



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

NOV 01 2017

OFFICE OF
PUBLIC ENGAGEMENT
AND ENVIRONMENTAL EDUCATION

MEMORANDUM

SUBJECT: Recusal Statement

FROM: Tate Bennett *Tate Bennett*
Associate Administrator

TO: Ryan Jackson
Chief of Staff

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and have been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13770 and the Trump Ethics Pledge that I signed.

FINANCIAL CONFLICTS OF INTEREST

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

I have consulted with OGC/Ethics and been advised that I do not currently have any financial conflicts of interest but will remain vigilant and notify OGC/Ethics immediately should my financial situation change.

OBLIGATIONS UNDER EXECUTIVE ORDER 13770

Pursuant to Section 1, Paragraph 6 of the Executive Order, I understand that I am

prohibited from participating in any particular matter involving specific parties in which my former employer, **National Rural Electric Cooperative Association (NRECA)**, is a party or represents a party. I understand that my recusal lasts until March 19, 2019, which is two years from the date that I joined federal service.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means five or more parties.

Pursuant to Section 1, Paragraph 7 of the Executive Order, since I was a registered lobbyist within the two years prior to joining federal service, I understand that I am also prohibited from participating in any particular matter on which I lobbied within the previous two years and prohibited from participating in the specific issue area in which that particular matter falls. I am advised by OGC/Ethics that the Executive Order defines “participate” to mean “participate personally and substantially”¹ and that the term “specific issue area” means a “particular matter of general applicability.”²

I have been informed by OGC/Ethics that my obligations under Paragraph 6 arise from the specific issues areas in which I lobbied. My primary responsibilities within my lobbying portfolio were with respect to appropriations funding for the following USDA programs: The Rural Energy Savings Program, The Rural Utility Service Electric Loan Program, the Guaranteed Underwriter Program, the Rural Economic Development Loan & Grant Program and title 6205 of H.R. 2642: The Agricultural Act of 2014.

In an abundance of caution, I have consulted the Designated Agency Ethics Official about the fact that while my primary responsibilities in the appropriations issues were for USDA funding, on occasion, policy riders related to EPA were involved. I was advised that my current role in the Office of Public Engagement and Environmental Education (OPEEE) does not require personal and substantial participation in appropriations or policy issues generally, so I may continue to carry out my assigned duties.

Additionally, within the previous two years, my Lobbying Disclosure Act reports indicate that I also engaged in lobbying activities on a variety of other authorizing issues that may appear to arise at EPA. Actually, I personally lobbied on these specific EPA-related authorizing issues only in my final months with my employer when I assumed additional responsibilities outside of appropriations issues (specifically for the Clean Power Plan, Ozone National Ambient Air Quality Standards and coal combustion residual issues). Upon joining EPA, I consulted with

¹ See Exec. Order 13770, Section 2(t), which states that “participate” means to participate personally and substantially.

² See Office of Government Ethics Legal Advisory LA-17-03 (March 20, 2017).

OGC/Ethics and was advised that my former duties in the Office of Congressional and Intergovernmental Relations (OCIR) did not involve direct participation in the strategy, development or implementation in any issue areas. OGC/Ethics therefore concluded that I would not be participating “personally and substantially”³ in the same specific issue areas that I had previously lobbied. Given my new duties in OPEEE, OGC/Ethics has confirmed that I am still unlikely to be participating “personally and substantially” in the same specific issue areas that I had previously lobbied.

In both my previous and current positions at EPA, I have not and will not participate personally or substantially in the merits of any Clean Power Plan, Ozone National Ambient Air Quality Standards or coal combustion residuals discussions. I have been advised by OGC/Ethics that I can be involved in logistical matters such as setting up meetings at which parties discuss any issues, including those in which I had previously lobbied. I can also distribute information including content originating from other EPA offices including the Office of Public Affairs. Should an unexpected situation arise in which I am asked to participate in a more substantive role, I will first consult with OGC/Ethics for advice before taking any action.

SCREENING ARRANGEMENT

In order to ensure that I do not participate in matters relating to NRECA, I will instruct Stephen Gordon, Deputy Director for Public Engagement, to assist in screening EPA matters directed to my attention that involve my former employer as a specific party. I will provide a copy of this memorandum to my principal subordinates with a copy to Justina Fugh, Senior Counsel for Ethics. I will also instruct my principal subordinates that all inquiries and comments involving the NRECA should be directed to Mr. Gordon without my knowledge or involvement until after my recusal period ends.

If Mr. Gordon determines that a particular matter will directly involve NRECA, then he will refer it for action or assignment to another, without my knowledge or involvement. In the event that he is unsure whether an issue is a particular matter from which I am recused, then he will consult with OGC/Ethics for a determination.

UPDATE AS NECESSARY

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my

³ To participate “personally” means to participate directly, either individually or in combination with other persons, or through the direct and active supervision of any person an employee supervises. 5 C.F.R. § 2641.201(i)(2). To participate “substantially” means that the employee’s involvement is of significance to the matter, and includes decision-making, review or recommendation as to an action being taken, signing or approving a final document, and/or participating in a final decision briefing. “Participation in peripheral aspects of a matter or in aspects not directly involving the substantive merits of a matter (such as reviewing budgetary procedures or scheduling meetings) is not substantial.” 5 C.F.R. § 2641.201(i)(3).

personal or business relationships, or any changes to my EPA duties. In the event of any changes to my screening arrangement, I will provide a copy of the revised recusal statement to you, OGC/Ethics, and any principal subordinates.

cc: Nancy Grantham, Acting Associate Administrator for Public Affairs
George Hull, Acting Deputy Associate Administrator for Public Affairs
Justina Fugh, Senior Counsel for Ethics