previous employer: Director, Oregon Department of Energy

Conflict situation/concern	Divestiture basis			Recusal basis				
	DOE Act Sec.602	Waiver of DOE Act-602	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	DOE Act Sec.606	Appearance - 5 C.F.R. 2635	Appearance - Senate policy
Continuing financial interest								
Spousal employment Oregon State University and interests in Oregon Public Employees Retirement System and University of Missouri Deferred Retirement Plan				Recuse ^a				
Personal/business relationship								
Matters personally involved as an employee of Oregon Dept. of Energy								Recuse
Any matter raising questions of impartiality due to relationship with previous employer								1-Year recuse

^aEthics agreement also cited a May 1993 recusal policy of the confirmation committee as the basis for this recusal.

Appendix II
Documented Recusal Obligations of Top
Clinton Administration DOE Officials

Assistant Secretary,
Defense Programs

Appointee: Victor H. Reis
Previous employer: Director, Defense Research and Engineering, DOD

Conflict situation/concern	Divestiture basis			Recusal basis				
	DOE Act Sec.602	Waiver of DOE Act-602	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	DOE Act Sec.606	Appearance - 5 C.F.R. 2635	Appearance - Senate policy
Continuing financial interest								
Pension interest in Massachusetts Institute of Technology (an energy concern due to holdings in oil and gas properties)		Waiver (8/93)		Recuse				
Personal/business relationship								
None								

Assistant Secretary, Domestic and International Energy Policy

Appointee: Susan F. Tierney
Previous employer: Executive Office of Environmental Affairs,
Commonwealth of Massachusetts

Conflict situation/concern	Divestiture basis			Recusal basis				
	DOE Act Sec.602	Waiver of DOE Act-602	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	DOE Act Sec.606	Appearance - 5 C.F.R. 2635	Appearance - Senate policy
Continuing financial interest								
None								
Personal/business relationship								
Matters personally involved as officer, director, or employee of the Office of Environmental Affairs Commonwealth of Massachusetts or the Massachusetts Water Resources Authority								Recuse
Any matter raising questions of impartiality due to employment relationship with any of above two entities								1-Year recuse

Assistant Secretary,
 Environmental
 Restoration and Waste
 Management

Appointee: Thomas P. Grumbly
Previous employer: President, Clean Sites, Inc.

Conflict situation/concern	Divestiture basis			Recusal basis				
	DOE Act Sec.602	Waiver of DOE Act-602	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	DOE Act Sec.606	Appearance - 5 C.F.R. 2635	Appearance - Senate policy
Continuing financial interest								
None								
Personal/business relationship								
Matters personally involved as officer, director, or employee of Clean Sites, Inc., and five other entities								Recuse
Any matter raising questions of impartiality due to employment relationship with any of above six entities								1-Year recuse

Appendix II
Documented Recusal Obligations of Top
Clinton Administration DOE Officials

**Director, Office of
Civilian Radioactive
Waste Management**

Appointee: Daniel A. Dreyfus
Previous employer: Special Assistant to the Secretary just prior to nomination; prior to that he was Vice-President of Gas Research Institute

Conflict situation/concern	Divestiture basis			Recusal basis				
	DOE Act Sec.602	Waiver of DOE Act-602	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	DOE Act Sec.606	Appearance - 5 C.F.R. 2635	Appearance - Senate policy
Continuing financial interest								
Vested interest in the Gas Research Institute (GRI) (an energy concern)		Waiver ^a (8/93)		Recuse (12/93)				
Interests in IBM				Recuse				
Personal/business relationship								
Any matter raising questions of impartiality due to employment relationship with any of two entities (GRI and Gas Technology Information)							1-Year recuse	
Any matter raising questions of impartiality due to former membership on board of directors of Americans for Energy Independence							1-Year recuse	

^aAuthorized by the Secretary when Mr. Dreyfus was a Special Assistant to the Secretary for the duration of his DOE employment as a supervisory employee.

Appendix II
Documented Recusal Obligations of Top
Clinton Administration DOE Officials

**Director, Office of
Energy Research**

Appointee: Martha A. Krebs
Previous employer: Lawrence Berkeley Laboratory, University of California

Conflict situation/concern	Divestiture basis			Recusal basis				
	DOE Act Sec.602	Waiver of DOE Act-602	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	DOE Act Sec.606	Appearance - 5 C.F.R. 2635	Appearance - Senate policy
Continuing financial interest								
Holdings in an energy concern (American Electric Power Co., Inc.)	Divest			Recuse/ until divest				
Vested University pension interests		Waiver (1/94)		Recuse/ until waiver	Waiver ^a (1/94)			
Spouse's vested University pension interests				Recuse/ until waiver	Waiver ^a (1/94)			
Personal/business relationship								
Matters personally involved as an employee of the University of California, or as a consultant to the Gas Research Institute or Institute for Defense Analysis								Recuse
Any matter raising questions of impartiality due to employment relationship with Lawrence Berkeley Laboratory							1-Year recuse	
Any matter raising questions of impartiality due to service as consultant with the Gas Research Institute and Institute for Defense Analysis								1-Year recuse

^aExcludes matters specifically affecting the University's retirement system.

Director, Office of Minority Economic Impact

Appointee: Corlis S. Moody
Previous employer: Northern States Power Company

Conflict situation/concern	Divestiture basis			Recusal basis				
	DOE Act Sec.602	Waiver of DOE Act-602	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	DOE Act Sec.606	Appearance - 5 C.F.R. 2635	Appearance - Senate policy
Continuing financial interest								
Common stock holdings in an energy concern (Northern States Power Company)	Divest			Recuse/ until divest				
Personal/business relationship								
Matters personally involved as employee of Northern States Power Company								Recuse
Any matter raising question of impartiality due to employment with Northern States Power Company								1-Year recuse

Appendix II
Documented Recusal Obligations of Top
Clinton Administration DOE Officials

General Counsel

Appointee: Robert R. Nordhaus
Previous employer: Law firm of Van Ness, Feldman & Curtis

Conflict situation/concern	Divestiture basis			Recusal basis				
	DOE Act Sec.602	Waiver of DOE Act-602	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	DOE Act Sec.606	Appearance - 5 C.F.R. 2635	Appearance - Senate policy
Continuing financial interest								
Holdings in 11 energy concerns	Divest			Recuse/ until divest				
Spouse holdings in 13 entities viewed as financial interests under 18 USC 208			Divest	Recuse/ until divest				
Financial interest in previous law firm employer			Divest ^a	Recuse/ until divest				
Personal/business relationship								
Legal services to six energy concern clients of previous law firm						1-Year recuse		
Legal services to 14 energy concern clients (covers 5 years of prior personal involvement)						1-Year recuse		
Matters personally involved in as employee with previous law firm								Recuse
Any matter raising questions of impartiality due to employment with previous law firm or any immediate past business relationships								1-Year recuse
Other								
Participation in certain overcharge cases pending before the Federal Energy Regulatory Commission (incumbent recusal following Senate confirmation)							Recuse ^b	
Participation in revising a draft report on contract reform (following Senate confirmation)							Specific auth.(5 C.F.R. 2635.502(c))	

(Table notes on next page)

Appendix II
Documented Recusal Obligations of Top
Clinton Administration DOE Officials

^aThe appointee divested pension and ownership interests in previous law firm on his own initiative, according to a DOE ethics official.

^bA November 24, 1993, memorandum "memorializes previous conversations" wherein the appointee recused himself from certain matters, and a subsequent February 5, 1994, statement identified screening and referral officials. Both of these actions were initiated by the appointee, according to a DOE ethics official.

Documented Recusal Obligations of Top Bush Administration EPA Officials

The Environmental Protection Agency (EPA) had 15 positions that required Senate confirmation of presidential appointments during President Bush's administration. Table III.1 lists these EPA positions, the names of the incumbents whose financial disclosure records we reviewed at the Office of Government Ethics (OGE) in June 1993 and at EPA in August 1993, and the eight appointees whom we found had executed recusal statements related to their nominations to the Senate-confirmed positions. All but four of the appointees listed in table III.1 were serving at the end of the Bush administration in 1992.

Appendix III
Documented Recusal Obligations of Top
Bush Administration EPA Officials

Table III.1: Top EPA Officials in the Bush Administration With Nominee Recusal Statements

Senate-confirmed position	Incumbent records reviewed	Nominee recusal statement
Administrator	William K. Reilly	Yes-1989
Deputy Administrator	Frank H. Habicht II	Yes-1989
Assistant Administrator-Administration and Resources ^a	Charles Grizzle	None on file
Assistant Administrator-Air and Radiation	William G. Rosenberg	None on file ^b
Assistant Administrator-Enforcement and Compliance	Herbert H. Tate Jr.	Yes-1991
Assistant Administrator-External Affairs ^a	Jennifer Wilson	Nominee data not available
Assistant Administrator-International Affairs	Timothy B. Atkeson	Yes-1989
Assistant Administrator-Pest and Toxic Substances	Linda J. Fisher	None on file
Assistant Administrator-Policy/Plan/Evaluate ^a	J. Clarence Davies	Yes-1989
Assistant Administrator-Research and Development	Erich W. Bretthauer	None on file
Assistant Administrator-Solid Waste	Don R. Clay	None on file
Assistant Administrator-Water	LaJuana S. Wilcher	Yes-1989
Assistant Administrator and Chief Financial Officer	Christian R. Holmes	Yes-1992
General Counsel ^a	Edwin Donald Elliot, Jr.	Yes-1989
Inspector General	John C. Martin	Nominee data not available

^aBecause this position was vacant on December 31, 1992, we included the last confirmed incumbent of the position in this analysis.

^bIn providing us their views on the results of our analysis, EPA officials provided us a post-confirmation recusal statement filed by this appointee in 1989.

Source: GAO analysis of financial disclosure records on file at OGE and EPA.

Outcome of EPA's Application of Participation Restrictions

As shown in table III.1, 8 of the 13 Bush appointees whose financial disclosure records we reviewed had made obligations to recuse themselves from certain official EPA matters as part of their nominations and Senate confirmation to the EPA positions. Among other things:

- The 8 appointees with recusal obligations represent 62 percent of the 13 incumbents in EPA Senate-confirmed positions for whom financial disclosure data were available on their nominations to the positions at OGE during our work. All but two of the eight appointees were serving at the end of the Bush administration in 1992.
- There were five types of recusal or divestiture obligations that were applicable to these eight EPA Bush administration appointees. In total, 22 obligations were related to recusals, and 4 were related to divestitures. The 22 recusal-related obligations involved a total of 54 organizational entities, and the 4 divestiture-related obligations involved a total of 9 organizational entities.
- The specific basis for each type of remedial obligation was often not described in the disclosure records maintained by either OGE or EPA on these appointees. In these instances, an EPA ethics official identified EPA's basis during interviews with GAO officials.

Table III.2 identifies the frequency of occurrence of the five types of remedial obligations.

**Table III.2: Outcome of EPA's
Application of Participation
Restrictions to Eight Top Political
Appointees Serving in the Bush
Administration**

Basis for type of remedial action	Number of applicable appointees	Number of nominee obligations	Number of entities involved
Recusal-related:	8	22	54
To address appearance concerns (before uniform standards)	7	12	45
To comply with 18 U.S.C. 208	6	8	7 ^a
Waiver of 18 U.S.C. 208	1	2	2
Divestiture-related:	3	4	9
To comply with section 318 of the Clean Air Act	3	3	4
To comply with 18 U.S.C. 208	1	1	5
Total	8	26	63

^aOne recusal obligation under 18 U.S.C. 208 cited no specific entities; but rather the appointee disqualified himself from participating in any EPA rulemaking or policy matters involving four industries.

Source: GAO analysis of financial disclosure records on file at OGE and EPA.

Case History Summaries

For the eight Bush appointees in EPA with nominee recusal agreements on file with OGE, the following case histories summarize information from the financial disclosure records maintained at either OGE or EPA by the designated agency ethics official (DAEO). We selected information that would provide an overview of the outcome of EPA's entire application of restrictions governing participation in official government matters by Bush appointees. Beyond individual recusals, we identified when EPA used divestitures or waivers to resolve a conflict situation or concern. We summarized the underlying conflict situation or concern that the specific remedial action addressed. We generally categorized the conflict situation or concern as involving a continuing financial interest or a personal/business relationship. While many of the appointees had more than one paid or uncompensated position before Senate confirmation, we selected the previous employer that appeared to be the principal source of the appointee's recusal obligations. (App. V provides further details on the general types of EPA records we examined for each appointee and a description of related regulatory criteria.)

Administrator, EPA

Appointee: William K. Reilly
Previous employer: President of the World Wildlife Fund, The Conservation Foundation

Conflict situation/concern	Divestiture basis		Recusal basis		
	Clean Air Act	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	Appearance
Continuing financial interest					
Sever contractual relationship with Northeast Utilities by transferring deferred compensation into a bank trust account	Divest (sec. 318)		Recuse- until divest		
Personal/business relationship					
Any particular matter involving eight former employers or organizations in which he served as an officer, director, or trustee					Recuse

Appendix III
Documented Recusal Obligations of Top
Bush Administration EPA Officials

**Deputy Administrator,
EPA**

Appointee: F. Henry Habicht II
Previous employer: Perkins Coie/W.D. Ruckelshaus and Associates (law firm)

	Divestiture basis		Recusal basis		
	Clean Air Act	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	Appearance
Conflict situation/concern					
Continuing financial interest					
Financial interest in Pyrotite Company (a small nonpublicly traded company that makes fire-retardant materials)			Recuse		
Stocks in New Jersey Resources Corporation, Boeing, Brunswick, Illinois Central, and ATT		Divest			
Personal/business relationship					
16 former employers or clients					1-Year recuse
Resignation of positions in the Environmental Law Institute and the Natural Resources Section of the American Bar Association	Resign (sec. 318)				

Assistant
Administrator,
Enforcement

Appointee: Herbert H. Tate Jr.
Previous employer: Prosecutor, Essex County, New Jersey

	Divestiture basis		Recusal basis		
	Clean Air Act	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	Appearance
Conflict situation/concern					
Continuing financial interest					
Holdings in the New Jersey Public Employees' Retirement System fund				Two waivers ^a	
Personal/business relationship					
Any EPA matters in which Essex County is an adverse party and in which he represented or provided legal advice					Recuse
Any EPA matter that involves Essex County as a specific party					1-Year recuse
Any matter that involves the State of New Jersey as a specific party and in which the State is an adverse party, other than certain enforcement matters					Recuse
Other					
Any involvement with enforcement decisions or otherwise with a specific hazardous waste project (following confirmation)					Recuse

^aOne waiver permitted the appointee's participation in EPA matters affecting these holdings; the other permitted participation in any enforcement matter involving the State of New Jersey other than as a specific adverse party.

Assistant
 Administrator for
 International
 Activities

Appointee: Timothy B. Atkeson
Previous employer: Steptoe and Johnson (law firm)

Conflict situation/concern	Divestiture basis		Recusal basis		
	Clean Air Act	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	Appearance
Continuing financial interest					
Steptoe and Johnson pension interest (defined benefit plan)			Recuse		
Any rulemaking or policy matter that could affect any financial interests of the appointee, his wife, or minor children in four industries (such interests were not specified in recusal or ethics agreement)			Recuse		
Personal/business relationship					
Matters involving six former employers and clients					1-Year recuse

Assistant
 Administrator for
 Policy, Planning, and
 Evaluation

Appointee: J. Clarence Davies
Previous employer: The Conservation Foundation

	Divestiture basis		Recusal basis		
	Clean Air Act	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	Appearance
Conflict situation/concern					
Continuing financial interest					
None					
Personal/business relationship					
Any EPA matter that specifically involves three organizations in which he recently served as officer or employee, including The Conservation Foundation					Recuse
Other					
Minority share in family real estate business (after confirmation the appointee discovered that two properties held by the business have underground storage tanks and added this recusal to his nominee ethics agreement)			Recuse		

Appendix III
Documented Recusal Obligations of Top
Bush Administration EPA Officials

**Assistant
Administrator for
Water**

Appointee: LaJuana S. Wilcher
Previous employer: Bishop, Cook, Purcell & Reynolds of Washington, D.C. (law firm)

Conflict situation/concern	Divestiture basis		Recusal basis		
	Clean Air Act	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	Appearance
Continuing financial interest					
None					
Personal/business relationship					
Representative of Cave Research Foundation, Yellow Springs, Ohio, a scientific nonprofit educational organization					Recuse
Matters involving 11 former employers and clients, including former law firm (from whom she generated more than \$5,000 income)					1-Year recuse
Husband's employer, Environmental Law Institute					Recuse
Other					
Husband's new employer, Friends of the Earth (following confirmation)					Recuse
Any matter involving certain specific EPA regulatory issues with firm negotiating for future employment (following confirmation)			Recuse		

Appendix III
Documented Recusal Obligations of Top
Bush Administration EPA Officials

**Assistant
Administrator for
Administration and
Resources
Management**

Appointee: Christian R. Holmes
Previous employer: Acting Assistant Administrator for Administration
and Resources Management

Conflict situation/concern	Divestiture basis		Recusal basis		
	Clean Air Act	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	Appearance
Continuing financial interest					
Stock interest in a computer company, Digital Equipment Corp.			Recuse		
Holding in Mesa, Ltd (natural gas industry)			Recuse		
Personal/business relationship					
None					
Other					
Matters dealing with 25 firms with whom appointee had exploratory discussions regarding possible employment (25 individual recusal documents sent to EPA DAEO) (following confirmation)					Recuse

Appendix III
Documented Recusal Obligations of Top
Bush Administration EPA Officials

General Counsel

Appointee: Edwin Donald Elliot, Jr.
Previous employer: Professor, Yale University

	Divestiture basis		Recusal basis		
	Clean Air Act	18 U.S.C. 208	18 U.S.C. 208	Waiver, 18 U.S.C. 208	Appearance
Conflict situation/concern					
Continuing financial interest					
Employment interest in Yale University Law School (leave of absence)			Recuse		
Personal/business relationship					
University Fellow at Resources for the Future of Washington, D.C. (nonprofit educational institution)	Resign (sec. 318)				
Member of Board of Advisors in the Gruter Institute for Law and Behavioral Research					Recuse
Any EPA matter specifically involving five former employers or clients (from whom he received more than \$5,000 in income)					1-Year recuse

Documented Recusal Obligations of Top Clinton Administration EPA Officials

The Environmental Protection Agency (EPA) had 13 positions that required Senate confirmation of presidential appointments during the first year of President Clinton's administration. Table IV.1 lists these EPA positions, the names of the incumbents whose financial disclosure records we reviewed at the Office of Government Ethics (OGE) in December 1993 and at EPA in July 1994, and the nine appointees whom we found had executed recusal statements related to their nominations to the Senate-confirmed positions. All these appointees were serving at the end of the first year of the Clinton administration in 1993.

Appendix IV
Documented Recusal Obligations of Top
Clinton Administration EPA Officials

Table IV.1: Top EPA Officials in the Clinton Administration With Nominee Recusal Statements as of December 31, 1993

Senate-confirmed position	Incumbent records reviewed	Nominee recusal statement
Administrator	Carol M. Browner	Yes
Deputy Administrator	Robert M. Sussman	Yes
Assistant Administrator-Air and Radiation	Mary D. Nichols	Yes
Assistant Administrator-Enforcement and Compliance	Steven A. Herman	None required
Assistant Administrator-International Affairs	(unfilled)	
Assistant Administrator-Pest and Toxic Substances	Lynn R. Goldman	Yes
Assistant Administrator-Policy/Plan/Evaluate	David M. Gardiner	Yes
Assistant Administrator-Research and Development	(unfilled)	
Assistant Administrator-Solid Waste	Elliot P. Laws	Yes
Assistant Administrator-Water	Robert W. Perciasepe	Yes
General Counsel	Jean C. Nelson	Yes
Assistant Administrator-Administration and Resources; Chief Financial Officer	Jonathan Z. Cannon	Yes
Inspector General	John C. Martin (carryover from previous administration)	Nominee data not available

Note: There are two fewer positions than in the Bush administration; the Assistant Administrator position of Chief Financial Officer was merged with the position for Administration and Resources, and the Assistant Administrator position for External Affairs was deleted.

Source: GAO analysis of financial disclosure records on file at OGE and EPA.

Outcome of EPA's Application of Participation Restrictions

As shown in table IV.1, 9 of the 10 Clinton appointees whose financial disclosure records we reviewed had made obligations to recuse themselves from certain official EPA matters as part of their nominations and confirmation to the EPA positions. Among other things:

- The 9 appointees with recusal obligations represent 90 percent of the 10 EPA political appointees who were Senate confirmed at the end of 1993 and for whom financial disclosure data were available on their nominations to the positions at OGE during our work.
- There were five types of recusal or divestiture obligations that were applicable to these nine EPA Clinton administration appointees. In total, 39 obligations were related to recusals, and 10 were related to divestitures. The 39 recusal-related obligations involved a total of 198 organizational entities, and the 10 divestitures involved a total of 30 entities.
- The specific basis for each type of remedial obligation was often not described in the disclosure records maintained by either OGE or EPA on these appointees. In these instances, an EPA ethics official identified EPA's basis during interviews with GAO officials.

Table IV.2 identifies the frequency of occurrence of the five types of remedial obligations.

Table IV.2: Outcome of EPA's Application of Participation Restrictions to Nine Top Political Appointees Serving in the Clinton Administration at the End of 1993

Basis for type of remedial action	Number of applicable appointees	Number of nominee obligations	Number of entities involved
Recusal-related:	9	39	198
To comply with 18 U.S.C. 208	5	7	56
Waiver of 18 U.S.C. 208	6	6	50
To address appearance concerns of covered relationships under uniform standards of conduct (5 C.F.R. 2635.502)	8	14	46
EPA practice in addressing "other" appearance concerns under the uniform standards-of- conduct regulation (5 C.F.R. 2635.502(a)(2))	9	12	46
Divestiture-related:	7	10	30
To comply with 18 U.S.C. 208	7	10	30
Total	9	49	228

Source: GAO analysis of financial disclosure records on file at OGE and EPA.

Case History Summaries

For the nine Clinton appointees in EPA with nominee recusal agreements on file with OGE, the following case histories summarize information from the financial disclosure records maintained at either OGE or EPA by the designated agency ethics official (DAEO). We selected information that

would provide an overview of the outcome of EPA's entire application of restrictions governing participation in official government matters by Clinton appointees as of the end of 1993. Beyond individual recusals, we identified when EPA used divestitures or waivers to resolve a conflict situation or concern. We summarized the underlying conflict situation or concern that the specific remedial action addressed. We generally categorized the conflict situation or concern as involving a continuing financial interest or a personal/business relationship. While many of the appointees had more than one paid or uncompensated position before Senate confirmation, we selected the previous employer that appeared to be the principal source of the appointee's recusal obligations. (App. V provides further details on the general types of EPA records we examined for each appointee and a description of related regulatory criteria.)

Administrator, EPA

Appointee: Carol M. Browner
Previous employer: Department of Environmental Regulation, State of Florida

Conflict situation/concern	Recusal basis					
	Divestiture basis		18 U.S.C. 208	Waiver, 18 U.S.C. 208	5 C.F.R. 2635.502 covered appearance relationship	Other uncovered appearance relationship
	18 U.S.C. 208	Other				
Continuing financial interest						
None						
Personal/business relationship						
Any matter involving State as a specific party and in which personally involved as Secretary of the Department of Environmental Regulation						Recuse - EPA practice
Any EPA matter involving the State or political subdivisions as a specific party					1-Year recuse	
Any particular matter involving Citizen Action as a specific party as long as spouse employed by the entity					Recuse	

Appendix IV
Documented Recusal Obligations of Top
Clinton Administration EPA Officials

**Deputy Administrator,
EPA**

Appointee: Robert M. Sussman
Previous employer: Partner, Latham and Watkins (law firm)

Conflict situation/concern	Recusal basis					
	Divestiture basis		18 U.S.C. 208	Waiver, 18 U.S.C. 208	5 C.F.R 2635.502 covered appearance relationship	Other uncovered appearance relationship
	18 U.S.C. 208	Other				
Continuing financial interest						
Holdings in diversified stock and bond fund accounts considered equivalent to “excepted investment funds”				Waiver		
Interest in LBO Partners, Ltd. (limited partnership)	Divest					
Severance of partnership interest in law firm (received lump sum payment, continued retirement, and medical program)	Divest					
Personal/business relationship						
Any matter involving former law firm as a specific party and in which personally participated on behalf of the firm						Recuse - EPA practice
No private communication regarding official EPA matters with employees of former law firm or former clients						1-Year recuse - EPA practice
Any matter involving any of 19 former legal clients as a specific party (compensation over \$5,000) ^a					1-Year Recuse	
Any matter with a specific EPA contractor (ICF company) as long as sister is employed by the company ^b						Recuse

^aThe EPA DAEO advised this appointee in July 1993 that this recusal obligation would not require the appointee to recuse himself from a particular EPA matter involving one of his former legal clients.

^bThe EPA DAEO provided this appointee additional guidance in July 1993 on the scope of this recusal obligation that, among other things, stated the recusal was intended to include only specific party matters involving ICF and not general rulemaking or policy matters affecting ICF or EPA contractors as a whole. An example cited of a specific party matter prohibited by the recusal would be the appointee's involvement in approving or disapproving any request for changes in funding for the ICF contract or any proposed contractual remedies against ICF. An example cited of a nonspecific party matter allowed under the recusal would be the appointee's involvement in applying the Superfund indemnification rule to existing contractors, even though ICF is one of the existing contractors. Further, the guidance stated that the EPA Administrator could authorize the appointee's participation in a specific party matter involving ICF.

Assistant Administration for Air and Radiation

Appointee: Mary D. Nichols
Previous employer: Senior Staff Attorney, Natural Resources Defense Council

Conflict situation/concern	Recusal basis					
	Divestiture basis		18 U.S.C. 208	Waiver, 18 U.S.C. 208	5 C.F.R. 2635.502 covered appearance relationship	Other uncovered appearance relationship
Continuing financial interest	18 U.S.C 208	Other				
Interest in 17 stocks likely to come to attention of her office and be affected by particular matters	Divest ^a		Recuse until divest	Waiver until divest ^b		
Personal/business relationship						
Any matter involving as a specific party the Natural Resources Defense Council or City of Los Angeles Dept. of Water and Power and in which personally participated on behalf of these two former employers firms						Recuse -EPA practice
Any other matter involving as a specific party the Natural Resources Defense Council, the University of Southern California, or City of Los Angeles Dept. of Water and Power					1-Year recuse	
Any EPA matter in which the law firm of O'Melveny and Meyers provides representational services (spouse employment)			Recuse			
Other						
Any particular matter involving the Walt Disney Company as a specific party (following confirmation)			Recuse			

^aIn January 1994 the DAEO endorsed a request for a Certificate of Divestiture to OGE covering certain of these stock holdings. As part of the justification, the DAEO stated that it is impractical for this appointee to recuse herself from participation in matters that have a direct and predictable effect on these financial interests because such matters are an essential part of the duties of the Assistant Administrator for Air and Radiation.

^bIn December 1993 the DAEO granted an 18 U.S.C. 208(b)(1) waiver to allow this appointee to participate in rulemaking or policy matters that affect any of the 17 entities. The waiver did not extend to matters involving the entities as specific parties. The waiver justification cited the appointee's commitment to sell all the stocks pursuant to a Certificate of Divestiture to be issued by OGE. The DAEO viewed as small and insubstantial the appointee's financial interest in any EPA rule or policy that could affect the value or earnings of these stocks.

Assistant Administrator for Prevention, Pesticides and Toxic Substances

Appointee: Lynn R. Goldman
Previous employer: Public Health Medical Administrator, California
Department of Health Services

Conflict situation/concern	Divestiture basis		Recusal basis			
	18 U.S.C. 208	Other	18 U.S.C. 208	Waiver, 18 U.S.C. 208	5 C.F.R. 2635.502 covered appearance relationship	Other uncovered appearance relationship
Continuing financial interest						
Leave of absence from previous employer	Resigned					
Interest in California State retirement system (defined benefits plan)				Waiver ^a		
Personal/business relationship						
All lawsuits and other matters involving the State of California as a specific party and in which personally participated in position of Public Health Medical Administrator						Recuse - EPA practice
All other specific party matters (except lawsuits challenging EPA rules) in which the State of California is a party or has filed an amicus brief unless authorized by EPA Administrator					1-Year recuse	
Any EPA matter involving the American Academy of Pediatrics as a specific party					Recuse	
Any EPA matter involving as a specific party any of nine positions previously held outside of U.S. government					1-Year recuse	

^aThis waiver applies to matters that involve the State of California as a specific party as well as to rulemaking or policy matters that distinctively affect state governments.

Assistant
Administrator for
Policy, Planning and
Evaluation

Appointee: David M. Gardiner
Previous employer: Employee, Sierra Club, Washington, D.C.

Conflict situation/concern	Divestiture basis		Recusal basis			
	18 U.S.C. 208	Other	18 U.S.C. 208	Waiver, 18 U.S.C. 208	5 C.F.R. 2635.502 covered appearance relationship	Other uncovered appearance relationship
Continuing financial interest						
Holdings of stocks or bonds in four entities	Divest		Recuse until divest			
Personal/business relationship						
Any EPA matter involving Sierra Club as a specific party and in which personally participated as employee of the Club						Recuse - EPA practice
Any EPA matter involving as a specific party any of four positions previously held outside of U.S. government					1-Year recuse	
Any EPA matter specifically involving a Superfund contractor, "CH2M Hill," as long as brother employed with that company					Recuse	
Any EPA matter specifically involving the law firm of Hazel and Thomas of Alexandria, Va. as long as brother-in-law employed with that firm					Recuse	

Assistant Administrator for Office of Solid Waste and Emergency Response

Appointee: Elliott P. Laws
Previous employer: Partner (nonequity) in the law firm Patton, Boggs and Blow, Washington, D.C.

Conflict situation/concern	Recusal basis					
	Divestiture basis		18 U.S.C. 208	Waiver, 18 U.S.C. 208	5 C.F.R. 2635.502 covered appearance relationship	Other uncovered appearance relationship
Continuing financial interest	18 U.S.C. 208	Other			18 U.S.C. 208	Waiver, 18 U.S.C. 208
Stock in a single entity, Dominion Resources ^a	Divest		Recuse until divest	Waiver until divest		
Leave of absence from previous law firm employer (agreed to completely sever relationship)	Resign					
Personal/business relationship						
Any EPA matter involving a specific party in which previous law firm employer is providing legal services before EPA unless authorized by the EPA Administrator					1-Year recuse	
Any EPA matter involving 10 former clients of previous law firm employer (who received over \$5,000) unless authorized by the EPA Administrator					1-Year recuse	
Any site-specific issue regarding 13 Superfund sites represented as a former client ^b						Recuse - EPA practice

^aOn Dec. 7, 1993, the DAEO granted this appointee an 18 U.S.C. 208(b)(1) waiver applying only to rulemaking or policy matters affecting the utility industry. The waiver did not extend to matters that involve Dominion Resources as a specific party. The waiver also stated "EPA customarily and routinely grants waivers for rulemaking and policy matters where, as here, the total value of stock in an affected industry does not exceed \$15,000." Further, the waiver stated "... this waiver will cease to apply even to rulemaking or policy matters if the value of your stock should ever exceed \$15,000." OGE issued a Certificate of Divestiture for this stock on December 21, 1993. Evidence of actual divestiture on February, 10, 1994, was in EPA's records. While this recusal obligation was first stated in the Sept. 15, 1993, ethics agreement, it was not included in the formal recusal statement executed on Nov. 1, 1993.

^bIn November 1993 an EPA ethics official provided advice on the applicability of this recusal obligation to a Superfund site not listed in his recusal statement but that involved as a "potential third party defendant" a former client covered in the appointee's recusal statement. The advice was that the appointee need not recuse himself from issues associated with the Superfund site because the former client had no direct dealings with EPA.

Assistant
Administrator for
Water

Appointee: Robert W. Perciasepe
Previous employer: Secretary of Maryland Department of Environment

Conflict situation/concern	Recusal basis					
	Divestiture basis		18 U.S.C. 208	Waiver, 18 U.S.C. 208	5 C.F.R. 2635.502 covered appearance relationship	Other uncovered appearance relationship
	18 U.S.C. 208	Other				
Continuing financial interest						
Interest in Maryland State retirement system (defined benefits plan)				Waiver ^a		
Personal/business relationship						
All lawsuits and other matters involving the State of Maryland as a specific party and in which personally participated in position as Secretary of the Maryland Department of the Environment						Recuse - EPA practice
All other specific party matters (except lawsuits challenging EPA rules) in which the State of Maryland is a party or has filed an amicus brief unless authorized by EPA Administrator					1-Year recuse	

^aThis waiver applies to matters involving the State of Maryland as a specific party and to rulemaking or policy matters distinctively affecting state governments, including the Chesapeake Bay Program.

**Appendix IV
Documented Recusal Obligations of Top
Clinton Administration EPA Officials**

General Counsel

Appointee: Jean C. Nelson
Previous employer: Chief Deputy Attorney General, State of Tennessee

Conflict situation/concern	Recusal basis					
	Divestiture basis		18 U.S.C. 208	Waiver, 18 U.S.C. 208	5 C.F.R. 2635.502 covered appearance relationship	Other uncovered appearance relationship
Continuing financial interest	18 U.S.C. 208	Other				
Any matter involving Chevron Corporation, Exxon Corporation, or Dupont E.I. DeNemours and participation affecting any related industries	Divest		Recuse until divest			
Holdings in 29 stocks or bonds (including spouse and joint holdings)			Recuse ^a	Waiver ^b		
Retained pension benefits from former law firm of Gullet, Sanford, Robinson's, Martin	Divest					
Personal/business relationship						
All lawsuits and other matters involving the State of Tennessee as a specific party and in which personally participated in position as Chief Deputy Attorney General						Recuse - EPA practice
All lawsuits and other matters involving the Southern Environmental Law Center as a specific party and in which personally participated as a member of the Board.						Recuse - EPA practice
All other specific party matters (except lawsuits challenging EPA rules) in which Tennessee or the Law Center is a party or has filed an amicus brief unless authorized by EPA.					1-Year recuse	

^aThe recusal obligation for each of these 29 entities (plus 2 additional entities) was first stated in the August 11, 1993, ethics agreement. However, this obligation was not entirely included in the formal recusal statement executed on December 23, 1993. The recusal statement addressed specifically three of the entities and firms in the computer industry. Addressing treatment of the other entities, the recusal statement also said: "I or my husband have other interests in several industries. Although I am aware that 18 U.S.C. 208(a) bars my participation in any EPA matter which involves any of these entities as a specific party, I am not listing the individual holdings because it is highly unlikely that the Office of General Counsel will have occasion to deal with any 'particular matter' which involves them as a specific party."

^bOn Dec. 21, 1993, the DAEO granted this appointee an 18 U.S.C. 208(b)(1) waiver applying only to rulemaking or policy matters affecting the 29 entities. The waiver did not extend to matters involving any of the entities as a specific party.

Assistant
 Administrator for
 Administration and
 Resources
 Management / Chief
 Financial Officer

Appointee: Jonathan Z. Cannon
Previous employer: EPA Acting Assistant Administrator, Office of Policy,
 Plans, and Evaluation

Conflict situation/concern	Recusal basis					
	Divestiture basis		18 U.S.C. 208	Waiver, 18 U.S.C. 208	5 C.F.R. 2635.502 covered appearance relationship	Other uncovered appearance relationship
Continuing financial interest	18 U.S.C. 208	Other				
Stock in IBM	Divest			Recuse until divest		
Personal/business relationship						
Any EPA matter in which provided legal services to any of 22 entities while employed with former law firm (received \$5,000 or more)						Recuse - EPA practice

Types of General Financial Disclosure Records Examined and Related Regulatory Criteria

1. Copies of New Entrant (Nominee), Annual, and Termination Public Financial Disclosure Reports (SF 278s)

As a means of increasing public confidence in federal officials, public disclosure of certain financial information of elected and high-level officials has been required by statute since 1979. Presidential appointees requiring Senate confirmation are required to file public disclosure reports (SF 278s) with the designated agency ethics official (DAEO) at the employing agency. DAEO is required to review the information disclosed in the report for compliance with applicable conflict-of-interest laws and regulations, including those governing recusals. In addition, the Office of Government Ethics (OGE) further reviews the reports of all presidential appointees requiring Senate confirmation. OGE views these financial disclosure reports as an important safeguard for the individual, as well as the government, in that they provide a mechanism for identifying and resolving actual or potential conflicts between the individual's public responsibilities and private interests.

2. DAEO Opinion Letter to OGE

This is one of several documents required by OGE financial disclosure regulations that would address the recusal obligations of presidential nominees (other related documents are described below.) Current OGE regulations require DAEOs to write an opinion letter to the OGE director certifying that DAEO's review of the presidential nominee's disclosure report disclosed no conflict of interest under applicable law and regulations and the DAEO's letter is supposed to discuss:

“(A) Any actual or apparent conflicts of interest that were detected during the review process; and

(B) The resolution of those real or apparent conflicts, including any specific commitment, ethics agreement entered under the provisions of subpart H of this part, or other undertaking by the nominee to resolve any such conflicts. A copy of any commitment, agreement, or other undertaking which is reduced to writing shall be sent to the Director, in accordance with subpart H of this part.” [See 5 C.F.R. 2634.605(c)(2)(iii).]

Typically, these DAEO opinion letters will refer to any recusal obligations made by the nominee.

3. DAEO Notification to OGE of Ethics Agreements

OGE's regulation requires DAEOS to (1) submit to OGE any ethics agreement that a presidential nominee has made with the nominee's financial disclosure report; (2) notify OGE immediately of any additional agreements made by the nominee after submission of the nominee's report; and (3) apprise OGE of any other ethics agreements made by the individual as an incumbent in a Senate-confirmed position, or that become known to DAEOS during the incumbent's term in office. [See 5 CFR 2634.803(a) and (b).] This regulation does not specify a form for this notification (such as a letter).

4. OGE Opinion Letter to Senate Confirmation Committee

OGE's regulation requires the Director of OGE to provide Senate confirmation committees a letter "expressing the Director's opinion whether, on the basis of information contained in the report, the nominee has complied with all applicable conflict laws and regulations." [See 5 C.F.R. 2634.605(c)(3).]

5. The Appointee's Executed Recusal Statement

This document is viewed by OGE as evidence of satisfaction of a formal ethics agreements under section 110 of the Ethics in Government Act, as amended. OGE's regulation requires the appointee to list and describe in the executed recusal statement the specific matters or subjects to which the recusal applies; state the method by which the agency will enforce the recusal; and list the positions of those agency employees involved in the enforcement (i.e., the individual's immediate subordinates and supervisors.) [See 5 C.F.R. 2634.804(b)(1).] Such recusal statements are considered as part of the confirmation process and with OGE and DAEOS opinion letters (see above discussion) have been viewed by oversight committees as an important institutional check against conflicts of interest by presidential appointees.

6. Evidence of Ethics Agreement Compliance

OGE's regulation requires that evidence of any action taken to comply with ethics agreements be submitted by the DAEOS, upon receipt, to OGE and to the Senate confirmation Committee. [See 5 C.F.R. 2634.804(a).] The ethics agreement is required to specify that the individual must complete action that he or she has agreed to undertake within a period not to exceed 3 months from the date of the agreement. The definition of ethics agreements includes any oral or written promise by a reporting individual

to alleviate an actual or apparent conflict of interest, including “Preparation of a written instrument for recusing (disqualifying) the individual from one or more particular matters or categories of official action.” [See 5 C.F.R. 2634.802(a)(1).]

7. OGE Ethics Agreement Tracking Form

This is an internal OGE form that OGE staff use to record the results of their determinations of when the ethics agreements of presidential appointees have complied with OGE’s regulatory requirements. Using this record, OGE enters into a computer database the status of each appointee’s compliance with any ethics agreement that generally involves six types of actions: recusals, divestitures, resignations, waivers, severance payments, and blind trusts. OGE prepares monthly status reports from this data and has biennially provided Congress information on the frequency of such agreements governmentwide.

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