

# PENDING NOMINATIONS

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## HEARING

BEFORE THE

COMMITTEE ON  
HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
UNITED STATES SENATE  
ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

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NOMINATION OF EMORY A. ROUNDS III NOMINTATED TO BE DIRECTOR,  
U.S. OFFICE OF GOVERNMENT ETHICS, KELLY A. HIGASHI  
NOMINATED TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT FOR THE  
DISTRICT OF COLUMBIA, AND FREDERICK M. NUTT NOMINATED TO BE  
CONTROLLER, OFFICE OF FEDERAL FINANCIAL MANAGEMENT, OFFICE  
OF MANAGEMENT AND BUDGET

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## NOMINATION HEARING

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WEDNESDAY, MAY 23, 2018

U.S. SENATE,  
COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 2:33 p.m., in room 342, Dirksen Senate Office Building, Hon. James Lankford presiding.

Present: Senators Lankford, Carper, Heitkamp, Hassan, Harris, and Jones.

Senator LANKFORD. Good afternoon, everyone. I apologize for starting a couple of minutes late. I am going to shift some schedule around a little bit in deference to some Members and some things that are moving right now as well, and so we can also get us moving as we go through this, and move some of our introductions, our distinguished guests that are here as well, Senator King and Delegate Norton, to be able to do some introductions, which we want to make sure we honor that. That is a rare enough moment for us to have votes at all, and so I want to make sure that we are getting good quality time to that and we can get through as much as we possibly can.

So what I would like to do before I do my opening statement, before Ranking Member Jones today gives his opening statement, I would like to recognize Senator King to do an introduction, and then I am going to recognize Delegate Norton to also do an introduction as well. Senator King.

### **STATEMENT OF THE HONORABLE ANGUS KING, A UNITED STATES SENATOR FROM THE STATE OF MAINE**

Senator KING. Thank you, Chairman Lankford, and Senator Carper, Members of the Committee. It is an honor for me to come to the meeting and join my colleague, Senator Collins in introducing Emory Rounds. He is President Trump's nominee to be the Director of the Office of Governmental Ethics (OGE).

Before I begin I want to recognize Emory's family. His wife, Leslie, is here. She is the Executive Director of the Dyer Library and Saco Museum in Maine. I also want to recognize his children, Emory IV, Erin, Kathleen, Christopher, and Megan. And I know from service in the government that their support is very important to his successful career.

Emory Rounds has a long record of public service. He was a Navy Judge Advocate General (JAG) officer for 22 years, ethics counsel in the Bush Administration, most recently an associate

counsel at the Office of Governmental Ethics. In the Navy, he served in a number of different capacities as a JAG officer, command legal officer, district attorney, chief counsel resolving criminal, tort, ethics, civil, personnel information release, equal opportunity, aviation accidents, international congressional inquiry—admiralty and litigation issues. In Department of Commerce he served as a staff attorney in the Office of the Assistant General Counsel of Administration, and as such he managed ethics training for over 12,000 employees, personally trained more than 1,100 employees.

From 2003 to 2009, Emory served as Associate Counsel to the President, where he provided counsel to Cabinet and other Senate confirmed nominees regarding financial disclosure reports, responsibilities, as well as standards of conduct, compliance, and general legal issues. He recruited and supervised ethics professionals detailed to the Office of Counsel to the President.

Since 2009, Emory has been working in the Office of Governmental Ethics. He has been a Special Assistant to the OGE's Acting Director, Acting Chief of OGE's Internal Operations Division, and Associate Counsel in the General Counsel's Office.

I think the one thing that is clear is that Emory Rounds is devoted to public service. That is why his nomination has won praise from people like Walter Shaub, the former OGE Director. Mr. Shaub said, on Cable News Network (CNN), "He is a solid guy, a decent human being, devoted his life to public service." That is not a bad epitaph for any of us, a solid guy, a decent human being, devoted his life to public service.

It is a privilege to be able to introduce him to the Committee today. I commend him to your consideration and am delighted to have a son of Maine appearing before this Committee and ascending to this important position.

Senator LANKFORD. The only hesitation that we would have is Mainers are so incredibly nice. To have someone running government ethics to be that nice, to be a Mainer, makes us all a little nervous.

Senator KING. Thank you, Mr. Chairman. I will note that for the record.

Senator LANKFORD. Yes. I would also ask unanimous consent that the statement of Senator Collins,<sup>1</sup> who could not be here due to other Committee assignments right now, regarding the support for Emory Rounds, to be the Director of the Office of Government Ethics, also be included in the hearing record. Without objection, I would like to include her resounding recommendation as well.

Senator King, thank you. If you want to stay you are welcome to that, or I know you also have other responsibilities.

Senator KING. We are in the Armed Services Committee right now, so I feel that I must do that, Mr. Chairman.

Senator LANKFORD. Thank you.

Delegate Norton, thank you for being here. You have such an incredible pride and tenacity for watching out for Washington, DC. We are honored that you are here to be a part of this conversation. Obviously, this hearing itself also is very important to Washington,

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<sup>1</sup>The prepared statement of Senator Collins appears in the Appendix on page 26.

DC. in the days ahead and in the judicial work here so I appreciate you being here very much. You are recognized.

**STATEMENT OF THE HONORABLE ELEANOR HOLMES NORTON, A REPRESENTATIVE IN CONGRESS FROM THE DISTRICT OF COLUMBIA**

Ms. NORTON. Thank you very much, Senator Lankford, and we certainly miss you on the House side, especially in the Committee on which you and I both served.

I very much appreciate the opportunity to appear before you today on behalf of the nomination of Kelly A. Higashi. But the court to which she is being nominated is different from what this Committee is used to hearing, because it is the Superior Court of the District of Columbia. That is an Article I court, which means this Committee must confirm.

I will summarize my testimony. I think you will find Ms. Higashi to be an eminently qualified nominee to serve on the Superior Court, which is the engine of the day-to-day criminal and civil justice operation in the District of Columbia.

Mr. Chairman, it would be difficult to imagine a nominee more qualified and with greater experience. The nominee has litigated in both the D.C. courts and the Federal courts. She is now 14 years as Chief of the Sex Offense and Domestic Violence Section of the United States Attorney General's Office. She has a staff of 38, and she has this multifaceted, with both courts, experience that should hold her in good stead.

Higashi was an Assistant U.S. Attorney for 22 years, and litigated in the United States District Court for the District of Columbia. She handled complex, and sometimes very serious litigation involving domestic violence and sexual assault involving both adults and children. She has been the recipient of a number of awards.

She received her bachelor's degree from the University of Pennsylvania and then came here to law school, to George Washington University Law School. She clerked on the Superior Court, which is the court on which she would now serve on, if confirmed.

I hope you will allow me, Mr. Chairman, indeed, I think I would be remiss if I did not call to your attention the number of vacancies on the D.C. Superior Courts. There are 10 vacancies out of 62 authorized judges of the Superior Court, and 2 vacancies out of 9 authorized on the Court of Appeals. We are a year and a half into this Congress, and we have only been able to get one judge confirmed.

The reason I bring that to your attention, this is a very busy, big-city court, and the court has indicated that it feels itself in a crisis mode. Understandably, most of the nominees that are here before you are here for Federal courts, so it is very difficult for the Committee to focus on an Article I court. I understand that. I would not use this time to bring this to your attention except that the judges of the Superior Court and the D.C. Court of Appeals have brought these vacancies to my attention on more than one occasion and our local court is in crisis for lack of personnel. Because these nominees are so over-qualified, if I may say so, I do not think it would take much time if the Committee were to hear from a few more of these judges.

The Senate leadership, of course, is understandably more focused on your attempts during this Congress to get U.S. District Court and Courts of Appeals nominees confirmed. I draw the D.C. Court vacancies to your attention and ask that you give some further attention, even as I thank you very much for reducing the number of vacancies by the hearing before you today for Ms. Higashi.

Senator LANKFORD. Ms. Norton, thank you for being here. Again, you are welcome to be able to remain or you also have other responsibilities. I know lots of things that are going on. This is a busy week in the House as well, so you may take your leave either direction that you choose to go.

#### **OPENING STATEMENT OF SENATOR LANKFORD<sup>1</sup>**

Senator LANKFORD. I do want to introduce and be able to set up the rest of the hearing, on the three nominations we have, Mr. Emory Rounds to be the Director, Office of Government Ethics; Ms. Kelly Higashi to be the Associate Judge on the Superior Court of the District of Columbia; Mr. Frederick Nutt to be the Controller of the Office of Federal Financial Management (OFFM), which is in the Office of Management and Budget (OMB).

The Committee takes these nominations seriously. We are pleased to have three very strong candidates before us today.

Mr. Emory Rounds is nominated to be the Director of the Office of Government Ethics. Mr. Rounds earned his B.A. from the University of Massachusetts at Amherst and his J.D. from the University of Akron Law School. Upon completion of law school, Mr. Rounds began his active duty Navy career, where he advanced from attorney to Military Judge in his 22 years of military service to his country.

After a very brief retirement—I think it was about 10 minutes or so, if I remember reading it right—Mr. Rounds rejoined the Federal Government as an ethics attorney, first with the Department of Commerce and then as Associate Counsel to President George W. Bush at the White House Counsel's Office. Mr. Rounds joined the Office of Government Ethics as an Associate General Counsel in 2009, the position which he serves now.

Committee staff spoke to Mr. Rounds' colleagues in the ethics community and OGE, who spoke exceptionally highly of his experience as an ethics lawyer and his commitment to the mission of the Office of Government Ethics. The Committee is confident Mr. Rounds is qualified to be the Director of the Office of Government Ethics.

Ms. Higashi earned a Bachelor of Arts degree from the University of Pennsylvania and her J.D. from George Washington University School of Law. Ms. Higashi has had a legal career steeped in criminal law. After law school, Ms. Higashi clerked for The Honorable Frederick Weisberg of the Superior Court of the District of Columbia. Ms. Higashi then joined the U.S. Attorney's Office of the District of Columbia in 1994.

Early in her career with the U.S. Attorney's Office, Ms. Higashi rotated through several sections, gaining experience in the misdemeanor trial section, felony trial section, and grand jury selection

<sup>1</sup>The prepared statement of Mr. Lankford appears in the Appendix on page 21.

and the narcotics section. However, for the last 15 years, Ms. Higashi's work has focused on the very difficult work of the Sex Offense and Domestic Violence Section of the U.S. Attorney's Office for the District of Columbia. Ms. Higashi is currently the section chief of this section, and, by the way, is very respected there.

Committee staff reached out to numerous colleagues of Ms. Higashi and the comments were very positive, with specific praise given to her intelligence, her hard work, her people skills, and leadership as section chief, her ability to manage difficult cases, make hard decisions every day. Interestingly enough, after all of those things, several mentioned just her humanity in dealing with victims of crime, as well, and her compassion for those individuals. Those are good characteristics for a judge.

The Office of Federal Financial Management provides direction to our Federal financial systems. The Controller coordinates the work of the Chief Financial Officers of the major Federal agencies. The Controller also coordinates the work of the senior real property officers. This position provides a unique opportunity to help make our Federal Government run efficiently and effectively by implementing policies that support sound budgeting, cost management, effective financial reporting, and right-sizing Federal real properties.

Frederick Nutt graduated from Virginia Tech and has spent much of his career serving in the Federal Government. Mr. Nutt has worked in both houses of Congress and has held several financial management roles at the Environmental Protection Agency (EPA), the Millennium Challenge Corporation, and the Overseas Private Investment Corporation.

Committee staff spoke with former colleagues of Mr. Nutt and they speak very highly of his professionalism and his varied experience that has gained within the Federal Government, and that he could bring that understanding to different Federal organizations had a great bearing in this selection.

Staff interviewed the nominees on an array of issues. Each has thoughtfully and competently answered each question. To date, the Committee has found you all to be qualified to the position you have been nominated. I look forward to speaking with each of you more today on your experience and accomplishments and how you intend to bring them to bear for the Federal Government and for the District of Columbia.

I now recognize Ranking Member Jones for his opening statement as well.

#### **OPENING STATEMENT OF SENATOR JONES<sup>1</sup>**

Senator JONES. Thank you, Mr. Chairman and thank you for the opportunity, for the first time, to serve as Ranking Member on this Committee. And I want to thank each of you and congratulate you, Mr. Rounds, Mr. Nutt, and Ms. Higashi, for being here today and on your nominations. Each of you has demonstrated a dedication to public service and we appreciate your willingness to continue to serve in those new roles.

<sup>1</sup>The prepared statement of Senator Jones appears in the Appendix on page 23.

Ms. Higashi, as an attorney who has practiced in Federal and State courts for almost 40 years, I know how much litigants depend on having qualified, impartial judges on the bench. I served as an Assistant U.S. Attorney, a U.S. Attorney, also as a defense lawyer at various parts of my career, so I understand the difficult work you have been doing, and I commend you on your dedication to finding justice for the most vulnerable among us who have been the victims of some of the most heinous crimes.

Public service requires government employees to place loyalty to the Constitution, the laws and ethical principles above private gain. The Office of Government Ethics is responsible for providing leadership and oversight to the Executive Branch ethics programs, which is intended to prevent and resolve conflicts of interest involving Administration employees. In other words, the purpose of OGE is to safeguard the public's trust in government.

In the current climate of intense partisanship and suspicion, the importance of this role cannot be overstated. Created by the 1978 Ethics in Government Act in the wake of Watergate, the OGE was reviewed and reauthorized by Congress until 2007, when its statutory authorization expired. Although OGE does continue to receive Federal appropriations, reauthorization is important and provides an opportunity to consider whether there are improvements that can better enable the OGE to fulfill its mission. I hope that this Congress will see fit to reauthorize OGE before it ends later this year.

There are a number of OGE reform proposals under consideration, some based on suggestions made by former OGE Director Walter Shaub. Having reviewed those proposals and given the climate we currently find ourselves in, I hope that they will be given serious consideration by Congress, and to the extent that they can be done internally by OGE itself.

Mr. Rounds, you have an extensive background in ethics and obviously a deep commitment, not just to public service but to ethical and transparent public service. I am interested to hear how you plan to help OGE navigate novel conflict-of-interest circumstances, whether you feel OGE has the adequate tools necessary to address the issues that have recently arisen, and how you plan to ensure OGE's independence in doing its job.

The Office of Federal Financial Management also has a role in protecting the public trust in government, specifically with regard to the effective and transparent use of government resources. The OFFM was established in 1990, to lead the Executive Branch toward better financial management and decisionmaking. Its priorities include transparency and data management, shared services, real property, improper payments, grants management, internal control, Federal financial reporting, debt collection, and charge cards. We could probably add some more to that, Mr. Nutt, if you want to increase your responsibilities, but I think that that is plenty.

Mr. Nutt, you are currently serving as Senior Advisor to the Director and Deputy Director of the Office of Management and Budget, and in that role you have had some opportunity to familiarize yourself with OFFM, since it reports to the Deputy Director. You have recognized that the Federal Government continues to waste

far too much money on improper payments, and I look forward to hearing your thoughts on ways OFFM can effectively reduce this number.

Once again, thank you all for your service and thank you for being here, and I look forward to hearing from each of our nominees.

Thank you, Mr. Chairman.

Senator LANKFORD. Thank you. It is the custom of this Committee to be able to swear in all witnesses before they give testimony, so if you would please stand and raise your right hand.

Do you swear the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. ROUNDS. I do.

Ms. HIGASHI. I do.

Mr. NUTT. I do.

Senator LANKFORD. Thank you. You may be seated. Let the record reflect that all witnesses answered in the affirmative.

I am going to recognize you in the order that you are seated here, actually. Mr. Rounds you will go first. I would fully anticipate that when you begin your oral testimony you will start by recognizing your family that is here, and introducing them to us. We are all very pleased to be able to meet your family. This is a big day, not just for you but for your family as well.

Mr. Rounds, you are recognized.

**TESTIMONY OF EMORY A. ROUNDS III,<sup>1</sup> NOMINATED TO BE  
DIRECTOR, U.S. OFFICE OF GOVERNMENT ETHICS**

Mr. ROUNDS. Thank you, Chairman. I would like to introduce my wife of some 45 years, Leslie Rounds. I do not know what I would do without her; my daughter, Erin, a newly minted attorney from California; my son, Emory, on the end, my oldest, and his friend, Cagney. Thank you, sir.

Chairman Lankford, Ranking Member Jones, Senator Carper, Senator Hassan, Senator Harris, Members of the Committee, I thank you for the opportunity to appear here before you today.

I am profoundly honored that President Trump has nominated me to be the Director of the Office of Government Ethics. It has been my distinct privilege to serve my country and the American public for more than four decades, as a career naval officer and later as a civil servant and White House appointee. That I might serve further, as OGE's Director, would certainly be the capstone of my government career.

I have proudly been a member of the OGE team since January 2009, and could not be more pleased to have, if I am confirmed, an opportunity to lead the people who constitute the most dedicated, talented, and professional small agency staff in the Executive Branch. In context with the growing interest in and concerns regarding government ethics, OGE finds itself under-funded, understaffed, over-missioned, and to a great extent under-appreciated. But, to a person, OGE's staff always performs above any reasonable expectations.

<sup>1</sup>The prepared statement of Mr. Rounds appears in the Appendix on page 27.

If confirmed, my challenges as Director may be many, but the least among those challenges is any question about OGE's staff and its ability to do its job, whatever the environment. Each member of OGE's staff is committed to achieving OGE's mission, whatever it takes to do so, to ensure that OGE continues to provide leadership and oversight of the Executive Branch's ethics program. This nation should be proud of their work.

I have been a zealous supporter of the government's ethics program and its mission to prevent conflicts of interest; fraud, waste, and abuse; and to ensure impartiality throughout my career. I firmly believe that it is better to prevent ethical misconduct than to correct or punish violations after the fact. I strongly believe that it must be Executive Branch leaders who, by example, foster an ethical culture in their agencies not only by themselves acting in compliance with the ethics laws and rules, but also by carefully considering the appearance of their actions, even if permissible. The default must be on the side of "over-compliance" rather than the testing of any limits. In my opinion, the tone from the top is critical to fostering and maintaining a strong ethics culture and a positive tone, which requires more than mere technical compliance.

If confirmed as OGE's Director, I would take on the critical duty of ensuring that the Executive branch's ethics laws and rules are followed by calling upon government leaders to protect the integrity of government and strengthen the public's confidence in government decisionmaking.

To that end, one of my immediate priorities, if confirmed, would be to personally meet with as many departmental and agency heads as I can, as quickly as possible, to convey my commitment to, and leadership of, the ethics program. I would impress upon these officials the critically important need for their strong ethics leadership. Further, I would commit to leading the Executive branch ethics program by working with senior agency leaders, ethics officials, and the enforcement community to prevent potential ethical lapses, resolve issues that currently exist, and support enforcement when prevention has failed.

Integrity in government must not be simply aspirational. Rather, it must be our mission as senior leaders every day to encourage and foster a culture of government integrity, free of conflicts, and dedicated to impartial decisionmaking. Without impartial and ethical decisionmaking, government leaders cannot deliver on their important promises, perform their public duties, or serve our country and its people.

If confirmed, I look forward to the opportunity to lead OGE and the Executive Branch in this vital mission.

Mr. Chairman, thank you once more for your consideration of my nomination.

Senator LANKFORD. Thank you, Mr. Rounds. Ms. Higashi, I understand that your parents were not able to join us today but they are watching online through a video feed. They have to be incredibly proud of you. This is yet another accomplishment in your life, in your service. So I look forward to receiving your testimony, and I am sorry they could not be with us here today.

So, Ms. Higashi, you are recognized.

**TESTIMONY OF KELLY A. HIGASHI,<sup>1</sup> NOMINATED TO BE AN ASSOCIATE JUDGE, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Ms. HIGASHI. Thank you, Senator.

Good afternoon, Mr. Chairman, and Members of the Committee. It is a great honor for me to be here today and I thank you for considering my nomination to be a Judge of the Superior Court of the District of Columbia.

I would like to recognize the leadership of the Honorable Eleanor Holmes Norton for introducing me today, and the District of Columbia Judicial Nomination Commission, chaired by the Honorable Emmet Sullivan, for recommending me to the White House. I am grateful that Judge Sullivan is here today. I thank the President for nominating me for this position. I would also like to recognize and acknowledge D.C. Superior Court Chief Judge Robert Morin, who is present today, for his leadership and encouragement.

I am immeasurably grateful for the support and inspiration of my colleagues, family, and friends, many of whom are here with me today. The United States Attorney for the District of Columbia, Ms. Jessie Liu, an exemplary leader of the Office, as well as many of my present and former colleagues, are here today, including Mr. Channing Phillips, the beloved former U.S. Attorney who preceded Ms. Liu.

Many close friends, including two from my childhood days in California, who traveled from far away, are here today. I would like to introduce to you my family: my life partner, Mr. John Marsh, and our children, Mary Marsh, a freshman at Columbia University; and Riley Marsh, a ninth-grader at the School Without Walls in D.C. They, along with my 14-year-old nephew, Taro Zimmerman, are my greatest sources of support and inspiration.

I would also like to acknowledge the love and support I have received from my two sisters, and to acknowledge my parents, Robert and Kiyo Higashi, who were unable to travel here from California, but who truly wished they could be here. My mother, who was born and raised in Portland, Oregon, and who, during World War II, spent several years in internment camps for Japanese Americans, is especially proud that I have had the privilege, as an Assistant United States Attorney, to seek truth and justice within our legal system, and if I am fortunate enough to be confirmed, that I will contribute to the D.C. Superior Court's mission to provide equal access to justice for all people.

Although I was born and raised in Los Angeles, California, the District of Columbia is my home. I moved here in 1990, to attend law school at George Washington University School of Law, and I never left. I then had the good fortune to serve as a judicial law clerk to the Honorable Frederick H. Weisberg of the Superior Court of the District of Columbia, who I am honored to say is here today, and who has been a role model and mentor to me throughout my career.

After my clerkship, I was sworn in as an Assistant U.S. Attorney in the District of Columbia, where I have served the citizens of the District as a prosecutor for the past 23½ years. It would be a privi-

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<sup>1</sup>The prepared statement of Ms. Higashi appears in the Appendix on page 93.

lege and an honor for me to continue my public service, and my commitment to the citizens of the District of Columbia, as an Associate Judge of the Superior Court.

Thank you again for considering my nomination and I look forward to answering your questions.

Senator LANKFORD. Thank you. Mr. Nutt, we would be pleased to be able to receive your testimony, and any introductions you want to give.

**TESTIMONY OF FREDERICK M. NUTT,<sup>1</sup> NOMINATED TO BE CONTROLLER, OFFICE OF FEDERAL FINANCIAL MANAGEMENT, OFFICE OF MANAGEMENT AND BUDGET**

Mr. NUTT. Thank you. Thank you, Mr. Chairman.

Good afternoon Chairman Lankford, Ranking Member Jones, Members of the Committee. It is an honor to appear before the Committee today as the Administration's nominee for Controller in the Office of Management and Budget. I would like to thank the President for nominating me to this position and I would like to thank Director Mulvaney and Deputy Director for Management Weichert in supporting my nomination.

I would also like to thank my father, Tom Nutt, who is sitting behind my left shoulder, for being a great father, mentor, and friend. I am very grateful that he was able to make it here today.

I come from a family with a long commitment to public service. My grandfather served in the Iowa House of Representatives, my grandmother was a school teacher and principal, my father served 30 years in the United States Navy, and I have nearly 22 years of Federal service as well.

After my father's Navy career, my family began farming just 50 miles west of Washington, DC. There I learned how farming was a way of life, a business, a small business subject to factors outside of the farmer's control such as weather, pestilence, and economic decline. I also learned about the importance of being responsible, reliable and consistent.

Years later, my family decided to try our hand at oyster farming in Reedville, Virginia. The Chesapeake Bay's oyster population had been depleted due to overharvesting and other ecological problems. We built a business that produced nearly 600,000 oysters per year, which in addition to providing a food source, filtered the Bay's water and reduce the undesirable and excessive algae bloom.

These experiences in farming and oyster aquaculture introduced me to the role that the government plays in the everyday lives of the American people. While farming, we interacted with the U.S. Department of Agriculture (USDA) Farm Service Agency and the Natural Resources Conservation Service, and with oyster farming, we interacted with the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and the State Marine Resources Commission. These experiences gave me an appreciation for the role government plays in our daily lives and how dependent we are for timely and effective interaction with government agencies.

After college, I started my first professional job working as a cost analyst for a defense contractor. Several years later, I worked in

<sup>1</sup>The prepared statement of Mr. Nutt appears in the Appendix on page 117.

the House of Representatives tracking appropriations riders which were important to the Speaker. For the last 15 years, I have worked in management at Federal agencies, such as the Environmental Protection Agency, the Millennium Challenge Corporation, and the Overseas Private Investment Corporation. At these agencies I led efforts to track appropriations, modernize, replace and consolidate financial systems, and modernize business systems to improve agency management and achieve savings. My experience leading management professionals in the Federal community taught me that many agencies face the same management issues, regardless of size.

At a time when the American people are accessing information instantaneously and ordering food and transportation services over their smart phones, the Federal Government needs to modernize and transform the way it operates to be more effective at delivering the mission, to be more customer service oriented to the citizens, and to be good stewards of public assets.

In working to develop solutions for management problems, I have learned how to work with stakeholders with a variety of competing interests and I have learned that improving management in an agency is more than buying new systems. It is about changing the minds of your peers and getting them to adopt bold new ideas. Without the support of internal stakeholders, failure is often a likely outcome.

My experience has given me the knowledge, insight, and desire to lead efforts to address systemic problems including transforming financial management across government. My temperament and ability to convene with a variety of people and interests allows me to lead agency stakeholders to support new solutions. My practical experience has given me a holistic understanding of Federal financial systems and how they interact with other systems. I understand the lifecycle of a Federal dollar from appropriation to disbursement.

My strong interest in improving Federal financial systems across government allows me to work across the silos within agencies in the areas of information technology (IT), procurement, and performance management to bring efficiency and transparency to government.

My appreciation for the role government plays in our daily lives, the need for more efficient and effective government services, improved transparency, and my experience in working in financial management, has prepared me to address the issues facing financial management today.

Thank you again Chairman Lankford, Ranking Member Jones, and Members of the Committee for your time and for the opportunity to appear before you today.

I would be glad to take any of your questions.

Senator LANKFORD. Thank you. Thank you, all three of you. We have three mandatory questions that we ask all candidates and nominees that appear before this Committee, so I am going to ask for a yes-or-no answer for these three questions, and then I am going to defer my questioning time to Senator Carper, then, to be able to ask a 5-minute question round there.

So let me ask this first. This will be a yes-or-no question. I will ask all three of you in a row.

First question, is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated. Mr. Rounds.

Mr. ROUNDS. No.

Senator LANKFORD. Ms. Higashi.

Ms. HIGASHI. No.

Senator LANKFORD. Mr. Nutt.

Mr. NUTT. No.

Senator LANKFORD. Second question. Do you know of anything, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated? Mr. Rounds.

Mr. ROUNDS. No.

Senator LANKFORD. Ms. Higashi.

Ms. HIGASHI. No.

Senator LANKFORD. Mr. Nutt.

Mr. NUTT. No.

Senator LANKFORD. Third question. Do you agree, without reservation, to comply with any requests or summons to appear and testify before any duly constituted committee of Congress if you are confirmed? Mr. Rounds.

Mr. ROUNDS. Yes.

Senator LANKFORD. Ms. Higashi.

Ms. HIGASHI. Yes.

Senator LANKFORD. Mr. Nutt.

Mr. NUTT. Yes.

Senator LANKFORD. Thank you.

I recognize Senator Carper for questioning.

#### **OPENING STATEMENT OF SENATOR CARPER**

Senator CARPER. Thank you, Mr. Chairman, and welcome, one and all. Thank you for joining us today and for your friends and family that have joined you here and afar.

I want to start off with a couple of yes-or-no questions if I could, for Mr. Rounds, and one question will need a little more discussion.

The first one of those is, do you agree, Mr. Rounds, that it is important for OGE to function independently of the White House?

Mr. ROUNDS. I believe that it is very important that the Office of Government Ethics provide solid, firm, independent advice. I analogize it to the good doctor who might otherwise have a patient who has an illness and has to be prescribed, perhaps, some hard medicine.

Senator CARPER. All right. Thank you. If confirmed as OGE Director, are you confident you can maintain independence from this White House and, when necessary, hold it accountable?

Mr. ROUNDS. I certainly intend to do so. Yes, sir.

Senator CARPER. Good. Thank you.

Third question. What steps will you take, if confirmed, to ensure that your work and the work of the OGE employees remains independent from this Administration?

Mr. ROUNDS. Well, it simply is as we have done in the past, if I am confirmed. OGE has a very strong outreach and transparency

program, and we will continue that. The Office of Government Ethics has not been shy, and will not be shy in the future, within the constraints of its authority, its limited authority, to take such action as is necessary to protect and preserve the integrity of the government with regard to the ethics laws and rules.

Senator CARPER. Thank you. A couple of questions for Mr. Nutt, and a welcome to your father. Tom Nutt, it is nice to have you here, sir.

For years, my colleagues and I on this Committee have partnered with the Government Accountability Office (GAO), with agency Inspector Generals (IGs), with OMB to ensure that agencies are more efficiently and effectively addressing management challenges in areas like property management, IT procurement, and preventing improper payments. In fact, our Congress built off the recommendations of the Government Accountability Office by passing two real property reform bills. Some of us worked on that legislation. These bills require the Federal Government to better manage the vast real property holdings across our government, across the country, to help us get a better handle on what we are spending on real estate.

So I would just ask of you, what is your vision for driving better management practices across the government when it comes to real property management?

Mr. NUTT. Thank you, Senator, for that question. I think that real property in the Federal Government is an area that has been somewhat neglected in the past and it needs to be elevated, because it represents such a substantial—

Senator CARPER. I can assure you it has not been neglected in this Committee. Go ahead.

Mr. NUTT. It represents such a substantial dollar amount that I think that by elevating the issue internally, and if confirmed I would work to that effort through the Federal Real Property Council, as well as through the Federal Assets Sale Transfer Act (FASTA) board, I would work to elevate that issue.

Senator CARPER. Just a follow-up. What, if any, reforms would you suggest to current law to expedite the process for disposing of excess unutilized or surplus real property?

Mr. NUTT. Senator, at this point I do not have any suggestions to make to current law. I think that working within the context of the laws that we have is sufficient, and I would just like to work in that area.

Senator CARPER. At the beginning of our Congress, GAO issued something called a high-risk list, high-risk ways of wasting money, and near the top of the list every year has been, for a long time, real property management reform. The second area that they always bring to our attention, improper payments, which, last time I checked I think it was fiscal 2016, totaled about \$145 billion for overpayments, underpayments, mistaken payments, \$145 billion, in a year.

I understand that you do not believe that publishing a governmentwide improper payment rate is helpful to the issue of managing improper payments. In fact, I understand that the Trump Administration has not published an improper payment estimate

for the Federal Government yet. Can you please elaborate on your position?

Mr. NUTT. The issue of improper payments is an issue with a lot of different factors affecting the aggregate number. We had looked at it and discussed this internally, quite a bit, and we came up with the thought that the programs each have their own problems when it comes to improper payments, so it was much more helpful, from a policymaker's point of view, to look at each program-level activity and address the problems that they have at that amount.

The aggregate number was not published for 2017. The program numbers were available, though, and could be added up, and I think if you did add them up you would find that it was a slight decline but it was within the margin of error of the estimates, so it was relatively flat.

Senator CARPER. I am out of time, but if improper payments are not identified, if they are not recorded in a manner that allows us to compare them to previous years, one would wonder how well you will be able to gauge OMB's efforts in addressing this issue, governmentwide. A guy named Vince Lombardi used to coach the Green Bay Packers for many years, quite successfully, as I recall, and he used to say if we are not keeping score, we are just practicing. What you cannot manage, and this is an issue that we have dealt with, trying to deal with, and I would say we just need all hands on deck, including OMB. Thank you.

Senator LANKFORD. Thank you, Senator Carper.

Senator HASSAN.

#### **OPENING STATEMENT OF SENATOR HASSAN**

Senator HASSAN. Well, thank you, Senator Lankford and Senator Jones. Thank you to all three of you for your past service, for being willing to accept these nominations, to your families. This is a family affair and we are so grateful for your support of these three nominees. And so congratulations, and again, thank you.

I am going to ask my questions today of Mr. Rounds, and, Mr. Rounds, I enjoyed our meeting very much and I thank you for taking the time to have a courtesy meeting.

I wanted to follow up a little bit on what Senator Carper was asking. I will take from your exchange with him that you are committing to ensuring that the Ethics in Government Act is enforced free from political influence. Is that correct?

Mr. ROUNDS. That is absolutely correct.

Senator HASSAN. Thank you.

Mr. ROUNDS. Yes, Senator.

Senator HASSAN. Does the Ethics in Government Act apply to individuals who work in the White House?

Mr. ROUNDS. It applies, as written, to all officers and employees of the Federal Government.

Senator HASSAN. So that would include people in the White House.

Will you commit to ensuring that government officials who work in the White House comply with the Ethics in Government Act?

Mr. ROUNDS. To the extent of my authority as Director, if confirmed, I will do so, just as I would with any other agency or department within the Executive branch.

Senator HASSAN. The distinction, of course, being that other agencies have Inspectors General and the White House does not. Is that correct?

Mr. ROUNDS. Well, there are other agencies which do not have Inspectors General either.

Senator HASSAN. Oh, OK.

Mr. ROUNDS. Smaller agencies do not have Inspectors General either, but that said, OGE has, I think, over the past many months, shown that it is ready and willing to protect and preserve, as I say, the integrity of the employees and officials of the Executive Branch, and we will continue to do so, if I am confirmed as Director.

Senator HASSAN. Thank you for that.

We talked in my office about the importance of top-down leadership and of creating a culture of ethics at each agency, and you have said that one of your priorities, should you be confirmed, is to meet with the heads of agencies in order to set this tone. But the fact of the matter is that this Administration has arguably seen some of its biggest ethics violations from these people at the top. How will you work to create a top-down ethical culture if the people at the top are part of the problem?

Mr. ROUNDS. Well, that is, in fact, the challenge, yes, Senator, and I am going to do the best that I can, use whatever persuasive skills I might have, perhaps, to discuss with them, and to listen to them as well. Because if we have a communication, if we have a dialogue, perhaps there will be a fuller and better understanding of what the ethics laws and rules are and how they play an important role within an Executive Branch agency and department.

Senator HASSAN. Well, I would look forward to continuing that discussion because I think it is a real challenge that we have right now, and I think when the tone is not set correctly at the top it makes it very difficult for the public to have confidence, which I know is something you care a great deal about.

I wanted to raise one additional issue. OGE recently released guidance on disclosures of donors to legal defense funds that former OGE Director Walter Shaub has called—and this is his quote—“the worst thing OGE has done in its 40 years of existence.” This guidance I am referring to applies to recipients of money to the Patriot Fund, the fund established to defray the legal costs of members of the President’s team who are deposed in the Russia investigation.

This new guidance would exclude recipients of money from this fund from having to name individual donors who give \$200 or more to the fund on their financial disclosures, leaving the development of these donor list to the fund’s manager, who has discretion over how to dole out the money pooled in the fund. The fund manager cannot only dole out money as she sees fit, meaning the fund recipients could be rewarded monetarily for giving more favorable testimony in the investigation, but her management also gives the President’s team plausible deniability if there are any illegal gifts to the fund.

I find this very concerning, and I guess my first question is, have you read this guidance, and, if so, do you share these concerns?

Mr. ROUNDS. Senator, I have read the guidance but I fully do not have all of the information, all of the facts, all of the considerations that were made before this was, in fact, promulgated as an opinion, a recommendation, if you will, of the Office of Government Ethics.

I should explain that I strongly respect the Senate's confirmation role in the appointment process, and because of that, and given my Navy background where there is only one skipper of any ship, and that current skipper is the Acting Director of the Office of Government Ethics, I have been very careful not to, in any way, impose myself on the agency in any other role than as an employee, and I have not insinuated myself in any OGE decisionmaking, and I have done that purposefully.

So what I need to do, among many things, when I get there, is ask questions.

Senator HASSAN. Right. And I realize that I am over my time. What I would appreciate is a commitment from you to review the guidance, if you are confirmed, and to, I hope, make changes necessary so that that guidance complies with ethical standards.

Mr. ROUNDS. I appreciate your concerns, Senator. I have a list of things, if I am confirmed, that I will be considering.

Senator HASSAN. OK. Thank you very much.

Senator LANKFORD. Thank you. I am going to recognize Ranking Member Jones for this. We have just had votes called, and so we are going to see if we can wrap this up with his questions and with mine. And I know that would grieve you all tremendously if we were to wrap up in the next 10 or 12 minutes, but we will see if we cannot wrap that up together. Senator Jones.

Senator JONES. Thank you, Mr. Chairman, and let me say, real quickly, that this morning I had the opportunity to visit with the FBI to discuss your backgrounds and I will say, Mr. Chairman, that in my time in the Senate it was the shortest meeting I think I have ever had, which I think is a testament to all of our nominees here.

So, Mr. Nutt, real quick, I am just going to ask a series of things. You have talked about becoming familiar with the President's management agenda. What specific challenges can you identify with the management agenda that the President has put out, and do you have any plans for developing and implementing that agenda?

Mr. NUTT. There are approximately 14 cap goals in the President's management agenda, of which 4 or 5 are in the financial management area that we would be meeting with the appropriate folks at various agencies to get everybody aligned so that we are all working in the same general direction when it comes to the various different issues, whether it is improper payments, financial and other systems, grants, improved accountability for grants management, and so forth. So there are several different areas that we would be working in.

Senator JONES. All right. Great. Ms. Higashi, I mentioned in my earlier statement that I have been both an Assistant U.S. Attorney and U.S. Attorney. What I did not also say is that in between both of those stints I was also a member of the Defense bar, both in a civil and criminal realm. So I understand sometimes it is difficult going from one hat to the next. But I know you understand the importance of an independent judiciary and a fair judiciary. Do you

see any problem with you changing hats after a wonderful career as a prosecutor to make sure that all litigants that come before you have the same and equal opportunity?

Ms. HIGASHI. Absolutely not, Senator. I do not see any difficulty. In fact, in my role as an Assistant U.S. Attorney, and especially during the years when I have been a supervisor, I have come to learn that one of the most important roles that we serve is not just as an advocate but as a minister of justice. So, as you know, as an Assistant U.S. Attorney, my client is not the victim of a case. My client is the United States. My client is the community. So I have a special duty to ensure that we only bring prosecutions, or we have reasonable likelihood of success. When we evaluate evidence for potential disclosure under Brady and Giglio, we are required to view the evidence from a defense perspective in deciding whether or not something would be not only material or favorable, but something that the defense should know.

Senator JONES. All right. Thank you so much.

Mr. Rounds, let me say, earlier in my statement I talked about the challenges, I think, that we are facing right now, both with partisanship around here as well as, I think, ethics has become a highlight over the last couple of years. I am not being critical of the Administration or anyone. I think what we have seen are some new opportunities where the President and others that are coming in are representing some new challenges that we have not seen as much before.

With those challenges come opportunities to fine-tune the ethics and the role of the Office of Government Ethics. Is that what you plan to do, to try to look and review all of this in the light of what can be done to make it better in light of the new circumstances that we may see, and new opportunities?

Mr. ROUNDS. Thank you, Senator, and I appreciate the interest, and I concur that this is something that, if I am confirmed as Director, I will certainly be doing. The nature of financial interests that we see on financial disclosure reports has changed and evolved since the Ethics in Government Act was first promulgated, and OGE has to evolve in many ways with those changes.

OGE has, over its history, evolved, and has changed, and has come to grips with changes that need to be made as time passes. So, absolutely, this is one of the things that I will be doing, is studying, with my senior staff, if I am confirmed, what can we do to make this better?

Senator JONES. All right. Thank you, sir. And let me just say that I share Senator Hassan's concern concerning the Patriot Fund, and I hope you will look at that. And I come at that from the standpoint of both a prosecutor and a defense lawyer. No one is suggesting that there is any manipulation going on, but when there is that possibility, it raises issues that I think need to be looked at, so I appreciate your willingness to at least take a look and see whether that guidance needs to be reviewed.

So thank you and thank you all for being here, and congratulations.

Thank you, Mr. Chairman.

Senator LANKFORD. Thank you. Mr. Rounds, let me ask you a question on reauthorization. Senator Jones just, earlier, mentioned

about how OGE has not been reauthorized now. Mr. Shaub, the previous Director, did a proposal for a 7-year reauthorization but with no changes in it. After he left as Director, he recommended 13 different policy changes to the Office of Government Ethics. It has been an interesting challenge for us all along that people that are sitting in the chair say everything is fine and when they leave they say, "By the way, there are major changes I would recommend" but would not say it while they were in the chair.

I am not asking you to make the recommendations. You are not even in the chair at this point yet.

Mr. ROUNDS. Yes, sir.

Senator LANKFORD. But we need engagement from this Committee so that when you are in the seat, we can have ongoing dialogue rather than hearing, "It is fine," and then you leave and go, "Yes, there are real problems." Can we have a commitment from you that we can have some honest dialogue, that if you are placed in this position and confirmed, if there are recommendations that you would make, we could have that dialogue either in a public or private setting, so we can make the changes needed?

Mr. ROUNDS. Yes, sir.

Senator LANKFORD. We would appreciate that very much, just to be able to have that open once you get to know us, we are not that difficult. So we will get a chance to be able to work this out.

The previous Director also did some tweets at different points. No one really understood was that the official position from the Office of Government Ethics or was this a personal opinion on that. How will you handle social media, and as far as official policy positions or statements from OGE?

Mr. ROUNDS. If I am confirmed as Director, it will be crystal clear when there are official statements made by the Office of Government Ethics, and I do not intend, as Director, to make any unofficial statements or declarations as Director.

Senator LANKFORD. Terrific. That helps make it exceptionally clear.

Ms. Higashi, I have one simple question for everyone on the bench, and it is, do you pledge that the facts of the law will drive your decisions when you are on the bench?

Ms. HIGASHI. Absolutely.

Senator LANKFORD. I did not doubt your answer on that, but I ask everybody, because that is the primary question. There are a lot of other issues that we could talk about, but the law being the primary feature obviously is the key issue as you walk through the process, and what people would anticipate when they come to your bench.

Let me ask you a second follow-up question. In your experience that you have had, which has been pretty varied, what do you think prepares you uniquely for this spot on the bench, based on your experience, and where are you weakest to think I am going to have to develop that because I do not have a strong experience in that area?

Ms. HIGASHI. Well, while my 23 years of experience prosecuting cases in the Superior Court and the U.S. District Court has been within the area of criminal law, I believe that, at a base level, every litigated matter, whether it is within the criminal law, the

civil law, family law, has two basic aspects—a fair finding of the truth in the facts, and identifying of the governing relevant law, and applying that law to the facts. And I have significant experience in investigating and prosecuting cases, and have developed, through that, a skill at honing in on the relevant facts of a case. And I have also gained experience in being very resourceful in finding the governing relevant law and analyzing it and applying it to the facts.

Absolutely, and when I am assigned to a docket in the civil division, or the family division, or the tax and probate division, I will absolutely have to be very diligent and study and learn new rules of procedure and become familiar with new areas of law that I am not as familiar with. But I believe given the experience that I have, I am confident that I can do that.

Senator LANKFORD. OK. Thank you.

Mr. Nutt, Senator McCaskill and I have a bill that we are working through the process called the Taxpayer's Right to Know. It has passed unanimously through the House. It is now in the Senate. It might surprise you that it slowed down some in the Senate, even though it was unanimous in the House. That bill does a simple request of every agency to do a list of all the programs that they do, as an agency, how much they spend on those programs, how many staff they assign to those programs, the people that they serve for those programs, and if the program is evaluated, how it is evaluated. It is fairly straightforward. It is not a complicated piece.

And, by the way, the GAO has said this was the top issue for them, and saying it is a tool that they need to be able to do oversight from the GAO level as well—that would fall to you, to be able to help work with agencies. When this passes, and we believe that it will, and we are going to keep working until it does, how will you implement that? Have you had the opportunity to be able to look at that particular bill?

Mr. NUTT. I am familiar with the issue only a certain level. I, first off, would say that I am wholeheartedly in support of improving transparency and accountability to the U.S. taxpayer. My understanding of the data from agency to agency across the government is such that it is not easily comparable, and so that is one of the difficult areas, and it is an area that I think we are already working on. But it is an area that will continue to need to be addressed over the years, to bring the data in line so that the comparisons, the reporting, the transparency can be realized.

Senator LANKFORD. OK. We will look forward to working with you on that. Senator McCaskill and we do not like to lose, and so I can assure you we will keep pressing until we get this done, because we feel it is exceptionally important to be able to have that type of inventory, not only for the American people and the taxpayer but from agencies. What we hear from other agencies, they do not know what other agencies are doing and how to compare themselves and how to be able to work through the process. So it would be helpful within the government, and certainly outside of the government as well.

Let me recognize Senator Heitkamp for any questions that she may have, as we are wrapping up and preparing for votes that have already been called, by the way, about 13 minutes ago.

**OPENING STATEMENT OF SENATOR HEITKAMP**

Senator HEITKAMP. Thank you all for your willingness to serve, and I wish you well. We will be submitting some questions for the record. [Laughter].

Senator LANKFORD. That could not have been any easier for you.

Senator JONES. That is a first.

Senator HEITKAMP. I can read his mind.

Senator LANKFORD. Any other final statements that you all would have, as well?

Mr. ROUNDS. Just thank you, sir.

Senator LANKFORD. Thank you.

Ms. HIGASHI. No, sir.

Mr. NUTT. Thank you. No more at this time. Thank you.

Senator LANKFORD. The nominees have made financial disclosures and provided responses to biographical and pre-hearing questions submitted by the Committee.<sup>1</sup> Without objection, this information will be made a part of the hearing record,<sup>2</sup> with the exception of the financial data, which will be on file and available for public inspection in the Committee offices.<sup>3</sup>

The hearing record will remain open until 5 p.m. tomorrow, May 24th, for submission of statements and questions for the record that we understand are coming, and we will follow up with you on any of those questions we have, we will get to you.

For all three of you and your families, thank you. This is a tremendous sacrifice to be able to do public service. We understand that. You understand that all very well. Also, for the public service that you have already given, we appreciate you stepping up to continue to be able to serve the public.

With that, this hearing is adjourned.

[Whereupon, at 3:30 p.m., the Committee was adjourned.]

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<sup>1</sup>The information submitted by Mr. Rounds appears in the Appendix on page 29.

<sup>2</sup>The information submitted by Ms. Higashi appears in the Appendix on page 94.

<sup>3</sup>The information submitted by Mr. Nutt appears in the Appendix on page 119.

# APPENDIX



## Opening Statement

### Hearing before the Homeland Security And Government Affairs Committee

Wednesday, May 23rd, 2018 at 2:30 PM

Good afternoon. Today we will consider three nominations: Mr. Emory Rounds to be Director, Office of Government Ethics; and Ms. Kelly Higashi to be an Associate Judge on the Superior Court for the District of Columbia; and Mr. Frederick Nutt to be the Controller, Office of Federal Financial Management which is in the Office of Management and Budget.

The Committee takes these nominations very seriously, so we are pleased to have three strong nominees before us today.

Mr. Emory Rounds is nominated to be the Director of the Office of Government Ethics. Mr. Rounds earned his B.A. from the University of Massachusetts at Amherst and his J.D. from the University of Akron Law School. Upon completion of law school, Mr. Rounds began his active duty Navy career, where he advanced from attorney to a Military Judge in his 22 years of military service to his country.

After a very brief retirement, Mr. Rounds rejoined the federal government as an ethics attorney, first with the Department of Commerce and then as Associate Counsel to President George W. Bush in the White House Counsel's Office.

Mr. Rounds joined the Office of Government Ethics as an Associate General Counsel in 2009, the position in which he serves now.

Committee staff spoke to Mr. Rounds' colleagues in the ethics community and at OGE, who spoke highly of his experience as an ethics lawyer and his commitment to the mission of the Office of Government Ethics. The committee is confident Mr. Rounds is qualified to be the Director of the Office of Government Ethics.

Ms. Higashi earned a Bachelor of Arts degree from the University of Pennsylvania and her J.D. from the George Washington University School of Law. Ms. Higashi has had a legal career steeped in criminal law.

After law school, Ms. Higashi clerked for the Honorable Frederick Weisberg of the Superior Court of the District of Columbia. Ms. Higashi then joined the U.S. Attorney's Office for the District of Columbia in 1994.

Early in her career with the U.S. Attorney's Office, Ms. Higashi rotated through several sections, gaining experience in the Misdemeanor Trial Section, and Felony Trial Section, the Grand Jury Section, and the Narcotics Section.

However, for the last fifteen years, Ms. Higashi's work has focused on the difficult work of the Sex Offense and Domestic Violence Section of the U.S. Attorney's Office for the District of Columbia. Ms. Higashi is currently the Section Chief of this section.

Committee staff reached out to numerous colleagues of Ms. Higashi, and the comments were highly positive, with specific praise given to her intelligence and hard work; her people skills and leadership as a Section Chief; her ability to manage difficult cases and make hard decisions every day; and her humanity in dealing with the victims of crime.

The Office of Federal Financial Management provides direction to our federal financial systems. The Controller coordinates the work of the Chief Financial Officers of the major federal agencies. The Controller also coordinates the work of Senior Real Property Officers. This position provides a unique opportunity to help make our federal government run efficiently and effectively by implementing policies that support sound budgeting, cost management, effective financial reporting, and "right-sizing" federal real properties.

Frederick Nutt graduated from Virginia Tech and has spent much of his career serving in the federal government. Mr. Nutt has worked in both Houses of Congress, and has held several financial and management roles at the Environmental Protection Agency, the Millennium Challenge Corporation, and the Overseas Private Investment Corporation.

Committee staff spoke with former colleagues of Mr. Nutt, and they speak highly of his professionalism and the varied experience he has gained within the federal government and how he could bring that understanding of different federal organizations to bear in this role.

Staff interviewed the nominees on an array of issues, and each has thoughtfully and competently answered each question.

To date, the Committee has found you to be qualified for the position you have been nominated. I look forward to speaking with each of you more today on your experience and accomplishments and how you intend to bring them to bear for the federal government and the District of Columbia.

I now recognize Ranking Member Jones for his opening statement.

**U.S. Senate Committee on Homeland Security and Governmental Affairs**  
**Nominations of**  
**Emery A. Rounds, III to be Director, Office of Government Ethics**  
**Frederick M. Nutt to be Controller, Office of Federal financial Management,**  
**Office of Management and Budget**  
**Kelly Higashi to be Associate Judge, District of Columbia Superior Court**

**May 23, 2018**

**Ranking Member Doug Jones**

**Opening Statement**

Thank you, Mr. Chairman.

Thank you Mr. Rounds, Mr. Nutt, and Ms. Higashi, for being here today and congratulations on your nominations. Each of you has demonstrated a dedication to public service, and we appreciate your willingness to continue to serve in these new roles.

Today we convene to provide advice and consent for the President's nominees to be Director of the Office of Government Ethics, Controller of the Office of Federal Financial Management, and an Associate Judge of the District of Columbia Superior Court.

Ms. Higashi, as an attorney who practiced in federal and state courts for almost forty years, I know just how much litigants depend on having qualified, impartial judges on the bench. I also served as an Assistant U.S. Attorney, and later as the U.S. Attorney in Birmingham, Alabama, and I understand the difficult work

you do. I commend you on your dedication to finding justice for the most vulnerable among us who have been the victims of the most heinous crimes.

Public service requires government employees to place loyalty to the Constitution, the laws, and ethical principles above private gain. The Office of Government Ethics is responsible for providing leadership and oversight of the executive branch ethics program, which is intended to prevent and resolve conflicts of interest involving Administration employees. In other words, the purpose of the OGE is to safeguard the public's trust in government. In the current climate of intense partisanship and suspicion, the importance of this role cannot be overstated.

Created by the 1978 Ethics in Government Act in the wake of the Watergate scandal, the OGE was reviewed and reauthorized by Congress until 2007, when its statutory authorization expired. Although OGE does continue to receive federal appropriations, reauthorization is important and provides an opportunity to consider whether there are improvements that can better enable the OGE to fulfill its mission. I hope that this Congress will see fit to reauthorize OGE before it ends later this year.

There are a number of OGE reform proposals under consideration, some based on suggestions made by former OGE Director Walter Schaub. Having reviewed those proposals and given the climate we currently find ourselves in, I hope that they will be given serious consideration by Congress and to the extent that they can be done internally, by the OGE itself. Mr. Rounds, you have an extensive background in ethics and a deep commitment not just to public service, but to ethical and transparent public service. I am interested to hear how you plan to help the OGE navigate novel conflict of interest circumstances, whether you feel

OGE has had the tools to adequately address the issues that have recently arisen, and how you plan to ensure OGE's independence in doing its job.

The Office of Federal Financial Management also has a role in protecting the public trust in government, specifically with regard to the effective and transparent use of government resources. The OFFM was established in 1990 to lead the Executive Branch toward better financial management and decision-making. Its priorities include transparency and data management, shared services, real property, improper payments, grants management, internal control, federal financial reporting, debt collection and charge cards.

Mr. Nutt, you currently serve as Senior Adviser to the Director and Deputy Director of the Office of Management and Budget. In that role, you have had some opportunity to familiarize yourself with the OFFM since it reports to the Deputy Director, and you have recognized that the federal government continues to waste far too much money on improper payments. I look forward to hearing your thoughts on ways OFFM can effectively reduce this number.

I look forward to hearing from each of these nominees. Thank you, Mr. Chairman.

**Statement of Senator Susan M. Collins**  
**Hearing to consider the nomination of Emory A. Rounds III, of Maine, to be Director of**  
**the Office of Government Ethics**  
**May 23, 2018**

Mr. Chairman, first, let me thank you for the opportunity to make a statement, along with Senator King, in support of the nomination of Emory A. Rounds III, of Arundel, Maine, to be the Director of the Office of Government Ethics for a term of five years. While I do not know Mr. Rounds personally, I am impressed with his accomplishments and I look forward to the Senate's consideration of his nomination to be the next Director of the Office of Government Ethics.

The 1978 statute creating the Office of Government Ethics describes its purpose as providing "overall direction of executive branch policies related to preventing conflicts of interests on the part of officers and employees of any executive [branch] agency." OGE is responsible for providing direction, training, and oversight to more than 4,500 designated agency ethics officials across more than 130 executive branch agencies, on a host of ethics, financial disclosure, and conflict of interest laws, rules, and regulations. OGE also has the important responsibility of making sure that prospective nominees for federal office are free of conflicts of interest.

In ensuring proper conduct, the first of 14 general principles set forth by Office of Government Ethics is that "Public service is a public trust, requiring employees to place loyalty to the Constitution, the law and ethical principles above private gain." In other words, OGE plays a critical role in maintaining the public's trust in its government and government employees.

The Director of the Office of Government Ethics is a demanding job, and Mr. Rounds' resume speaks to his qualifications for the position. He has held numerous positions at OGE since 2009, most recently as associate counsel in the General Counsel's Office. He has also served as an ethics counsel in the White House during the George W. Bush Administration, as an ethics lawyer at the Department of Commerce, and as a Navy Judge Advocate for 22 years on active duty.

In addition to his qualifications, Mr. Rounds' nomination has received support from the former Director of the OGE, Walter Shaub, an Obama Administration appointee who resigned last year, who has stated: "Emory is a good and decent man who has devoted his life to public service. He believes in the government ethics program, and he will ably lead OGE...I hope the Senate confirms Emory quickly. He's a great pick for this position." Richard Painter, former White House Counsel to President George W. Bush, had this to say about Mr. Rounds' nomination: "Great choice...He was my deputy...Not political — I had no idea if he was a D, R or I."

Mr. Rounds has demonstrated a commitment to our ethics laws and carrying out the ethics program. He has ample experience to undertake the responsibilities of this important position, and the confidence of those familiar with the essential work of the OGE. I thank the Chairman again for the opportunity to join Senator King in introducing Mr. Rounds today, and I urge his approval by the members of this Committee and the full Senate.

**Opening Statement of Emory A. Rounds III  
to be Director, U.S. Office of Government Ethics  
May 23, 2018**

Chairman Lankford, Ranking Member Jones, and members of the committee, I thank you for the opportunity to appear before you today.

I am profoundly honored that President Trump has nominated me to be the Director of the Office of Government Ethics. It has been my distinct privilege to serve my country and the American public for more than four decades, as a career Navy officer and later as a civil servant and White House appointee. That I might serve further, as OGE's Director, would certainly be the capstone of my government career.

I have proudly been a member of the OGE team since January 2009, and could not be more pleased to have – if I am confirmed – an opportunity to lead the people who constitute the most dedicated, talented, and professional small agency staff in the Executive Branch. In context with the growing interest in and concerns regarding government ethics, OGE finds itself underfunded, under-staffed, over-missioned, and to a great extent under-appreciated. But, to a person, OGE's staff always performs above any reasonable expectations.

If confirmed, my challenges as Director may be many, but the least among them is any question about OGE's staff and its ability to do its job whatever the environment. Each member of OGE's staff is committed to achieving OGE's mission, whatever it takes to do so, to ensure that OGE continues to provide leadership and oversight of the Executive Branch's ethics program. This nation should be proud of their work.

I have been a zealous supporter of the government's ethics program and its mission to prevent conflicts of interest; fraud, waste, and abuse; and to ensure impartiality throughout my career. I firmly believe that it is better to prevent ethical misconduct than to correct or punish violations after the fact. I strongly believe that it must be Executive Branch leaders who, by example, foster an ethical culture in their agencies not only by themselves acting in compliance with the ethics laws and rules, but also by carefully considering the appearance of their actions, even if permissible. The default must be on the side of "over-compliance" rather than the testing of any limits. In my opinion, the tone from the top is critical to fostering and maintaining a strong ethics culture and a positive tone requires more than mere technical compliance.

If confirmed as OGE's Director, I would take on the critical duty of ensuring that the Executive Branch's ethics laws and rules are followed by calling upon government leaders to protect the integrity of government and strengthen the public's confidence in government decision-making. To that end, one of my immediate priorities, if confirmed, would be to personally meet with as many departmental and agency heads as I can, as quickly as possible, to convey my commitment to, and leadership of, the ethics program. I would impress upon these officials the critically important need for their strong ethics leadership. Further, I would commit to leading the Executive Branch ethics program by working with senior agency leaders, ethics

officials, and the enforcement community to prevent potential ethical lapses, resolve issues that currently exist, and support enforcement when prevention has failed.

Integrity in government must not be simply aspirational. Rather, it must be our mission as senior leaders every day to encourage and foster a culture of government integrity, free of conflicts and dedicated to impartial decision-making. Without impartial and ethical decision-making, government leaders cannot deliver on their important promises, perform their public duties, or serve our country and its people.

If confirmed, I look forward to the opportunity to lead OGE and the Executive Branch in this vital mission.

Mr. Chairman, thank you once more for your consideration of my nomination.

REDACTED

**HSGAC BIOGRAPHICAL QUESTIONS FOR  
EXECUTIVE NOMINEES**

**1. Basic Biographical Information**

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
Name of Position	Date of Nomination
Director, United States Office of Government Ethics	February 13, 2018

<i>Current Legal Name</i>			
First Name	Middle Name	Last Name	Suffix
Emory	Arthur	Rounds	III

<i>Addresses</i>					
Residential Address (do not include street address)			Office Address (include street address)		
[REDACTED]			Street: 1201 New York Ave, NW, Suite 500		
City: Arundel	State: ME	Zip: 04046	City: Washington	State: DC	Zip: 20005

<i>Other Names Used</i>						
First Name	Middle Name	Last Name	Suffix	Check if Maiden Name	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
Trey (nickname)		Rounds			1951 Est X	Current Est X

<i>Birth Year and Place</i>	
Year of Birth (Do not include month and day)	Place of Birth
1951	Attleboro, MA

<i>Marital Status</i>					
Check All That Describe Your Current Situation:					
Never Married	Married	Separated	Annulled	Divorced	Widowed
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<i>Spouse's Name (current spouse only)</i>			
Spouse's First Name	Spouse's Middle Name	Spouse's Last Name	Spouse's Suffix
Leslie	Lambert	Rounds	

<i>Spouse's Other Names Used (current spouse only)</i>

First Name	Middle Name	Last Name	Suffix	Check if Married Name	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
Leslie	Harriet	Lambert		X	1953 Est X	1973 Est X

Children's Names (If Over 18)			
First Name	Middle Name	Last Name	Suffix
Emory	Arthur	Rounds	IV
Kathleen (Kate) Maiden name: Kathleen	Anne	Avery Rounds	
Christopher	Robert Douglas	Rounds	
Erin	Elizabeth	Rounds	
Megan	Eileen	Rounds	

**2. Education**

List all post-secondary schools attended.

Name of School	Type of School (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	Date Began School (month/year) (check box if estimate)	Date Ended School (month/year) (check box if estimate) (check "present" box if still in school)	Degree	Date Awarded
University of Akron	Law School	9/1973 Est <input type="checkbox"/>	5/1976 Est Present <input type="checkbox"/> <input type="checkbox"/>	JD	1976
University of Massachusetts at Amherst	University	9/1969 Est <input type="checkbox"/>	5/1973 Est Present <input type="checkbox"/> <input type="checkbox"/>	BA	1973

**3. Employment**

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

Type of Employment (Active Military Duty Station, National Guard/Reserve, USPS Commissioned Corps, Other Federal employment, State Government (Non-Federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other)	Name of Your Employer/Assigned Duty Station	Most Recent Position Title/Rank	Location (City and State only)	Date Employment Began (month/year) (check box if estimate)	Date Employment Ended (month/year) (check box if estimate) (check "present" box if still employed)
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Other Federal employment	US Office of Government Ethics	Associate General Counsel	Washington, DC	1/2009	Present
Other Federal employment	White House Counsel's Office	Associate Counsel to the President	Washington, DC	6/2003	1/2009
Other Federal employment	US Department of Commerce	Ethics Attorney	Washington, DC	6/2000	6/2003
Other Federal employment	Federal Emergency Management Agency	Field Trainee (Reserve)	Washington, DC	4/2000 (Est)	4/2000 (Est)
Unemployed (US Navy retiree)	N/A	N/A	Leonardtown, MD	8/1999	6/2000
Active Military Duty Station	Naval Air Systems Command	Staff Judge Advocate/CDR	Patuxent River, MD	10/1997 (Est)	7/1999 (Est)
Active Military Duty Station	United States Transportation Command	Chief, Operational Law/CDR	Scott Air Force Base, IL	7/1994 (Est)	10/1997 (Est)
Active Military Duty Station	Naval Legal Service Office Detachment Philadelphia	Officer-in-Charge/CDR	Naval Base Philadelphia, PA	9/1992 (Est)	7/1994 (Est)
Active Military Duty Station	Naval Base Philadelphia	Staff Judge Advocate/CDR	Naval Base Philadelphia, PA	6/1989 (Est)	9/1992 (Est)
Active Military Duty Station	Office of the Judge Advocate General (Code 63 – Management and Plans)	Staff Attorney/CDR	Alexandria, VA	4/1986 (Est)	6/1989 (Est)
Active Military Duty Station	Naval Air Station Brunswick ME	NAS Judge Advocate/LCDR	Brunswick, ME	12/1984 (Est)	4/1986 (Est)
Active Military Duty Station	Naval Legal Service Office Detachment Brunswick	Officer-in-Charge/LCDR	Brunswick, ME	12/1983 (Est)	11/1984 (Est)
Active Military Duty Station	Naval Legal Service Office Newport	Head of Military Justice/LCDR	Newport, RI	2/1981 (Est)	11/1983 (Est)
Active Military Duty Station	Navy-Marine Corps Court of Military Review	Senior Commissioner/LCDR	Washington DC	7/1979 (Est)	1/1981 (Est)
Active Military Duty Station	Naval Legal Service Office Washington DC	Claims Attorney/LT	Washington DC	2/1978 (Est)	7/1979 (Est)
Active Military Duty Station	Office of the Judge Advocate General (Code 21 – Investigations)	Legal Advisor/LTJG	Washington DC	3/1977 (Est)	2/1978 (Est)
Active Military Duty Station	USS Richard E Byrd	Training/LTJG	Norfolk, VA	3/1977 (Est)	3/1977 (Est)

Active Military Duty Station	Naval Justice School	Student/LTJG	Newport, RI	1/1977 (Est)	2/1977 (Est)
Active Military Duty Station	Officer Indoctrination School	Student/LTJG	Newport, RI	6/1975 (Est)	7/1975 (Est)
Non-Government Employment (part-time)	Blakemore, Rosen, & Norris	Law Clerk	Akron, OH	5/1974 (Est)	12/1976 (Est)
Unemployed (Law Student)	N/A	N/A	Akron, OH	9/1973 (Est)	5/1974 (Est)
Non-Government Employment (part-time)	Zee Enterprises (McDonald's Restaurant)	Assistant Manager	Hadley, MA	6/1973 (Est)	8/1973 (Est)
Non-Government Employment (part-time and intermittent)	University of Massachusetts	Various jobs on campus	Amherst, MA	6/1970 (Est)	5/1973 (Est)

Note: Over the course of my career (both Navy and civilian) I have had several various details and temporary assignments of varying lengths within the above employments -- given the temporary nature of these duties, such details are not included in the list above.

**(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.**

None

#### **4. Potential Conflict of Interest**

**(A) Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.**

None

**(B) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.**

None

#### **5. Honors and Awards**

**List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.**

Seven military decorations: two Meritorious Service Medals, four Navy Commendation Medals, and one Navy Achievement Medal

#### **6. Memberships**

List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years.

Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax deductible donation of \$1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

None (current licensed as an attorney in good standing in the State of Maine, but not a member of the Maine State Bar Association)

**7. Political Activity**

(A) Have you ever been a candidate for or been elected or appointed to a political office?

No

(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

None

(C) Itemize all individual political contributions of \$200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

None

**8. Publications and Speeches**

(A) List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet. Please provide the Committee with copies of all listed publications. In lieu of hard copies, electronic copies can be provided via e-mail or other digital format.

None

(B) List any formal speeches you have delivered during the last five years and provide the Committee with copies of those speeches relevant to the position for which you have been nominated. Include any testimony to Congress or any other legislative or administrative body. These items can be provided electronically via e-mail or other digital format.

None

(C) List all speeches and testimony you have delivered in the past ten years, except for those the text of which you are providing to the Committee.

No speeches (or testimony) – only training/briefings provided on behalf of the US Office of Government Ethics to various employees or visiting groups on various occasions:

Participation in OGE's 2011 Conference presentations:

- History of the Conflict of Interest Regulations (briefing, with the Acting Director)
- Ethics Across the Three Branches (Panel Member)
- Supplemental Ethics Regulations (Panel member)
- OGE's OFPP/FAR/ACUS Roles (OGC's Update to Plenary Session)

Participation in OGE's 2010 Conference presentations:

- White House/OGE Perspective on the Transition: Past, Present, and Future (Panel Member)
- OGE's Kennedy Center Gift Advisory – DO-09-030 (OGC's Update to Plenary Session)

Presentations to State Department Programs as part of OGE's International Technical Assistance initiative:

- Briefing to members of Kyrgyzstan Parliament (2012)
- Briefing to Les Aspin Program (2011)

### 9. Criminal History

Since (and including) your 18<sup>th</sup> birthday, has any of the following happened?

- **Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Exclude citations involving traffic infractions where the fine was less than \$300 and did not include alcohol or drugs.)**

No

- **Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official?**

No

- **Have you been charged, convicted, or sentenced of a crime in any court?**

No

- **Have you been or are you currently on probation or parole?**

No

- **Are you currently on trial or awaiting a trial on criminal charges?**

No

- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation?

No

#### **10. Civil Litigation and Administrative or Legislative Proceedings**

(A) Since (and including) your 18th birthday, have you been a party to any public record civil court action or administrative or legislative proceeding of any kind that resulted in (1) a finding of wrongdoing against you, or (2) a settlement agreement for you, or some other person or entity, to make a payment to settle allegations against you, or for you to take, or refrain from taking, some action. Do NOT include small claims proceedings.

There were a couple of past traffic accident events with injuries involving me (in 2004 or 2005) and my daughter (in 2012). Neither of us were cited by law enforcement but the other car driver (in the first event) and the motorcyclist (in the second event) did each pursue and receive settlements from my insurance company. The records for the earlier event involving me are not available due to the passage of time.

(B) In addition to those listed above, have you or any business of which you were an officer, director or owner ever been involved as a party of interest in any administrative agency proceeding or civil litigation? Please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

No

(C) For responses to the previous question, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

None

#### **11. Breach of Professional Ethics**

(A) Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed.

No (currently licensed as an attorney in good standing in the State of Maine)

(B) Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy?

In 1973, while an assistant manager of a fast-food restaurant (between college graduation and law school), I was offered a manager position at a newly-built location. I declined, explaining that I was to attend law school

within the month. Within a day or so I was advised that the safe had been left open after my previous night shift and, although nothing was missing, that I would be let go.

**12. Tax Compliance**

**(This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)**

**REDACTED**

REDACTED

**13. Lobbying**

**In the past ten years, have you registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State).**

I have never registered as a lobbyist.

**14. Outside Positions**

**[X] See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)**

**For the preceding ten calendar years and the current calendar year, report any positions held, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.**

None

**15. Agreements or Arrangements**

**[X] See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)**

**As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.**

None

**Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.**

None

**16. Additional Financial Data**

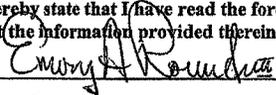
**All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)**

**REDACTED**

**REDACTED**

**SIGNATURE AND DATE**

I hereby state that I have read the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

  
\_\_\_\_\_

This 27<sup>th</sup> day of February, 2018



February 13, 2018

David J. Apol  
Designated Agency Ethics Official  
1201 New York Ave., NW, Suite 500  
Washington, DC 20005

Dear Mr. Apol:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Director of the U.S. Office of Government Ethics.

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.

My spouse is employed by the Dyer Library Association in a position for which she receives a fixed annual salary. For as long as my spouse continues to work for the Dyer Library Association, I will not participate personally and substantially in any particular matter involving specific parties in which I know the Dyer Library Association is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

My spouse is a regular book reviewer for Kirkus Media LLC for which she is paid per book review. For as long as my spouse is a paid book reviewer for Kirkus Media LLC, I will not participate personally and substantially in any particular matter involving specific parties in which I know Kirkus Media LLC is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), obligations of the United States, or municipal bonds.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order No. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

I will meet in person with you during the first week of my service in the position of Director in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,  
  
Emory A. Rounds, III

**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-hearing Questionnaire  
For the Nomination of Mr. Emory A. Rounds, III to be  
Director, Office of Government Ethics**

**I. Nomination Process and Conflicts of Interest**

1. Did the President give you specific reasons why he nominated you to be the next Director of the Office of Government Ethics (OGE)?  
  
No
2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.  
  
No
3. Have you made any commitments with respect to the policies and principles you will attempt to implement as Director? If so, what are they, and to whom were such commitments made?  
  
No
4. Are you aware of any business relationship, dealing, or financial transaction that could result in a possible conflict of interest for you or the appearance of a conflict of interest? If so, please explain what procedures you will use to recuse yourself or otherwise address the conflict. And if you will recuse yourself, explain how you will ensure your responsibilities are not affected by your recusal.  
  
No

**II. Background of the Nominee**

5. What specific background, experience, and attributes qualify you to be OGE Director?

Experience at OGE (since 2009)

As an Associate Counsel in the General Counsel's Office, my current and past duties have included: working directly with agency ethics officials reviewing financial disclosure reports and ethics agreements for the President's nominees; reviewing for my final certification new entrant, annual, termination, and transactional financial disclosure reports (nearly 2500 reports reviewed in four years); advising on ethics laws and regulations, and agency waiver consultations; resolving Certificate of Divestiture requests; editing various policy and procedural documents; and providing support to OGE's legislative, international, and training programs.

As Acting Chief of OGE's Internal Operations Division from 2013-2015, I led and managed OGE's administrative, human resource, procurement, and information technology strategic initiatives and day-to-day programs as one of OGE's four division heads.

While a Special Assistant to OGE's Acting Director from 2011-2013, I developed and implemented agency strategies and policies with and on behalf of the Acting Director, in coordination with agency executive management and senior leadership; directed staff research and agency response to questions related to financial, administrative, personnel, and strategic planning; ensured the timely collection of data for and correct preparation by agency staff of presentations to the Director; and mentored OGE staff members. I also reviewed and assigned to staff attorneys questions from agency ethics officials, and worked closely with OGE's action officer and OGE leadership to assure correct and timely resolutions.

#### Experience at the Office of the Counsel to the President (2003-2009)

I was honored to serve the President while an appointee. As an Associate Counsel to the President, at the Special Assistant level, I personally advised and provided strategic counseling in a dynamic and demanding environment to other commissioned assistants to the President and Presidential appointees, including Cabinet and other Senate-confirmed nominees, regarding financial disclosure reports and responsibilities as well as standards of conduct, compliance, and general legal issues. I wrote and approved advisory opinions, ethics agreements, and disqualification statements; reviewed and drafted changes to major ethics legislative, regulatory, and policy proposals; and served as liaison to senior agency ethics officials and OGE's Director.

As the deputy to the lead White House ethics official, I directly recruited and supervised a rotating team of up to six highly-skilled ethics professionals detailed to the Office of the Counsel, and was responsible for day-to-day office and docket management – to include the White House Office's financial disclosure program – as well as the production of the highest quality legal advice, at speed, in support of the President. I resolved and provided training on complex standards of conduct issues involving potential conflicts of interest, appearances of bias, and lobbying; gifts between employees and to the Government; political and outside activities; job-seeking and post-employment; and use of Government resources.

#### Experience at the Department of Commerce (2000-2003)

As a staff attorney in the Office of the Assistant General Counsel for Administration, I reviewed 800+ Presidential appointee, new entrant, and annual public and confidential financial disclosure reports, and advised on remedial action as needed. I advised on outside activities; gifts; Secretarial disqualifications; Government and political travel; conflicts of interest; post-employment; and awards. I coordinated Presidential appointee ethics packages with the White House and OGE; prepared ethics agreements and letters to Senators; and briefed appointees on ethics rules and the nomination process. I

managed the Department's program that provided ethics training to more than 12,000 Department employees in over 500 sessions – and personally trained over 1,100 employees.

Experience while serving in the U.S. Navy (1976-1999)

I served in the Navy in several assignments as a command legal advisor with duties similar to that of a city solicitor, district attorney, and chief counsel, resolving criminal, tort, ethics, civil, personnel, information release, equal opportunity, aviation accident, international, debarment, Congressional inquiry, admiralty, and litigation issues. I managed ethics programs and provided staff training, reviewing over 750 financial disclosure reports; took pretrial and post-trial actions on hundreds of criminal cases; reviewed and drafted opinions on investigations into death, personal injury, and property loss (over 150 resulted in trials or hearings). I also drafted Navy regulations; letter authorizations for the President's signature; final administrative opinions; and legislation that Congress passed so that military tankers complied with environmental law. I have also acted on complex short-fused questions involving the law of armed conflict, rules of military engagement, freedom of navigation, and the law of the sea concerning the worldwide transport of people and goods by Government or commercial air, sea, and land carriers.

As a manager, I directed two field legal offices and ensured that legal services were professional and timely; adjudicated Federal claims; wrote and signed evaluations; managed trial dockets to ensure timely case completion; and prepared and executed budgets. I supervised a field office staff of 33 lawyers, paralegal professionals, and support personnel that provided trial, claims, legal assistance, ethics, and administrative law services in a five-state region, and managed a newly established law office of four lawyers and two paralegals. In field legal services office assignments, I supervised and mentored three prosecutors, four defense attorneys, and six paralegals as head of criminal justice services; and led three trial attorneys, and four paralegals and court reporters, as a senior prosecutor. At the Naval Legal Service Command headquarters level, I rewrote and published the Navy's legal services operating manual; managed executive orientations; and briefed manpower, equipment, and space requirements.

I also have served as an appellate counsel, legal representative, and investigator, while representing the Government in several assignments and when defending clients in bench and jury criminal trials, worker's disability proceedings, and administrative hearings. I served as the senior law clerk (Commissioner) to the Navy's 11-member appellate criminal court, reviewing over 450 trial records for legal error; researching issues and briefing judges; editing court opinions for content and form; and drafting 50 opinions (15 published). I also assisted the Chief Judge's management of a 4,500 case docket, and supervised three law clerks. In another assignment, I was a key player on the three-member team that wrote the Navy JAG Corps' first professional conduct rules and enforcement procedures. I have also investigated attorney professional ethics misconduct. I have prosecuted felonies and misdemeanors, including major conspiracy cases involving fraudulent payments by disbursing clerks. I was hand-picked to be a

special prosecutor to investigate high-visibility charges against senior executives; intensive inquiry revealed no misconduct, and an interested Congressman was personally briefed.

I have defended clients at 40 trials and administrative boards (in a six-month period) and represented clients in over 250 disability hearings. I provided legal assistance to service members, and negotiated and settled tort and personnel claims filed against the Navy; investigated and prosecuted high-visibility and complex cases, serving as the preliminary hearing officer in felony cases that included murder (at sea), rape, and drug allegations. I have also served as an Inspector General team member and advisor.

6. Please describe:

a. Your leadership and management style.

While I embrace the “team” concept of leadership and management, I also believe that a strong leader must make the tough decisions when needed – and if confirmed as OGE’s Director, I will do so. OGE enjoys a reputation as an elite group of experienced subject-matter experts who are self-directed and fully-motivated to perform their assigned tasks. Diverse viewpoints are encouraged. Decisions need to be made after considering these different points of view (often, equally viable). I will lead OGE to the best decision. When OGE assets need to be allocated and organized, to better accomplish OGE’s mission, I will manage to ensure the efficacy of the agency and its oversight of the Executive Branch’s ethics program.

b. Your experience managing personnel.

As Acting Chief, I supervised and managed OGE’s nine-member Internal Operations Division, which is responsible for OGE’s day-to-day administrative, human resource, procurement, and information technology programs and strategic initiatives.

While a Special Assistant to OGE’s Acting Director, I indirectly managed OGE staff: I directed staff research and agency response to questions related to financial, administrative, personnel, and strategic planning; ensured the timely collection of data and correct preparation by agency staff for presentations to the Director; mentored OGE staff members; reviewed and assigned to staff attorneys questions from agency ethics officials; and worked closely with OGE’s assigned staff member and OGE leadership to assure correct and timely resolutions.

While at the White House I directly supervised a rotating team of up to six highly-skilled ethics professionals detailed to the White House Counsel’s Office, where I was responsible for day-to-day office and docket management – to include the White House Office’s financial disclosure program – as well as the production of the highest quality legal advice, at speed, in support of the President.

On active duty in the Navy, I supervised a field office staff of 33 lawyers, paralegal professionals, and support personnel that provided trial, claims, legal assistance, ethics,

and administrative law services in a five-state region; managed a newly established law office of four lawyers and two paralegals; managed the military justice division (13 lawyers and paralegals, providing both prosecution and defense services) within a legal service office; served as the lead Commissioner (law clerk) of up to three other clerks at the Navy's appellate criminal court; and, while the staff judge advocate (senior attorney) at several Navy commands, supervised and managed assigned attorneys and support staff.

c. What is the largest number of people that have worked under you?

While the Officer-in-Charge of the Navy's Legal Service Office Detachment in Philadelphia I supervised and managed 33 (+/-) attorneys, paralegals, and supporting staff members.

7. Please briefly describe the type of work you do as OGE Associate Counsel?

While an Associate Counsel, my current and past duties have included: working directly with agency ethics officials reviewing financial disclosure reports and ethics agreements for the President's nominees; reviewing for my final certification new entrant, annual, termination, and transactional financial disclosure reports (nearly 2500 reports reviewed in four years); advising on ethics laws and regulations, and agency waiver consultations; resolving Certificate of Divestiture requests; editing various policy and procedural documents; and providing support to OGE's legislative, international, and training programs.

### III. Policy Questions

8. Please describe your view of the agency's core mission and the Director's role in achieving that mission.

Through its Director, OGE provides leadership of and oversight over the Executive Branch ethics laws, regulations, policies, and related processes within the Executive Branch's ethics program. Together with the Executive Branch ethics community, OGE's Director's duty is to prevent and resolve conflicts of interest and impartiality concerns regarding government officials and employees.

I firmly believe in and would promote the "four pillars" reflected in OGE's Strategic Plan: a strong and uniform ethics program; holding senior government leaders and employees accountable for their own as well as their agency's compliance with the ethics rules and programs; supporting the seamless continuity of government; and engaging the public. I would focus on enhanced training opportunities within and for the ethics community as well as opening further the window into OGE and the government's ethics programs to allow even more "sunshine." I would also hold OGE itself accountable for a strong leadership and oversight presence.

If confirmed as OGE's Director, I would play the key role in ensuring that OGE's policies and procedures regarding the Executive Branch ethics program are clearly

articulated and readily disseminated and available to the senior ethics officials and government employees who rely on understanding the ethics “rules of the road” as they undertake their government assignments, as well as ensuring the same for citizens and outside groups interested in the integrity of their public servants. Two-way communication between the ethics community and OGE – and the OGE Director – is critical. OGE’s communication and outreach programs are fully engaged to ensure that its opinions and decisions are available to all, and to ensure that OGE has an institutional “open door” policy for all who engage OGE for questions or want to provide input.

The OGE Director does not have a law enforcement role. Nonetheless, if confirmed as Director I would play a critical role in the Executive Branch’s inspector general programs, initiatives, and – at times – investigations. I would ensure that issues of non-compliance are fully addressed, and that the “ethics wall” stands firm. I would also ensure that OGE’s outward-facing programs and policies, to include its mission to monitor agency compliance with its standards of conduct and disclosure rules, remain practical, relevant, and viable in times of diminishing personnel and budgetary resources. I would ensure that OGE’s rules and mandates focus on and address preventing and resolving conflicts of interest.

9. If confirmed as OGE Director, how do you plan on ensuring the independence and impartiality of your office?

To ensure independence I would, if confirmed as OGE’s Director, be steadfast and constant in my non-partisan, apolitical, impartial decision-making, actions, and recommendations. I would, as steward of the government’s ethics programs, at all times strive to protect the integrity of the government and its individual employees. I would do this by way of decisional transparency and by constant as well as consistent communication with issue participants and stakeholders.

If confirmed as OGE’s Director I would always serve as the “honest broker” within the ethics community. I have the courage to take the unpopular stand or make the difficult and painful decision when needed to ensure that the integrity of the Executive Branch remains intact. I would serve perhaps as does the good doctor who advises his or her patient with the good as well as the bad news and as to the best treatment, however difficult a pill to swallow. I would be vigilant with concern that the patient would ignore the doctor’s advice at the patient’s peril, but would not waiver to ensure the viability of the government’s ethics culture.

10. If confirmed, what will be the immediate, highest priority issue(s) that you expect to address and how will you go about addressing them?

My immediate external priority if confirmed as OGE’s Director would be to personally meet with as many departmental and agency heads as I can, as quickly as possible. I would discuss with them the critically important need for their strong ethics leadership in their stewardship of government resources. I would explain that the ethics rules apply with equal force to senior government officials as well as front-line employees. I would

underscore the significance of a strong agency ethics program and its effect on staff performance. I would also explain OGE's continued commitment to support such efforts, as by OGE's many training offerings.

Professional development and ethics training is a key OGE priority. There has perhaps never been a higher level of ethics expertise within OGE and the Executive Branch's ethics community as exists now. Nonetheless, there are professional skills outside an ethics expertise that can be enhanced, such as regards leadership, management, writing, presentation, and communication – this training is important within OGE as well as the ethics community. This can be done through available OGE training initiatives, but it may also be appropriate to consider training opportunities outside the government – in a manner that permits a compare-and-contrast experience in non-government ethics environments. Outside training would serve to broaden the OGE employee's perspective and skills as they learn new ways to promote an ethical culture.

Many government ethics experts are leaving their government positions. It is critical, to maintain the high level of expertise the public has come to expect of this community, that newly-installed ethics advisors be fully trained to identify and resolve the many ethics issues that might arise across a very broad spectrum of issues. To this end, among my highest priorities as Director would be ensuring that ethics officials are fully trained in the many functional areas of the ethics regime. If confirmed as its Director, I will ensure that OGE continues to educate ethics officials – and the public – as to such ethics-related information.

11. Statutory authorization for OGE lapsed in 2007, although it continues to receive federal appropriations. OGE, under the leadership of its most recent Senate-confirmed Director, Walter Shaub, requested no substantive changes in the reauthorization proposal transmitted to the 114<sup>th</sup> Congress. If confirmed, will you propose substantive reforms to Congress? If so, what area(s) do you believe is most in need of statutory reform?

I have no current plans to recommend specific substantive reforms to Congress regarding the Ethics in Government Act (EIGA). That said, I am in favor of all three of the government's branches subject to the EIGA, perhaps by way of a combined working group, considering the branches' collective "lessons learned" over the past several years with the goal of strengthening the government's ethics initiatives.

12. Mr. Shaub testified in December 2015 that "Congress left [OGE] almost no discretion in interpreting the statute" and that the work of OGE is entirely preventative and not investigatory in nature. Do you agree with this sentiment? Why or why not?

The Ethics in Government Act (EIGA), which I believe was the focus of the former Director's remark during the referenced testimony, is a law which by its very terms requires that OGE undertake specific responsibilities and duties and that financial disclosure filers in turn provide specified information given described circumstances. To the extent that these requirements mandate OGE and filers to act and provide information in a given way, I concur that there is indeed very little room for any OGE interpretive

redesign of the EIGA's ethics regime. OGE has through the years strived for consistency – especially as regards financial disclosure requirements – through the continuity of its adherence to the EIGA, to ensure fairness and to further ensure that OGE and its ethics community remains a level playing field for any and all participants. The financial disclosure reporting requirements must remain constant no matter who is the filer or whatever the Administration.

OGE also has been consistent in asserting that the agency otherwise does not handle complaints of employee misconduct, to the extent criminal statutes and the standards of conduct may be implicated, and has neither an investigative nor a prosecutorial mandate, let alone resources. Those duties are left to the pertinent inspectors general and the Department of Justice, as appropriate. OGE's mission through its existence as an agency has been and would continue to be focused on preventing conflicts of interest and ensuring impartiality.

13. Mr. Shaub, frequently commented to the media on ethics issues as Director, making it unclear what constituted official guidance to government employees and what was simply rhetoric for the media. If confirmed, how will you make clear when your public statements constitute official guidance?

I do not intend to make any public statements that are not official and are readily understood as such. It would be crystal clear to anyone that any public statement I make is official. It must be clear to OGE's audience – whether Executive Branch officials and civil servants, the public, or outside groups – just what is (and, at times, what is not) OGE's policy and procedure. To this end, I would ensure that substantive OGE policy and process guidance be disseminated in such a way that it is clearly identified as official OGE guidance (such as by an advisory on letter head).

14. If confirmed, how would you handle disciplinary issues at OGE?

- a. How would you respond to underperforming individuals within your office and the agency at large?

If confirmed as OGE's Director, I would ensure that an underperforming individual would be given every opportunity to succeed. If it becomes necessary to handle a personnel matter as a disciplinary matter, I would ensure that OGE follows all appropriate procedures to hold that person accountable.

15. Please describe how you believe the Director should interact with the Inspector General community?

I fully support and would embrace OGE's excellent working relationships with the various Executive Branch Inspectors General (IGs). I look forward, if confirmed, to membership as OGE's Director on the Council of the Inspectors General on Integrity and Efficiency. I would also look forward to meeting with IGs on such cases of mutual

interest as from time-to-time arise, and to continuing OGE's longstanding training of IG staffs.

I see it as no coincidence that OGE's symbiotic relationship with the Inspector General community began at inception, by way of the Ethics in Government Act (EIGA). Both the EIGA and Inspector General Act came out of the same committee at about the same time in the post-Watergate era. IGs are tasked – among other duties – to address fraud, waste, and abuse within the Executive Branch, and OGE's mission to prevent conflicts of interest dovetails with the IGs' missions. OGE, in its preventive role, and I if confirmed as its Director, would rely on the IGs' investigative and enforcement capabilities, when issues arise regarding employees and possible ethics infractions. OGE would continue to work with IGs who seek guidance regarding the various ethics laws and rules, especially as might affect an ongoing investigation.

16. Please describe how you believe OGE should interact with agency Designated Agency Ethics Officials (DAEOs)?

OGE's Director has leadership and oversight responsibilities over the DAEOs as well as their agencies' ethics programs. If confirmed as OGE's Director I would continue that oversight and leadership challenge, but in partnership – as the "senior partner" – with the DAEOs as we work together as a team to better prevent conflicts of interest in the Executive Branch.

I believe that DAEOs are critical members of the Executive Branch's ethics team, and constitute the senior leaders present in each agency of the Executive Branch's ethics mission and agency initiatives. The Executive Branch-wide ethics program is purposefully designed to be de-centralized, and by design relies on the DAEO – and his or her agency subordinate ethics advisors – to execute an agency's day-to-day ethics program.

To this end, I would fully support DAEOs as they seek to better perform their duties and responsibilities, and would ensure that there is at all times an "open door" to OGE and such OGE assistance and resources as may be needed, as we work together as a team to prevent conflicts of interest. If confirmed as OGE's Director I would take the overall lead in the promulgation of branch-wide ethics rules, policies, and procedures. This would ensure consistency as to the applicability and application of the standards of conduct to all Executive Branch employees. OGE's compliance team would regularly conduct program reviews of agency ethics programs to ensure DAEOs are leading compliant programs. OGE would continue to hold agency heads accountable if their ethics programs are not meeting OGE's programmatic requirements, are not providing necessary agency training, or are not using the many available ethics tools – such as OGE's e-filing system, Integrity.

As OGE's Director I would expect that the day-to-day execution of the Executive Branch's rules, policies, and procedures remain the primary responsibility of each DAEO. DAEOs are given a large measure of independence and discretion within the

Executive Branch's ethics program, subject to OGE's leadership in its oversight mandate. OGE would be available to offer its advice and counsel to a DAEO when the need arises, as it has done over its existence. OGE would continue if I am its Director to listen carefully to such concerns and recommendations a DAEO and/or the DAEO community may have regarding the Executive Branch's ethics initiatives. This would ensure that the ethics program is operating at peak efficiencies, so to better guard against conflicts of interest. As Director I would recognize that each agency's missions and government business practices – within the basic paradigm of governing – can be different as compared to another agency, and sometimes even within a department or agency.

17. Protecting whistleblower confidentiality is of the utmost importance to this Committee.

a. During your career, how have you addressed whistleblower complaints?

I have not in my career been faced with a whistleblower complaint that I needed to address as a manager. As a public servant for over four decades it was my honor to protect the rights of any other public servant who might perceive a wrong and bring it to my attention. Even when I was assigned by the Navy as a special counsel to investigate a sailor's complaint concerning the misuse of used aircraft parts, I ensured that every protection was given the whistleblower as well as to the "accused" during the course of my inquiries.

b. How do you plan to implement policies within to encourage employees to bring constructive suggestions forward without the fear of reprisal?

I believe in an "open door" for each and every employee – this is how teamwork best succeeds in a small but dynamic environment of fully engaged and trained professionals with a complex mission. I enjoy receiving constructive feedback and would continue to encourage employees to speak their minds and/or voice their concerns, whatever might be the issue. I would personally seek to foster an environment in which there exists no fear of, and where there is zero-opportunity for, reprisal as to anyone who does express their constructive views.

c. Do you commit without reservation to work to ensure that any whistleblower within OGE does not face retaliation?

Yes

d. Do you commit without reservation to take all appropriate action if notified about potential whistleblower retaliation?

Yes

**IV. Relations with Congress**

18. Do you agree without reservation to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Yes: OGE has so complied through its existence as an agency within the Executive Branch, and I agree to continue this compliance.

19. Do you agree without reservation to make any subordinate official or employee available to appear and testify before, or provide information to, any duly constituted committee of Congress if you are confirmed?

Yes: OGE has so complied through its existence as an agency within the Executive Branch, and I agree to continue this compliance.

20. Do you agree without reservation to comply fully, completely, and promptly to any request for documents, communications, or any other agency material or information from any duly constituted committee of the Congress if you are confirmed?

Yes: OGE has so complied through its existence as an agency within the Executive Branch, and I agree to continue this compliance.

**V. Assistance**

21. Are these answers your own? Have you consulted with OGE or any other interested parties? If so, please indicate which entities.

The answers provided are my own answers. Any substantive consultation with OGE senior staff was to ensure that my responses comported with my goal to continue OGE's current initiatives.

**Minority  
Supplemental Pre-Hearing Questionnaire  
For the Nomination of Emory Rounds, III to be  
Director, Office of Government Ethics**

**I. Nomination and Conflicts of Interest**

1. Has the President or his staff asked you to sign a confidentiality or non-disclosure agreement?

No

2. Has the President or his staff asked you to make any pledge or promise if you are confirmed as Director of the Office of Government Ethics (OGE)?

No

3. Please describe how you came to apply for this position and your selection process.

I did not apply for this position. I received a telephone call from the White House Counsel's Office in July 2017 asking whether I would be interested in the position. I replied that I would be interested. A short interview took place with the White House Counsel in mid-August 2017. I received the paperwork to be completed from the Presidential Personnel Office in December 2017 and I returned it to that office early in 2018.

**II. Background of the Nominee**

4. Do you seek out dissenting views and how do you encourage constructive critical dialogue with subordinates?

I have already given staff a "heads up" that -- should I be confirmed into the position -- I expect to be provided the "pros" and "cons" as to matters before the Director for decision, and that if no "cons" are provided they would be sought out. I would ensure that I would not be surrounded by "yes people." Before I make any determinations as Director, I would expect a full discussion across the range of opinions and options.

5. Please give examples of times in your career when you disagreed with your superiors and aggressively advocated your position. Were you ever successful?

A key reason for my success through more than four decades of public service as a leader, manager, and attorney is my ability to successfully disagree with superiors. As a command attorney I was always a subordinate but also was always steadfast in giving the right advice and ensuring that the advice was followed, even when the commander disagreed. At the White House there were occasions when senior officials had "great ideas" that they wanted to walk by the ethics office and on multiple occasions there

were “lively discussions” in which I did succeed in explaining why it was not such a good idea if done the way desired. On one occasion a planned front lawn event was cancelled at the last moment given my objections. I have also had those tough discussions with (sometimes very senior) financial disclosure filers as to a need to recuse or divest given a potential conflict of interest issue. If confirmed as OGE’s Director, I would continue to disagree with my superiors as well as anyone else, when necessary, and aggressively advocate my position.

6. What would you consider your greatest successes as a leader?

I would point to the number of younger and/or subordinate attorneys who I have mentored to further success, especially in the last 14 or so years. In particular, this includes a number of fine professionals who have been promoted to higher ranks, including to the Senior Executive Service. There certainly are times when I was able to successfully “do more with less”, when I was able to move a dormant issue to completion, or when my goals were exceeded – but, in the end, the success of my junior colleagues is what stands as my greatest success over the years. To my outlook, when one’s staff succeeds, the government and the country in turn succeed.

7. What do you consider your greatest failure as a leader? What lessons did you take away from that experience?

Perhaps my greatest failure as a young leader early in my career is the counter-point to my success: when I solely put my goals as a manager ahead of the career needs of the young professionals who relied on me for guidance and development. It is a hard lesson to learn, and one I did not realize until I felt that a superior had failed me; only then did I recognize my own shortcomings as a mentor. To this day, I would rather step aside for someone else to take the “plum assignment,” and watch the success of that shipmate than seek my own glory.

8. During your career, has your conduct as a federal employee ever been subject to an investigation, audit, or review by a state legal bar or any government investigative entity? If so, please describe the review and its outcome.

No

9. Have you ever received a formal performance review related to your management experience? If so, please list the position and describe the outcome of the review.

I have received annual performance evaluations throughout my four-decade military and civil service careers – to include management assignments. These uniformly have been positive evaluations, often recommending promotion to higher rank with greater responsibilities.

### III. Policy Questions

#### *Role of the Office of Government Ethics*

10. In your words, what is the mission of OGE, and what is the role of the Director?

Through its Director, OGE provides leadership of and oversight over the Executive Branch's standards of conduct policies, processes, and programs. Together with the Executive Branch ethics community, OGE's Director's duty is to prevent and resolve conflicts of interest and impartiality concerns regarding government officials and employees.

I firmly believe in and would promote the "four pillars" reflected in OGE's Strategic Plan: a strong and uniform ethics program; holding senior government leaders and employees accountable for their own as well as their agency's compliance with the ethics rules and programs; supporting the seamless continuity of government; and engaging the public. I would focus on enhanced training opportunities within and for the ethics community as well as opening further the window into OGE and the government's ethics programs to allow even more "sunshine." I would also hold OGE itself accountable for a strong leadership and oversight presence.

If confirmed as OGE's Director, I would play the key role in ensuring that OGE's policies and procedures regarding the Executive Branch ethics program are clearly articulated and readily disseminated and available to the senior ethics officials and government employees who rely on understanding the ethics "rules of the road" as they undertake their government assignments, as well ensuring the same for citizens and outside groups interested in the integrity of their public servants. Two-way communication between the ethics community and OGE – and the OGE Director – is critical. OGE's communication and outreach programs are fully engaged to ensure that its opinions and decisions are available to all, and to ensure as well that OGE has an institutional "open door" policy for all who engage OGE for questions or who want to provide input.

The OGE Director does not have a law enforcement role. Nonetheless, if confirmed as Director I would play a critical role with and for the Executive Branch's inspector general programs, initiatives, and – at times – investigations. In this way I would ensure that breaches of the ethics wall against non-compliance are fully addressed, and that the wall stands firm. I would also ensure that OGE's outward-facing programs and policies, to include its mission to monitor agency compliance with its standards of conduct and disclosure rules, remain practical, relevant, and viable in times of ever-changing financial instruments as well as diminishing personnel and budgetary resources. In this regard, I would ensure that OGE's rules and mandates focus on and realistically address preventing and resolving conflicts of interest.

11. What is your philosophy on OGE's role in deterring ethical misconduct by federal employees?

In my opinion, it is better to prevent ethical misconduct than correct or punish violations after the fact. I would seek to ensure deterrence through strong training programs for ethics officials across the Executive Branch, who in turn train senior leaders through front-line employees. Experience teaches that most ethics violations occur out of ignorance and carelessness rather than focused intent; therefore, education initiatives are critical. It is also critical that Executive Branch leaders in turn foster an ethical culture in their agencies by themselves acting in compliance with the ethics laws and rules. Any err must be on the side of "over-compliance" rather than testing any limits. The optics of good behavior are often more important to a strong ethics culture than mere technical compliance.

12. If confirmed, what proactive steps will OGE take to ensure compliance with executive branch ethics laws and rules?

I plan to meet with agency heads and DAEOs, at their agencies, to discuss my deeply held belief that the agency head must provide strong "top-down" leadership in support of the various ethics initiatives within his or her agency. I would re-iterate that the agency head must personally comply with the ethics laws and standards of conduct. I would re-emphasize that the agency head must also demand high ethical standards of the agency's senior leadership and foster an ethical culture throughout the agency. I would encourage that the agency's ethics programs be provided the resource support they need, as a strong signal that the "tone from the top" supports the agency's ethics programs and initiatives.

As an agency, OGE would continue its commitments to agency ethics officials through training, advice, and counseling initiatives and would provide assistance to IGs and other executive branch entities. OGE senior leadership would continue to meet with DAEOs and IGs, one-on-one and in group sessions, to listen to their concerns and work to resolve systemic weaknesses in the ethics program. I would task OGE's staff to take yet another look at OGE's website, to determine if there are ways to better OGE's outreach initiatives and better educate employees as to the standards of conduct rules.

13. What in your view is the role of the President in supporting the work of OGE, implementing OGE's recommendations, and ensuring compliance with executive branch ethics laws and rules?

I have always been a firm believer in a "from-the-top" ethics culture. I believe that a President must demand high ethical standards of his or her senior leadership who in turn foster a strong ethical culture throughout the Executive Branch. I believe that the government's senior leadership must strongly support and encourage any rulemaking or resource requests that serve to enhance OGE and agency ethics programs. In my opinion, a President should take a significant leadership interest in, and be a strong supporter of, the various ethics initiatives within the Executive Branch.

14. What in your view is the role of an agency head in supporting the work of OGE, implementing OGE's recommendations, and ensuring compliance with executive branch ethics laws and rules?

As discussed above, I firmly believe that an agency head must provide strong "top-down" leadership in support of the various ethics initiatives within his or her agency, personally comply with the ethics laws and standards of conduct, demand high ethical standards of the agency's senior leadership, and foster an ethical culture throughout the agency, and provide the agency's ethics programs with the resource support they need. I have always been a firm believer that an agency head must demand high ethical standards of his or her leadership team, which in turn establishes a strong ethical culture throughout the agency. I also believe that an agency head must take a significant leadership interest in, and be a strong supporter of, the various agency ethics initiatives.

*Independence*

15. Do you agree that OGE should function independently of the White House?

Yes. OGE's Director must serve as the "honest broker" within the ethics community. The Director must have the courage to take an unpopular or painful stand or make a difficult and painful decision when needed, to ensure that the integrity of the Executive Branch remains intact. The Director must provide good as well as bad news, and the best resolution to any given set of issues.

16. Do you believe that you can be independent from this White House and, when necessary, hold it accountable?

I believe that I can serve independently from the White House if confirmed as the OGE Director, and I would do so to the best of my ability. I would hold accountable any Executive Branch employee and/or entity, as would be my responsibility under the Ethics in Government Act (EIGA). I have the personal integrity and strength to make the hard decision without regard to any personal ramifications that another might fear. If confirmed as OGE's Director I fully intend to use each and every tool available and appropriate, including transparency, to ensure that OGE best addresses such issues as arise and demand OGE's action. I would determine the best tool to use case-by-case, as circumstances warrant.

I understand that OGE is an agency within the Executive Branch and that its Director does report directly to the President – but I pledge to provide honest advice and recommendations as an advocate for public integrity, with the full independence I can enjoy as a public servant of so many years. I firmly believe that OGE's mission to prevent conflicts of interest within the Executive Branch is and must remain one that is independent and politically-neutral. To act otherwise would compromise the efficacy of its mission and diminish the ethics community. To provide the neutral voice towards a correct resolution of any given issue would be one of my paramount responsibilities if confirmed as OGE's Director.

17. If confirmed, what steps will you take to ensure that you and OGE employees' work is independent from the Administration?

As Director I would be the honest broker and would be steadfast and constant in providing impartial opinions and recommendations, as steward of OGE and its missions. This would best protect the integrity of the government and its individual employees. I would ensure decisional transparency and communication with issue participants and stakeholders, the key ingredients to an agency's independence. I have served the public for over four decades, and I firmly believe in public service and public integrity. I would say "Yes" when I can and "No" when I must.

If confirmed as OGE's Director, I would not advance any given Administration's policies that do not serve to strengthen the Executive Branch's standards of conduct policies and programs. I would stand guard against any attempts to lessen any ethics programs' viability and resolve, to ensure integrity in government. I would not be shy in my support for and protection of OGE's programmatic responsibilities, and to this end I would when needed provide or publish advice and policies that may be politically unpopular, when need be.

18. If confirmed, what would you do if the administration fails to take action against a White House appointee, Cabinet official, or agency head who has clearly violated the conflict of interest laws, the Ethics in Government Act, or the Standards of Conduct?

If confirmed as OGE's Director, I would use every appropriate proactive procedural and transparency tool necessary to ensure that Executive Branch officials are accountable to and comply with the conflict of interest laws, the EIGA, and the standards of conduct. OGE reviews the financial disclosure reports and ethics agreements of senior officials to discover and resolve potential issues, and works with agency ethics officials to ensure compliance. OGE conducts agency program reviews to maintain programmatic success. OGE coordinates with the IG community and the Justice Department to the extent there may be a violation of a criminal statute. If confirmed as OGE's Director I would also in an appropriate matter correspond with the agency head and/or with the White House to seek such action and assistance is necessary to protect and preserve the Executive Branch's ethical integrity.

To this end, if confirmed as OGE's Director I would use to the fullest extent possible my EIGA authority to, when necessary and to the extent needed, order corrective action on the part of an agency and/or an employee, and require pertinent report(s) from an agency to ensure that appropriate action was taken. The OGE Director is prohibited by law from making a finding that a criminal law has been violated – if there is such information, the Director would notify the appropriate IG or the Justice Department. Nonetheless, regarding a matter involving an individual officer and employee, if confirmed as OGE's Director I intend to aggressively carry out the Director's responsibilities set out in subsection (b)(9) of section 402 of the EIGA, as enumerated in subsection (e)(2)(A) of section 402. When circumstances warrant, I would recommend to the employee's

agency head that the agency investigate a possible violation of the ethics laws and rules, and take any appropriate action. When the agency head has failed to act on my recommendation to conduct an investigation, or if it is the agency head himself or herself who is of concern, I would make the appropriate recommendation to, and seek action from, the President. If I order specific action to end a violation, and there is not compliance, then I would promptly notify the agency head or the President, as appropriate.

- a. If no action is taken to address an ethics violation, will you commit to publicly disclosing the violation (except when doing so would undermine an ongoing investigation)?

I would commit to disclose an ethics violation only when it is appropriate to do so. It may be appropriate under a given set of circumstances that OGE should (and is legally able) to properly publicly disclose its concerns, such as when there is a letter to an agency head or ethics official. Such correspondence may regard further agency inquiry into a matter, when OGE, in its supervisory role, deems it is necessary, such as when a potential ethics issue is currently receiving close media attention and public scrutiny.

Any public disclosures by OGE while I am its Director, if confirmed, would be determined on a case-by-case basis, to ensure fairness and to protect individual rights to the extent appropriate. To the extent that unethical conduct might extend to criminal conduct which should be addressed by law enforcement authorities, OGE would maintain confidentiality. With regard to ethical conduct that extends to standards of conduct violations that are not criminal, OGE would continue to exercise the level of discretion appropriate to what is, all things considered, a personnel issue that is normally determined at the agency level.

19. How would you handle disagreement with the Office of the White House Counsel regarding interpreting or applying ethics laws and rules?

OGE must be the final arbiter of its own rules, and if confirmed as Director I would ensure that this independence remains strong, even with respect to the Office of the White House Counsel. OGE's decisions as to the meaning and application of an ethics law and rule must be the single authoritative determination, to ensure the viability of the Executive Branch's ethics program. This approach would foster the public's confidence in its government, to the extent that OGE maintains steadfast as the non-partisan honest broker of government ethics.

There will be occasions when OGE and an agency may disagree as to the interpretation or application of an ethics rule. That is to be expected and at times encouraged, to ensure that the ethics rules evolve to better protect the efficacy of Executive Branch ethics program. If confirmed as OGE's Director I would personally discuss any disagreements with the White House Counsel and/or his ethics official, as I would with any other agency's senior ethics official. If there is no agreeable resolution, I would maintain

OGE's determinative position as the correct and only ruling. This would ensure the across-the-board integrity of the Executive Branch's ethics program.

***Management***

20. What do you consider to be the principal challenges facing management at OGE?

The lack of sufficient resources to fully accomplish the agency's mission is perhaps the principal challenge facing management at OGE.

OGE is still not reauthorized – which itself disrupts the agency's and the ethics program's efficacy and relevancy – and, in context with the growing interest in and concerns regarding government ethics, is under-funded, under-staffed, over-missioned, and to a great extent under-appreciated.

Over the years OGE has done more with less. Recent events underscore that government ethics is no longer a “backwater” of government – to the extent that less may no longer be enough to permit more. Financial disclosure reports are increasingly more complicated and so need more attention and time-consuming review. The legal issues for agency attorneys are becoming more difficult and research more intense, while more questions are posed as the program's visibility increases. Requests for information from outside sources have increased exponentially. Important Congressional inquiries must be answered, but further re-direct resources.

OGE's staff is dedicated to completing its mission, whatever it takes to do so – but OGE's management must tackle how to do more (or at least “enough”) with budgets that do not keep pace with the ever-increasing demands on OGE.

21. Do you consider OGE to be adequately resourced and staffed to fulfill its mission? If not, how would you advocate to ensure OGE has the necessary resources?

As discussed above, I do not consider OGE sufficiently resourced and staffed. “Ethics” is growing as a functional area fully integrated into the fabric of governing, and OGE's staff and resources need to keep up. I estimate a 25% increase of its present budget to be necessary. To this end if I am confirmed as Director, OGE would seek White House and Office of Management and Budget support of an increased budgetary request.

22. How would cuts from OGE's budget impact the agency's work to ensure ethical compliance throughout government?

OGE, from my perspective, is nearly at the tipping point of having to do less with less. Such a dilemma could have a negative impact on the actual oversight of the Executive Branch's ethics programs. Further cuts could also serve to send the unfortunate and short-sighted message to the Executive Branch and its employees that OGE's ethics initiatives and programs are not as important as they should be perceived.

23. If confirmed, do you pledge to implement recommendations made by the Government Accountability Office?

Yes

24. Are you aware of any systemic weaknesses facing OGE programs and operations? Where would you prioritize your attention?

I am aware of the significant work by OGE's most recent confirmed Director to address any systemic issues that may have existed. I am convinced that OGE's current programs and operations remain systemically healthy. My concern, so my priority, is that the resources needed to continue OGE's strength and viability in what seems to be an ever-changing ethics environment are enhanced to the extent needed.

25. OGE recently released its strategic plan. Please describe how, under your leadership, the agency will:

a. Advance a strong, uniform executive branch ethics program;

If confirmed as OGE's Director I intend to fully embrace and enhance OGE's Desk Officer-Agency consultative initiatives. I would continue to support OGE's electronic financial disclosure system availabilities, by way of training and support services. I would ensure prompt responses to requests for expert assistance and fully support direct outreach efforts toward key stakeholders (to include Congress, executive branch investigative and enforcement communities, and OGE's international counterparts) whose activities intersect with the ethics program.

If confirmed, I would ensure that OGE has the necessary resources to continue to provide a variety of professional development opportunities, including targeted intensive training, distance learning technologies, and the National Government Ethics Summit. OGE would continue to publish legal and program advisories, to provide interpretive guidance on legal and program requirements.

As Director, I would meet weekly with senior leadership within OGE and periodically with the Executive Branch ethics community to ensure that OGE's programmatic initiatives meet stakeholder needs, to the extent that resources allow. I would ensure that any concerns and/or recommendations that stakeholders might have are addressed. To the extent that resources are not adequate to successfully address OGE's goals, I would strongly request budgetary relief to the extent appropriate.

b. Hold the executive branch accountable for carrying out an effective ethics program;

If confirmed, I would periodically meet with senior leadership within the Executive Branch ethics community to ensure that OGE's goals and initiatives are understood and meet the needs of the ethics community. Program reviews would

be undertaken on an accelerated schedule – on a four-year cycle (or on a three-year cycle if resource-feasible) instead of the current five-year-cycle, to ensure that agency programs fully protect employee and institutional integrity. I would seek out-of-cycle program reviews if I perceive that an agency's program is in distress, in a time-sensitive support role. OGE would continue to ensure that Executive Branch leaders confirmed by the Senate remain free of conflicts of interest after taking office, by way of its dynamic ethics agreement tracking initiatives. I would establish a "Tiger Team" of OGE experts who would be readily available to assist an agency who may need immediate assistance.

c. Contribute to the continuity of senior leadership in the executive branch; and

If confirmed, I would ensure that OGE's Presidential transition initiatives would continue to be at the forefront of programmatic responsibilities. OGE's strong focus on the success of this program is well known, and would continue, to ensure that any future Administration is ready from day one. This is critical to ensure that an Administration begins its governance without the impediment of ethics issues and constraints regarding its senior leadership. Planning, coordination, and cooperation – early and often – with candidates, as well as an incoming Administration, is and would be critical to the success of this endeavor. As Director (if confirmed) I would meet with transition stakeholders, to include the Senate, as early as practicable, and throughout the transition, to ensure that OGE is meeting customer needs and OGE goals.

d. Engage the public in overseeing government integrity.

I would continue OGE's current transparency, communication, and outreach initiatives.

I strongly believe that transparency that allows for critical outside review of OGE's programs and *public* financial disclosure documents is a key reason OGE exists. In my opinion, transparency promotes the public's confidence in the integrity of its government as it fosters necessary critical public review of OGE's programs. I believe that public engagement is critically important, especially considering that EIGA and its various ethics mandates and regulatory progeny were created to ensure the public's informed confidence in its government's integrity, across the branches. It is critical that the public fully understands what action OGE recommends or takes regarding such cases which from time-to-time arise that rightly have the public's attention. I fully support OGE's Strategic Plan objectives to better refine its communication efforts across a broader spectrum and to make publicly available even more datasets of information.

To this end, if confirmed as OGE's Director, I would work with OGE's staff to review OGE's current public engagement initiatives to learn how OGE's outreach can be even stronger, subject to fiscal and other resource constraints.

26. How would you attract and retain individuals with the necessary experience, education, skills, and independence to fulfill OGE's mission?

If confirmed as OGE's Director, I would ensure that OGE maintains its reputation as a good, people-friendly environment to work, notwithstanding its dynamic pace and professionally challenging mission. OGE has had no difficulties attracting and retaining top-notch professionals, and indeed has been able to "cherry pick" the very best individuals from the ranks of seasoned practitioners as well as recent graduates. This success is evident in the current OGE staff. If confirmed as OGE Director, I would also maintain vigilance to ensure that OGE is adequately staffed; I estimated above that a 25% increase of its present budget may be necessary to match staffing needs with OGE's ever-increasing government footprint. To this end as Director I would seek White House and Office of Management and Budget support of an increased budgetary request.

- a. Based on your experience, what priority would you place on developing OGE's workforce and how would you emphasize continuous learning within the agency?

Professional development and ethics training is a key OGE priority. My chief developmental priority would be to seek budgetary enhancement to increase the amount of outside training opportunities for each OGE employee. There has perhaps never been a higher level of ethics expertise within OGE as exists now. It is important to me that OGE's staff remains well-trained.

It is also important to me that OGE's staff continue to hone their professional skills outside an ethics expertise, such as regards leadership, management, writing, presentation, and communication. It further is important that each OGE employee be exposed to the "practice of ethics" outside of the government. This would provide the employee a better breadth of knowledge, experience and overall understanding of "ethics" across the spectrum of institutions.

With an enhanced budget that would increase the number of OGE staff members, I would also seek to trade detailees between OGE and other agencies for cross-training purposes, to help foster a better understanding of the application of the ethics rules at an agency level.

27. What experience do you have in acquisition policy and management that would guide you in the role of OGE Director?

Under my supervision while the Acting Director of OGE's Internal Operations Division from 2013-2015, a major IT Refresh Project was completed on time and within budget; a new agency-wide telephone system was contracted for and rolled-out, with minimum impact to OGE's staff customers; OGE's HVAC system for its IT data center equipment was contracted for and successfully installed; and OGE's IOD staff continued to work closely with the agency's website contractors.

In 2010, I attended and successfully completed the two-week long Government Contract Attorney's Course in residence at the Army's Judge Advocate Legal Center in Charlottesville, Virginia.

28. In its agency profile and annual budget submissions, OGE has highlighted the extensive work it has done to streamline and standardized its procedures. If confirmed, will you focus on maintaining and continuing to enhance OGE's processes, including standardized procedures, record-keeping systems, management controls for financial accountability, etc.?

I would focus on maintaining and continuing to enhance OGE's processes if confirmed as OGE's Director, as I believe that to be a core responsibility. OGE has always sought the better ways of doing business, to more effectively complete its mission to prevent conflicts of interest. I would as Director ensure that this continues to be true. As an agency head I would fully embrace the inherent and "top of the list" responsibility that OGE be able to complete its mission. This duty includes the corollary that OGE's mission must be accomplished in the most efficient way possible, as I would be always mindful of my role as a steward of the public's financial (taxpayer) support. Given my experience as the head of OGE's Internal Operations Division, I am particularly sensitive and committed to enhancing the agency's internal processes and standardizing its external procedures, management controls, and record-keeping.

29. In its agency profile and annual budget submissions, OGE has highlighted its strong and innovative training program for agency ethics officials. If confirmed, will you commit to sustaining and/or increasing OGE's ethics training program?

Yes. Much of OGE's success in its promotion of standards of conduct to Executive Branch employees has historically been, continues to be, and would remain under my stewardship, significantly due to OGE's world-class training programs.

30. In recent years, OGE has managed to present at ethics conferences locally in the D.C. area for a fraction of the cost of its past conferences in other regions. If confirmed, will you commit to continuing this practice or finding comparable means to cut the cost of conferences?

Yes. The low-cost with high-value success of these local conferences is evidence that this initiative has proven to be well-worth continuing.

#### *Information Technology*

31. If confirmed, what steps will you take to bolster information technology infrastructure at OGE?

I would support whatever advances can be made to OGE's IT capabilities, subject to budgetary constraints. As a former Acting Chief of OGE's Internal Operations Division, which includes overall responsibility for the agency's IT infrastructure, I am particularly sensitive to IT needs. OGE is currently undergoing another refresh of its IT capabilities,

but as technology advances so must OGE, so I would support OGE's ongoing planning as to both equipment and staffing needs.

32. If confirmed, will you commit to making IT security a priority, especially the security of OGE's e-filing system, Integrity?

Yes. If confirmed as Director, IT security and the safety of OGE's electronic systems would continue to be one of my paramount concerns.

33. If confirmed, will you commit to work to identify and implement reasonable executive branch best practices for IT security?

Yes. If confirmed as Director, IT security and the safety of OGE's electronic systems would continue to be one of my paramount concerns.

34. If confirmed, will you commit to recruiting and retaining a sufficient number of IT experts on OGE's staff?

Yes

35. If confirmed, will you continue to allow agencies to use Integrity free of charge?

Subject to the availability of funds, I intend to continue to allow agencies to use Integrity free of charge and I intend to advocate for the resources to keep it free.

36. If confirmed, will you make it a priority to keep Integrity updated with evolving technology and user experience best practices?

Yes. I have learned first-hand, as a filer and a reviewer, the value of OGE's Integrity initiatives, and it would be a top priority of mine if confirmed as Director to keep Integrity updated with evolving technology and user experience best practices.

***Whistleblower Protections***

37. Please describe any previous experience—in the public or private sector—with handling whistleblower complaints, and what steps you took to ensure those individuals did not face retaliation and that their claims were thoroughly investigated.

I have not in my career been faced with a whistleblower complaint that I needed to address as a manager. As a public servant for over four decades it was my honor to protect the rights of any other public servant who might perceive a wrong and bring it to my attention. Even when I was assigned by the Navy as a special counsel to investigate a sailor's complaint concerning the misuse of used aircraft parts, I ensured that every protection was given the whistleblower as well as to the "accused" during the course of my inquiries.

38. If confirmed, how will you ensure that whistleblower complaints are properly investigated and what specific steps will you take to ensure that OGE employees feel free to report waste, fraud, and abuse to senior leadership, including you, the IG, and to Congress without fear of reprisal?

I believe in an “open door” for each and every employee – this is how teamwork best succeeds in a small but dynamic environment of fully engaged and trained professionals with a complex mission. I enjoy receiving constructive feedback and would continue to encourage employees to speak their minds and/or voice their concerns, whatever might be the issue. I would personally seek to foster an environment in which there exists no fear of, and where there is zero-opportunity for, reprisal as to anyone who does express their constructive views. Also, I enjoy walking OGE’s corridors and talking to everyone on the staff, which has come to know me as a concerned person readily accessible and approachable.

The watchwords would be “see something, say something;” any and all allegations of fraud, waste, and abuse would be swiftly and thoroughly investigated. In turn, whistleblower retaliation would simply not be tolerated within OGE; any such allegations would also be quickly and thoroughly investigated.

#### *Transparency*

39. As a matter of practice, OGE voluntarily posts ethics-related documents and information on its website. In select cases, OGE identifies the names of documents and enables the public to submit requests directly through its website. Please describe how you would continue to provide the American people with transparency by making ethics related information publicly available.

I would continue OGE’s current transparency, communication, and outreach initiatives. I believe that transparency that allows for critical outside review of OGE’s programs and public financial disclosure documents is a key reason OGE exists. For example, public financial disclosure is one of OGE’s critical missions. It is critical that the public fully understand what action OGE recommends or takes regarding such cases which from time-to-time arise that rightly have the public’s attention.

40. To ensure the effective and efficient operation of the executive branch ethics program, what additional authorities does OGE need, if any, to collect ethics information and records, in particular in instances where executive branch officials are noncompliant?

There have been recommendations recently made that OGE be granted additional authorities to collect information and records, such as limited subpoena power. In my opinion, OGE has had great success in collecting such data and information that it needs to meet its leadership and oversight responsibilities with its current authorities. Should any additional collection authorities be provided by law, OGE would use that authority as necessary based on the circumstances.

41. In your view, how important is transparency to the executive branch ethics program?

I believe that transparency promotes the public's confidence in the integrity of its government as it fosters necessary critical public review of OGE's programs. I would continue OGE's current strong transparency, communication, and outreach initiatives.

42. If confirmed, what steps will you take to increase the transparency of the ethics program?

OGE's extensive current transparency initiatives would continue if I am confirmed as OGE's Director. As digital media capabilities evolve so would OGE's initiatives. I firmly believe that the public's ability to fully understand its government and the Executive Branch's ethics program is vital to the public's confidence in governing officials.

43. Will you commit to publicly announcing any changes in OGE's legal interpretations and practices, particularly those related to the resolution of conflicts of interest by presidential nominees?

Yes. Viable personnel standards of conduct and conflict of interest policies and procedures do not work well in a vacuum or behind closed doors. A fully visible ethics program, to the extent practicable, that is open to public view and review is important to ensure consistency and public confidence in the ethics program and government actions.

44. OGE currently posts the reports of its program reviews on its website, as well as the reports of follow-up reviews (i.e., follow-up action to see if agencies have implemented OGE's recommendations). Will you continue these practices if confirmed?

Yes. OGE's current practices in this regard would be continued. I would also review the current processes with a view to enhancing these practices, to the extent practicable.

45. OGE's prior Director adopted a policy of posting all FOIA responses online, with only a narrow exception for OGE's responses to individuals seeking records about themselves on OGE's website. Will you continue this practice if confirmed?

Yes. OGE's current practices in this regard would be continued. I would also review the current processes with a view to enhancing these practices, to the extent practicable.

46. OGE previously adopted a policy of posting ethics agreement compliance certification forms on OGE's website. These forms include signed certifications by Senate-confirmed appointees as to their compliance with their nominee ethics agreements. They also include useful details that allow outside watchdogs to validate aspects of their compliance. Will you commit to continuing these practice if confirmed?

Yes. OGE's current practices in this regard would be continued. I would also review the current processes with a view to enhancing these practices, to the extent practicable.

47. OGE currently posts on its websites agencies' raw responses to OGE's Annual Agency Ethics Program Questionnaire. Will you continue this practice if confirmed?

Yes. OGE's current practices in this regard would be continued. I would also review the current processes with a view to enhancing these practices, to the extent practicable.

48. If confirmed, will you actively seek to identify new documents and data sets that OGE can release proactively on its website?

Yes. OGE must be and would continue to be at the "cutting-edge" of good government initiatives. I would continue to seek additional ways for OGE to be proactively transparent, if I am confirmed.

49. If confirmed, will you commit to undertaking efforts to collect and post each of the following new data sets on OGE's website? If not, why not?

I would commit as an early priority, if confirmed, to a full review and a comprehensive evaluation of each of these items to consider what more OGE should collect and publish. I fully concur with and would support the commitments in OGE's Open Government Plan to make "information resources accessible, discoverable, and usable" and "to proactively disclose information to advance transparency, accountability, and openness."

- a. Records of Senate-confirmed appointees' initial ethics briefings, pursuant to 5 C.F.R. § 2638.305;
- b. Records of Senate-confirmed appointees' new employee training, pursuant to 5 C.F.R. § 2635.304;
- c. Records of Senate-confirmed appointees' annual ethics training, pursuant to 5 C.F.R. § 2638.308;
- d. Records of White House appointees' new employee training, pursuant to 5 C.F.R. § 2635.304;
- e. Records of White House appointees' annual ethics training, pursuant to 5 C.F.R. § 2638.308;
- f. Waivers of the criminal conflict of interest law pursuant to 18 U.S.C. § 208;
- g. Waivers exempting Presidential appointees from the revolving door recusal requirements pursuant to Executive Order 13770, section 3 (Jan. 28, 2017);
- h. Authorizations exempting Presidential appointees from the revolving door recusal requirements pursuant to 5 C.F.R. § 2635.502(d);

- i. Waivers of extraordinary payment recusal obligations issued to any employee, pursuant to 5 C.F.R. § 2635.503;
- j. Waivers of financial disclosure filing requirements, pursuant to 5 C.F.R. § 2634.205;
- k. Designations of Designated Agency Ethics Officials and Alternate Designated Agency Ethics Officials; and
- l. Data provided to OGE by agencies regarding their processing of public financial disclosure reports, pursuant to OGE Program Advisory PA-15-01, Section IV and Appendix 521.

50. What other data sets would you consider releasing?

I would commit as an early priority, if I am confirmed, to a continuing review and evaluation of such other data sets that OGE may seek and, if collected, may be amenable to posting. I support OGE's Open Government Plan in this regard.

***Ethics Policy***

51. During the most recent presidential transition, the possibility of presidential conflicts of interest was raised as a concern. Some ethics experts recommend that before a presidential election, presidential candidates should submit plans outlining how they would resolve their conflicts of interest. Do you agree with this recommendation? If not, why not?

If confirmed, I would always advocate that – as a matter of course – any candidate consider any potential conflicts of interest or impartiality issues that might arise upon his or her election. It is a matter of long-standing OGE policy that the President and the Vice President should conduct themselves as if they were bound by the conflict of interest laws and the standards of conduct. The public financial disclosure report submitted by a candidate to the Federal Election Commission and then to OGE provides public transparency into the candidate's holdings and, under my leadership if confirmed, OGE would stand ready to help identify, analyze, and provide candidates every opportunity to discuss potential conflict and impartiality issues and provide support on potential ways to resolve them.

52. Do you believe privately-held companies that are owned or controlled by a single family present unique challenges not necessarily addressed in the existing conflict of interest laws?

I do believe this presents unique challenges; however, most often, existing remedies (such as divestiture or recusal) are sufficient to resolve conflict concerns as to privately-held companies that are owned or controlled by a single family. OGE would, if I am confirmed, further consider the ramifications of such ownership challenges as regards to the ethics rules.

53. Setting aside the legal issues, do you think there are some circumstances in which an executive branch employee could be influenced by his/her beneficial interests in a discretionary trust?

I do think that there may be some circumstances in which an executive branch employee could be influenced by his/her beneficial interests in a discretionary trust. This is a complex legal area which OGE has been studying, and further research and consideration may be required to ensure that any OGE determination and guidance does not have any unintended consequences. I fully understand the increasing interest and concern regarding this issue. The promulgation of OGE guidance will be an early and top OGE priority if I am confirmed – at least, perhaps, to provide a set of pertinent factors that ethics officials should consider when reviewing discretionary trusts on a case-by-case basis.

54. Will you commit to notifying the committee, before your confirmation hearing, as to the status of OGE's study of discretionary trusts and whether OGE has consulted DOJ regarding this issue?

Although I cannot provide nonpublic information, I can highlight that OGE has publicly disclosed that it is studying and gathering further information on this complex question.

- a. Will you commit to studying this issue and to being transparent about its findings within a reasonable period of time?

If confirmed as Director, I would continue studying this issue and would publicly disseminate findings once they are final.

*Ethics Pledge*

55. Executive Order 13770 rescinded Executive Order 13490 and established a new ethics pledge for political appointees of the Trump administration. It includes a waiver provision at section 3. What legal standard do you read that order to establish with respect to the issuance of a waiver?

Regarding questions 55 through 59: I am aware of OGE's positions on these issues to the extent discussed and reflected in OGE's Legal Advisories LA-17-02 and LA-17-03; in the OGE Director's response to a Senate inquiry in a letter dated June 13, 2017; in a letter from OGE's Acting Director to Senator McCaskill dated August 7, 2017; in OGE's Program Advisory PA-17-02; and in OGE's "Special Review of Executive Branch Agency Waivers and Authorizations" in September 2017. If confirmed, I would of course consider any new issues or concerns regarding the Ethics Pledge as appropriate at that time.

56. Based on the Executive Order as written and any written guidance issued by the White House or OGE, what procedural criteria have been established that would require the President or his designee to deny a waiver?

Please see my response to question 55 through 59 above.

57. Based on the Executive Order as written and any written guidance issued by the White House or OGE, what substantive criteria have been established that would require the President or his designee to deny a waiver?

Please see my response to question 55 through 59 above.

58. Are Presidential appointees of the Obama administration who signed the ethics pledge under Executive Order 13490 subject to the 2-year post-employment recusal established in that order now that it has been rescinded?

Please see my response to question 55 through 59 above.

- a. What is the legal basis for your answer?
- b. Did OGE consult with DOJ on this matter?

59. Are any Presidential appointees of the Trump administration who signed the ethics pledge under Executive Order 13490 (prior to issuance of Executive Order 13770 on January 28, 2017) subject to the 2-year post-employment recusal established in Executive Order 13490 now that the order has been rescinded?

Please see my response to question 55 through 59 above.

- a. What is the legal basis for your answer?
- b. Did OGE consult with DOJ on this matter?
- c. If Trump appointees are being treated differently than Obama appointees, what would be the rationale?

***OGE Public Outreach***

60. OGE has issued only two formal advisory opinions in its 40-year history. The rest of OGE's guidance has consisted of informal advisory opinions. However, OGE issued new regulations at 5 C.F.R. part 2638, which became effective as of January 1, 2017. These new regulations clarify the process for issuing formal opinions.

- a. Why does OGE issue informal advisory opinions instead of formal ones?

Although I cannot authoritatively speak for past or current OGE leadership, I surmise that over the years, it was simply more efficient and more timely for OGE to issue an

informal rather than a formal advisory opinion due to the number of considerations and consultations that need to be made before a formal advisory opinion may be issued. The following procedural steps and considerations serve to illustrate the level of difficulty:

- In determining whether to issue a formal advisory opinion, the Director must consider the uniqueness of the question and its precedential value; the potential number of employees who may be affected by the question; how often the question arises; whether there are inconsistent interpretations on the same question by different agencies; and the interests of the executive branch ethics program.
- There are also a number of procedural steps that need to take place even before OGE may receive a DAEO's request for a formal advisory opinion. Once at OGE, and before OGE publishes an opinion, OGE must solicit written comments by posting a notice on its official Web site; consult with the Department of Justice, as needed; and consult with other executive branch officials when the Director deems necessary.

b. If confirmed as Director, would you be willing to use the process for issuing formal advisory opinions? Why or why not?

If confirmed as OGE's Director, I fully intend to use each and every tool available and appropriate to ensure that OGE best addresses such issues as they arise and require an OGE opinion. I would determine the best tool to use on a case-by-case basis, as circumstances warrant. I would consider using this process in a case involving an eligible person when it would be appropriate to issue formal guidance.

61. How important do you consider engagement with the general public, through outreach, social media, or other means, with regard to OGE's ethics program?

I believe that public engagement is critically important, especially considering that EIGA was created to ensure the public's informed confidence in its government's integrity, across the branches. If confirmed, I would continue OGE's current transparency, communication, and outreach initiatives. I believe that transparency that allows for critical outside review of OGE's programs and public financial disclosure documents is a key reason OGE exists; for example, *public* financial disclosure is one of OGE's critical missions. It is also critical that the public fully understands what action OGE recommends or takes regarding cases that come to the public's attention.

I fully support OGE's Strategic Plan objectives to better refine its communication efforts across a broader spectrum and to make publicly available even more datasets of information. To this end, if confirmed as OGE's Director I would work with OGE's staff to review OGE's current public engagement initiatives to determine how OGE's outreach can be made stronger, subject to fiscal and other resource constraints.

a. What purpose do you believe public engagement serves for OGE?

Public engagement serves OGE's mission by providing the public confidence that policies and procedures are in place to ensure integrity in governance. OGE's public engagement serves the public's understanding of its government by way of readily-available information, and other discourse. To the extent that public engagement informs OGE it is most valuable, such as when OGE drafts a new regulation or change to a regulation after comment from many stakeholders, including the public.

b. What specific steps would you take in terms of public engagement?

If confirmed as OGE's Director, I would continue to seek to enhance OGE's current transparency, communication, and outreach initiatives.

To this end, if confirmed I would, with OGE's staff, review OGE's current public engagement initiatives to determine how OGE's outreach can be even stronger, subject to fiscal and other resource constraints. OGE has an active Communications Team that is fully committed to the agency's very effective transparency efforts. Useful information is posted and readily-available to the public on its website. Timely responses are provided to ever-increasing numbers of requests under the Freedom of Information Act (FOIA). OGE responds to the many questions and requests made to its ContactOGE email address and telephone line.

One of my first priorities if confirmed as Director would be to seek further full-time employee resources to support an enhanced Communications Team, to include additional trained and dedicated Public Affairs and FOIA processing staff members.

62. If confirmed, will you disclose publicly any concerns you develop over unethical conduct on the part of senior administration officials or would you address these concerns confidentially?

If confirmed as OGE's Director I fully intend to use each and every tool available as appropriate, including transparency, to ensure that OGE best addresses such issues as they arise and demand OGE's action. I would determine the best tool to use on a case-by-case basis, as circumstances warrant.

a. Would your answer change if your efforts inside the government yielded no corrective action by the Administration?

If confirmed as OGE's Director, I would use every appropriate proactive procedural and transparency tool necessary to ensure that Executive Branch officials are accountable to, and comply with, the conflict of interest laws, the EIGA, and the standards of conduct. I would disclose unethical conduct to the public when it is appropriate to do so. Any public disclosures by OGE while I am its Director, if confirmed, would be determined on

a case-by-case basis to ensure fairness and to protect individual rights to the extent appropriate.

***OGE Program Reviews***

63. Will you commit to establishing a goal of completing one full cycle of program reviews of all executive branch agencies in four years?

Yes. Program reviews would be undertaken on an accelerated four-year schedule instead of the current five-year-cycle to ensure that agency programs fully protect employee and institutional integrity. If confirmed, my goal would be to undertake program reviews on a three-year cycle, subject to resource limitations.

- a. If so, what proactive measures will you take, if confirmed, to ensure that you meet this goal?

If confirmed, I would to the extent possible enhance the resources available to OGE's Compliance Division. This elite team of professionals recently completed its goal of reviewing all Executive Branch agencies during a five-year cycle, and has already begun the next cycle of reviews. If I am confirmed as Director, I commit to seeking White House and Office of Management and Budget support of an increased budgetary request that would permit OGE to increase its agency program review capabilities.

- b. If not, why not?

64. If confirmed, how will you go about pushing agencies to adopt OGE's recommendations from program reviews and other reports or documents?

I would, if confirmed as Director, use all of the oversight authorities available to the Director of OGE, including the transparency of published correspondence from me to an agency head. If necessary, I would ensure that OGE instigated a follow-up program review. This would ensure that the agency addresses OGE's concerns and recommendations, and would protect the overall efficacy of the Executive Branch ethics program.

65. In overseeing the executive branch ethics program, how would you use data, such as the data OGE collects on agencies' processing of annual financial disclosure reports?

If confirmed as OGE's Director, I would continue OGE's efforts to use a variety of data sources to most effectively leverage OGE's resources to achieve compliance, Executive Branch agency support, and other mission-critical activities. For example, OGE currently uses information gathered from agency ethics official inquiries to target legal advisories and training resources.

If confirmed, I would ensure that OGE's data stakeholders are thoroughly considering the collected data to assess ways in which OGE may better streamline its current processes. I commit to participating in the review of this data as well, to the extent practicable, to gain an up-close and hands-on perspective. Raw data can sit as simply numbers without attention; OGE's staff is well-versed in reading this data and the story that it tells. My OGE experience teaches that the agency's staff is particularly talented at understanding this data for application in the real-world, and I would encourage these efforts.

66. Will you commit to finding new ways to collect standardized data from agencies, compare that data across the executive branch, and use that data to make decisions regarding the executive branch-wide ethics program (e.g. decisions about which agencies need program reviews, which agencies are underperforming, which agencies are excelling and may have best practices to share, and what trends or deficiencies are emerging across the executive branch)?

Yes

- a. If so, how will you accomplish that goal if you are confirmed?

I fully embrace and would strongly support OGE's initiatives and goals regarding data collection as set out in the agency's Annual Performance Plan of February 2018. Current data is critical to OGE for monitoring agency compliance with ethics program requirements and compliance with officials' ethics commitments. OGE is continuously seeking new and innovative ways to collect more (and better) data – I would foster and encourage these initiatives to the extent personnel and budgetary constraints permit. If confirmed, I would seek to enhance OGE's data collection resources and data analysis teams, and would seek White House and Office of Management and Budget support of an increased budgetary request that would permit OGE to increase its data collection and review capabilities.

***Patriot Legal Defense Fund***

67. OGE recently approved a vehicle, the Patriot Legal Expense Fund (Patriot Fund), that appears to allow for the possibility that outside gifts or monetary contributions can be funneled to federal employees who have incurred or are incurring legal fees arising from their cooperation with Special Counsel Robert Mueller's Russia investigation.

Regarding questions 68 through 71: I am aware of OGE's current position on these issues to the extent discussed and reflected in information posted on OGE's website; in a letter to Congress in April 2018; and in a release shared with media outlets. As reflected in these materials, OGE does not approve legal defense funds and has a limited role in providing technical assistance on proposed funds to ensure that federal employees could receive disbursements from the fund without violating the executive branch ethics laws and rules, including the gift rules. Within these limitations, if confirmed, I would of course consider any new issues or concerns regarding the Patriot Fund as appropriate at that time.

- a. Did you personally participate in the development or OGE's review of the Patriot Fund? If so, please describe your role.

I did not personally participate in the development or OGE's review of the Patriot Fund. I did attend a general staff meeting, during which pros and cons of legal defense funds were discussed.

68. Ethics experts have raised concerns that, because there are multiple potential recipients, distributions from the Patriot Fund can be manipulated to influence witness testimonies in connection with the Russia investigations.

Please see my response to questions 68 through 71 above.

- a. Do you agree that the charter for the Patriot Fund differs from the template acting Director Apol posted online in August 2017?

69. The fund's charter ostensibly prohibits consideration of the content of a witness's disclosures to investigators when making distributions from the fund to help individuals with their legal fees, but the fund is structured in a way that would make it impossible for Congress, OGE, agency ethics officials, or anyone else to monitor whether the Patriot Fund is making or withholding distributions based on the content of communications with the Special Counsel. Even if distributions are ultimately not made based on such communications, the perception that this is possible may influence witnesses who fear financial devastation as a result of legal fees.

Please see my response to questions 68 through 71 above.

- a. If confirmed as OGE Director, how would you ensure that recipients of the Patriot Fund have not accepted a donation from a prohibited source?
- b. What happens in the event that a donor verbally tells the Patriot Fund's manager that the donation is being given because of the employee's position?
- c. Why does the charter for the Patriot Fund prohibit such donations only when the donor makes this statement in writing, while the template OGE posted online in September prohibits such donations whether the statement is made verbally or in writing?
- d. What discussion surrounded the decision to strike the word "verbally"?

70. Given that the Patriot Fund permits donations from prohibited sources and allows for the creation of separate sub-accounts for different recipients, do you believe it is possible for OGE to monitor whether any employees are accepting impermissible gifts or monetary contributions?

Please see my response to questions 68 through 71 above.

- a. Former OGE Director Walter Shaub recently wrote in the *LA Times* that, "For legal purposes, any bad money taints the whole fund because money is fungible: Every dollar the fund accepts from a questionable source and pays to a nongovernmental beneficiary frees up a dollar for those who do work for the government." Do you agree with Shaub's assessment?

71. If confirmed as OGE Director, how would you ensure that the Patriot Fund does not, in practice, reward employees whose testimony is favorable to the President and shun those whose testimony is unfavorable to him?

Please see my response to questions 68 through 71 above.

72. Will you commit to reviewing the charter of the Patriot Fund and reporting back to the committee, before your confirmation hearing, as to your views on whether the fund can be modified to bring it into compliance with OGE's historical practices regarding legal defense funds?

I would commit to reviewing recent past OGE issuances and activities to the extent that I would need, as Director, to make new determinations based on previously made policy and processes. I would ensure that OGE maintains the level playing field as a non-biased arbiter which exists to prevent conflicts of interest. Of course, the extent to which employees may have reasonably relied on OGE's current interpretations would be a factor.

#### *Congressional Relations*

73. What role do you believe Congress should play in ensuring compliance with executive branch ethics laws and rules?

Congressional oversight of the Executive Branch ethics program is important to ensure that the ethics laws that Congress has passed and any related rules are effective and are being complied with by ethics officials and ethics programs, as well as by agency employees. Recent history illustrates Congressional interest in OGE's activities, as well as OGE's firm commitment to cooperate with Congress and its oversight responsibilities, including testimony from OGE's Director.

74. If confirmed, do you agree without reservation to reply to any reasonable request for information from the Ranking Member of any duly constituted committee of the Congress?

I reiterate my sincere belief in full communication with any legislator, and if confirmed as OGE's Director would do so to the extent reasonable and appropriate. OGE has so complied through its existence as an agency within the Executive Branch, and I agree to continue this practice.

75. If confirmed, do you agree without reservation to reply to any reasonable request for information from members of Congress? If directed by the administration to systematically ignore oversight requests from minority members of Congress, will you comply?

If confirmed as OGE's Director I commit to reply to reasonable requests for information from any member of Congress. OGE has so complied through its existence as an agency within the Executive Branch, and I agree to continue this practice, whether requests are from majority or minority members.

76. If confirmed, do you commit to take all reasonable steps to ensure that you and your agency comply with deadlines established for requested information?

Yes

77. If confirmed, do you commit to protect subordinate officials or employees from reprisal or retaliation for any testimony, briefings or communications with members of Congress?

Yes

78. If confirmed, will you direct your staff to fully and promptly respond to Freedom of Information Act requests submitted by the American people?

Yes

79. If confirmed, will you ensure that political appointees are not inappropriately involved in the review and release of Freedom of Information Act requests?

Yes

I, Emory A. Rounds III, hereby state that I have read the foregoing Pre-Hearing Questionnaire and Supplemental Questionnaire and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.



(Signature)

This third day of May, 2018

**Senator Heidi Heitkamp  
Post-Hearing Questions for the Record  
Submitted to Mr. Emory Rounds**

**Nominations of Emory Rounds to be Director, U.S. Office of Government Ethics; Kelly Higashi to be an Associate Judge, Superior Court of the District of Columbia; and Frederick Nutt to be Controller, Office of Federal Financial Management, Office of Management and Budget  
Wednesday May 23, 2018**

1. **In your testimony, you noted that a critical component of fostering and maintaining a strong ethics culture within the Executive Branch come through leadership lead by example. I couldn't agree more. You also indicated in your pre-hearing questionnaire that you would use every appropriate proactive procedural and transparency tool necessary to ensure officials are held accountable and comply with ethics rules and regulations.**
  - a. **In your view, what are the negative ramifications that could occur if individuals in Executive Branch leadership positions do not comply with ethics regulations?**

In my view, strong Executive Branch senior leadership support of, and adherence to, the ethics laws and rules is critical to the accomplishment of each agency's mission and the overall work of government. It must be every senior leader's goal each day to encourage and foster a culture of government integrity, free of conflicts and dedicated to impartial decision-making. Experience teaches that decision-making that is free from ethical lapses best enables government leaders to deliver on their important promises, perform their public duties, and serve our country and its people without unnecessary distractions and inefficiencies. With impartial and ethical decision-making, government leaders can have confidence that the tough decisions they make as public servants warrant the public's full confidence.

- b. **Could you briefly elaborate on the tools and authorities that you would consider using to encourage officials to comply with ethics rules and regulations?**

If confirmed as OGE's Director, I would use to the fullest extent possible my authority under the Ethics in Government Act and other authorities to carry out OGE's full range of responsibilities, including promulgating and maintaining enforceable standards of ethical conduct; overseeing a financial disclosure system designed to detect and resolve conflicts of interest; issuing regulations and guidance to provide uniformity and clarity of requirements; reviewing agency ethics programs and senior leaders' ethics agreement certifications to ensure compliance with their ethical commitments; providing training and resources so that ethical violations can be avoided; conducting outreach to the general public

and making key ethics documents available so that citizens can hold their government accountable. And, if those efforts fail and ethical lapses occur, as necessary, I would recommend corrective action on the part of an agency and/or an employee and require pertinent report(s) from an agency to ensure that appropriate action was taken.

With the enhanced resources that I would request, if confirmed, OGE could better undertake all of this important work. For example, if sufficiently resourced and staffed, OGE would be able to provide more training for senior leaders and ethics officials, and would offer more educational tools that ethics officials may use to train their agency employees. These efforts go to the heart of OGE's mission to prevent conflicts of interest and ensure impartiality in government decision-making. In addition, with enhanced resources, OGE may be able to increase accountability by increasing the frequency of its review of agency ethics programs from the current five-year cycle to a four-year cycle (or a three-year cycle, subject to resource limitations). Increasing OGE's resources for its transparency efforts would also contribute to improved ethics compliance to the extent that the public, media, NGO stakeholders, and employees can see, and thereby better understand, OGE's overall oversight initiatives.

**c. If those tools and authorities are unsuccessful in getting an official to comply with ethics regulations, what steps would you consider taking?**

If I am confirmed as OGE Director and face a lack of compliance with the ethics rules by an official, I would use transparency, recommendations of corrective action, referrals, and notification to the President, as necessary and appropriate given the specific circumstances, to gain compliance.

Although the OGE Director is prohibited by law from making a finding that a criminal law has been violated, if OGE became aware of information that suggested a violation, if confirmed as Director, I would notify the appropriate IG or the Justice Department. Regarding a matter involving an individual officer or employee, if confirmed as OGE's Director, I would aggressively carry out the Director's responsibilities under the Ethics in Government Act (set out in subsection (b)(9) of section 402, as enumerated in subsection (e)(2)(A) of section 402).

When circumstances warrant, I would recommend to the employee's agency head that the agency investigate a possible violation of the ethics laws and rules, and take any appropriate action. If the agency head fails to act on my recommendation to conduct an investigation, or if it is the agency head who is of concern, I would make the appropriate recommendation to, and seek action from, the President. If I order specific action to end a violation, and there is not compliance, then I would promptly notify the agency head or the President, as appropriate. Finally, I would also use transparency with regard to OGE's actions, as appropriate, to encourage compliance with the ethics laws and rules.

**d. Do you believe that the tools and authorities granted to the Office of Government Ethics are adequate to ensuring compliance?**

I believe that OGE currently has the tools and authorities it needs to prevent and resolve conflicts of interest and impartiality concerns regarding Executive Branch officials and employees. If confirmed, I would study proposed reforms with OGE's senior leadership and provide technical assistance to Congress, as requested and as appropriate. I currently have no plans for OGE to propose specific substantive reforms to Congress regarding the Ethics in Government Act. I would support an initiative for all three of the government's branches to consider the branches' collective "lessons learned" over the past several years with the goal of strengthening each branch's ethics initiatives and authorities under the Ethics in Government Act.

**2. In your pre-hearing questionnaire, you indicated that you would have the courage to take the unpopular stand or make a difficult decision to ensure that the integrity of the Executive Branch remains intact.**

**a. In a general sense, what sorts of stances or decisions could you perceive as being unpopular or difficult to make?**

My experience teaches that the most unpopular and difficult decisions are generally those that affect an employee's ability – or inability – to retain or obtain a financial interest while undertaking his or her official duties. There are many times when an ethics advisor may consider an employee's question – such as whether a gift may be accepted, whether a financial instrument may be kept or purchased, whether an outside position may be retained or taken, whether an event may be attended personally or officially, and so on – and allow the employee to do so. There are many times, however, when an ethics advisor, the Designated Agency Ethics Official, or OGE's Director must consider the facts and circumstances of a given request or matter and deny the request. For example, in cases when, based on his or her job duties and reported financial interests, a President's prospective nominee may not retain an asset or position, but must divest or resign in consideration of the ethics laws and rules, we must say "No."

**3. In your pre-hearing questionnaire and during the staff interview, you noted that you would rely on the IGs' investigative and enforcement capabilities when issues arise regarding employees and possible ethics infractions.**

**a. Could you elaborate on how you plan to engage and collaborate with relevant IGs?**

I fully support and would embrace OGE's excellent working relationships with the various Executive Branch Inspectors General (IGs).

I look forward, if confirmed, to membership as OGE's Director on the Council of the Inspectors General on Integrity and Efficiency and to meeting with IGs on such cases of mutual interest as from time-to-time arise, as well as continuing OGE's longstanding training of IG staffs. As part of my plan to meet with agency heads as soon as possible, if confirmed, I hope to incorporate a meeting with the agency IG to ensure and facilitate future communication.

**b. Do you see opportunities to improve the Office of Government Ethic's engagement and coordination with IGs? How so?**

If I am confirmed as OGE's Director, I would meet with OGE's senior leadership team to consider whether there are any further or additional opportunities to improve OGE's engagement and coordination with IGs. At this point, it seems that OGE and the IG community currently enjoy a strong working relationship. Certainly, as a member on the Council of the Inspectors General on Integrity and Efficiency, if confirmed, I would promote OGE's readiness to assist the IG community, to the extent resources permit. I believe that it is vital that the ethics and IG communities work together to ensure the integrity of the Executive Branch's personnel and programs.

OGE's symbiotic relationship with the IG community began at inception, by way of the Ethics in Government Act (EIGA). Both the EIGA and Inspector General Act came out of the same committee at about the same time in the post-Watergate era. IGs are tasked – among other duties – to address fraud, waste, and abuse within the Executive Branch, and OGE's mission to prevent conflicts of interest dovetails with the IGs' missions. OGE, in its preventive role, and I, if I am confirmed as OGE's Director, would continue to rely on the IGs' investigative and enforcement capabilities when issues arise regarding employees and possible ethics infractions. If I am confirmed, OGE would continue to work with IGs who seek guidance regarding the various ethics laws and rules, especially as might affect an ongoing investigation.

**Senator Claire McCaskill  
Post-Hearing Questions for the Record  
Submitted to Mr. Emory Rounds**

**Nominations of Emory Rounds to be Director, U.S. Office of Government Ethics; Kelly Higashi to be an Associate Judge, Superior Court of the District of Columbia; and Frederick Nutt to be Controller, Office of Federal Financial Management, Office of Management and Budget  
Wednesday May 23, 2018**

**QUESTIONS**

**COOPERATION WITH CONGRESS**

**Q: If confirmed, will you ensure that you and your staff cooperate with oversight requests issued by the relevant ranking members?**

Yes. OGE has so complied through its existence as an agency within the Executive Branch, and I agree to continue this practice.

**THE STATE OF THE FEDERAL ETHICS PROGRAM**

**Q: You have stated that a 25% budget increase is necessary for OGE to meet its increased workload. What does it mean for OGE's ongoing work and the federal ethics program if the agency does not get a significant budget increase?**

If I am confirmed as Director, I would ensure that OGE's core mission to prevent conflicts of interest in the Executive Branch remains the agency's top priority, budgetary constraints notwithstanding. Over the years OGE has done more with less, but currently, resources are stretched very thin. Financial disclosure reports are increasingly more complicated and need more attention and time-consuming review. Agency program reviews should be undertaken more often. The legal issues for agency attorneys are becoming more difficult and require more intense research. Requests for information from outside sources have increased exponentially, and more questions are posed as the program's visibility increases. Important Congressional inquiries must be answered, but further redirect resources.

If OGE is not provided a budget increase, the following initiatives would not be possible, although if I am confirmed as OGE's Director, I would advocate strongly both to provide adequate resources for current initiatives and to institute improvements vital to long-term success. For example, if confirmed, I would seek to increase the frequency of OGE's program reviews of agencies and departments by increasing staff and resources for the compliance team. If confirmed, I would seek to enhance OGE's outreach to its constituent agencies by increasing the number of desk officers and by establishing "tiger teams" that could quickly be assigned to an agency program that requires additional assistance. If confirmed, I would seek to ensure that OGE's financial disclosure e-filing

system – *Integrity* – remains technically viable in the face of its popularity and growth as well as technical advances, and that this program is fully available to its Executive Branch agencies. If confirmed, I would seek to enhance OGE’s public affairs and transparency initiatives through additional staffing and tools.

OGE’s staff is dedicated to completing its mission, whatever it takes to do so – but OGE’s leadership must challenge budgets that do not keep pace with the ever-increasing demands on OGE.

**Q: If confirmed, how will you work with Designated Agency Ethics Officials (DAEO) and Alternate DAEOs to support OGE’s work?**

OGE’s Director has leadership and oversight responsibilities over the DAEOs as well as their agencies’ ethics programs. If confirmed as OGE’s Director, I would continue that oversight and leadership role, but in partnership – as the “senior partner” – with the DAEOs as we work together as a team to better prevent conflicts of interest in the Executive Branch.

I believe that DAEOs are critical members of the Executive Branch’s ethics team. Each DAEO is the senior agency leader responsible for his or her agency’s ethics initiatives in execution of the Executive Branch’s ethics mission. The Executive Branch-wide ethics program is purposefully designed to be de-centralized, and relies on the DAEO – and his or her agency subordinate ethics advisors – to execute an agency’s day-to-day ethics program.

To this end, I would fully support DAEOs as they seek to better perform their duties and responsibilities, and would ensure that there is at all times an “open door” to OGE and such OGE assistance and resources as may be needed, as we work together as a team to prevent conflicts of interest. If confirmed as OGE’s Director, I would take the overall lead in the promulgation of branch-wide ethics rules, policies, and procedures. This would ensure consistency as to the applicability and application of the standards of conduct to all Executive Branch employees. OGE’s compliance team would regularly conduct program reviews of agency ethics programs to ensure DAEOs are leading compliant programs. OGE would continue to hold agency heads accountable if their ethics programs are not meeting OGE’s programmatic requirements, are not providing necessary agency training, or are not using the many available ethics tools – such as OGE’s e-filing system, *Integrity*.

As OGE’s Director I would expect that the day-to-day execution of the Executive Branch’s rules, policies, and procedures remain the primary responsibility of each DAEO. DAEOs are given a large measure of independence and discretion within the Executive Branch’s ethics program, subject to OGE’s leadership in its oversight mandate. OGE would be available to offer its advice and counsel to a DAEO when the need arises, as it has done over its existence. OGE would continue, if I am its Director, to listen carefully to such concerns and recommendations a DAEO and/or the DAEO community may have regarding the Executive Branch’s ethics initiatives. This would

ensure that the ethics program is operating at peak efficiencies, to better guard against conflicts of interest. As Director I would recognize that each agency's mission and government business practices – within the basic paradigm of governing – can be different as compared to another agency, and sometimes even within a department or agency.

**Q: If confirmed, how will you work with Inspectors General to support OGE's work?**

I fully support and would, if confirmed, embrace OGE's excellent working relationships with the various Executive Branch Inspectors General (IGs). I look forward, if confirmed, to membership as OGE's Director on the Council of the Inspectors General on Integrity and Efficiency. I would also look forward to meeting with IGs on such cases of mutual interest as from time-to-time arise, and to continuing OGE's longstanding training of IG staffs.

I see it as no coincidence that OGE's symbiotic relationship with the Inspector General community began at inception, by way of the Ethics in Government Act (EIGA). Both the EIGA and Inspector General Act came out of the same committee at about the same time in the post-Watergate era. IGs are tasked – among other duties – to address fraud, waste, and abuse within the Executive Branch, and OGE's mission to prevent conflicts of interest dovetails with the IGs' missions. OGE, in its preventive role, and I, if I am confirmed as OGE's Director, would rely on the IGs' investigative and enforcement capabilities, when issues arise regarding employees and possible ethics infractions. OGE would continue to work with IGs who seek guidance regarding the various ethics laws and rules, especially as might affect an ongoing investigation.

**IMPROVING FEDERAL ETHICS COMPLIANCE**

**Q: What, in your view, are steps that OGE can take to improve ethics compliance by executive branch employees?**

If I am confirmed as Director, one of my first priorities would be to challenge OGE's senior leadership to propose any steps that OGE should undertake to even further enhance ethics compliance by Executive Branch employees, within existing resources.

In my view, it is a well-informed workforce that will best serve to improve the ethics culture of, and compliance by, Executive Branch employees. With the enhanced resources that I plan to request if confirmed, OGE will be able to provide more training for senior leaders and ethics officials, as well as provide more educational tools ethics officials may use to train their agency employees.

Also, as part of these education efforts, I plan to meet with agency heads and DAEOs to discuss my belief that the agency head must provide strong "top-down" leadership in support of the various ethics initiatives within his or her agency. I would re-iterate that the agency head must personally comply with the ethics laws and standards of conduct. I would reemphasize that the agency head must also demand high ethical standards of the

agency's senior leadership and foster an ethical culture throughout the agency. I would encourage that the agency's ethics program be provided the resource support it needs, as a strong signal that the "tone from the top" supports the agency's ethics program and initiatives.

In my view, in addition to education, both the review of agency ethics programs (to strengthen the programs and hold agencies accountable for the ethics services they are providing to their employees) and transparency initiatives are effective ways to improve compliance. If confirmed as Director, I plan to request enhanced resources for both of these areas. With additional resources, OGE could increase its program review schedule from the current five-year cycle to a four-year cycle (or a three-year cycle, subject to resource limitations). OGE's continued transparency efforts also contribute to improved ethics compliance to the extent that the public, media, NGO stakeholders and employees can see, and thereby better understand, OGE's overall oversight initiatives.

Under my leadership, if confirmed, OGE also would continue its commitments to agency ethics officials through training, advice, and counseling initiatives and would provide assistance to IGs and other executive branch entities. OGE senior leadership would continue to meet with DAEOs and IGs, one-on-one and in group sessions, to listen to their concerns and work to resolve any systemic weaknesses in the ethics program. I would task OGE's staff to take yet another look at OGE's website, to determine if there are ways to improve OGE's outreach initiatives and better educate employees as to the standards of conduct rules.

**Q: What, in your view, are steps that agency heads can take to improve ethics compliance by executive branch employees?**

An agency head is the leader of the overall ethics program in the agency. He or she should fully embrace and support his or her agency's ethics program, by way of compliance with the ethics laws and rules, by fostering an ethical culture, by setting high standards that other officers and employees must meet (and exceed), and by supporting the agency's ethics program with sufficient resources and visibility. The ethics office should be neither literally nor figuratively in some back corridor, but must have a "seat at the table" in every way.

**Q: What, in your view, are steps that the President can take to improve ethics compliance by executive branch employees?**

Similarly, in my view, a President is a critical part of the overall Executive Branch ethics program and "top-down" ethics culture. Presidential leadership of the ethics program involves complying with all applicable ethics laws and rules, fostering a strong ethical culture for the Executive Branch, setting high standards that other Executive Branch officers and employees must meet (and exceed), holding senior leaders accountable for ethical conduct, and supporting Executive Branch ethics programs with sufficient resources and visibility. A President's significant leadership interest in, and his or her strong support of, the various ethics initiatives within the Executive Branch will serve to

ensure that no Executive Branch ethics office is either literally or figuratively in some bureaucratic back corridor, but instead has a “seat at the table” in every way.

**Q: What, in your view, are steps that Congress can take to improve ethics compliance by executive branch employees?**

Congress should reauthorize OGE. Congress should also provide OGE and agency ethics programs with sufficient ongoing appropriations to support and enhance their important work of ensuring the integrity of, and impartiality in, government decision-making.

**Senator Thomas R. Carper  
Post-Hearing Questions for the Record  
Submitted to Mr. Emory Rounds**

**Nominations of Emory Rounds to be Director, U.S. Office of Government Ethics; Kelly Higashi to be an Associate Judge, Superior Court of the District of Columbia; and Frederick Nutt to be Controller, Office of Federal Financial Management, Office of Management and Budget  
Wednesday May 23, 2018**

**1. Ethics and the Presidential Transition**

**Earlier this year, I worked with Senator Warren and Congressman Cummings to introduce the “Transition Team Ethics Improvement Act.” The bill would take a series of steps to enhance the ethics requirements that govern presidential transitions. One of the provisions of the bill requires presidential candidates to develop and release transition team ethics plans.**

**Please share your vision for OGE’s role in the presidential transition process. Do you believe that there are areas where Congress should consider making reforms to OGE’s role?**

If I am confirmed as Director, I would be fully committed to OGE’s strategic goal relating to its preparations for future Presidential elections and transitions. As provided in its Strategic Plan for 2018-22, OGE would be an active participant in federal transition planning efforts, collaborate with other transition stakeholders, update necessary resources (to include its e-filing financial disclosure system), publish advisories on relevant topics, and provide training to federal ethics officials and other transition stakeholders on transition-related topics. OGE would also coordinate with Presidential candidate transition officials regarding financial disclosure reporting and potential conflict issues.

One of my early goals, if confirmed as Director, would be to task OGE’s senior leadership and transition stakeholders with reviewing OGE’s transition efforts in light of the most recent transition. I would seek recommendations as to what more OGE could do to ensure an even more efficient and smoother Presidential transition. These recommendations would serve to inform any recommendations OGE may have in the future.

**Do you believe that making ethics a higher priority in presidential transitions will help new administrations inoculate against potential conflicts of interest?**

Yes.

**Senator Gary C. Peters**  
**Post-Hearing Questions for the Record**  
**Submitted to Mr. Emory Rounds**

**Nominations of Emory Rounds to be Director, U.S. Office of Government Ethics; Kelly Higashi to be an Associate Judge, Superior Court of the District of Columbia; and Frederick Nutt to be Controller, Office of Federal Financial Management, Office of Management and Budget**  
**Wednesday May 23, 2018**

1. The work of the U.S. Office of Government Ethics (OGE) has always been critical, and I share your concern that OGE needs additional resources and staffing. **If confirmed, how do you plan to advocate for an increase in OGE's resources? Have you communicated with anyone at the White House or at the Office of Management and Budget (OMB) about OGE's budget and staffing challenges? How would you proceed if you were dealing with a White House and OMB that were antagonistic to your efforts?**

If confirmed as OGE's Director, I plan to personally advocate OGE's need for increased resources directly to the appropriate White House and OMB officials. In my current role and as a nominee, I have not communicated with anyone at the White House or at OMB about OGE's budget and staffing challenges. If met with reluctance, I would persevere using the appeal process and personal advocacy to continue to insist on funding that fully supports OGE's stewardship of the Executive Branch's ethics program.

2. In January 2017, President Trump issued Executive Order 13770 requiring all political appointees to sign an Ethics Pledge as a condition of their employment. The executive order appears to allow the President or the White House Counsel to issue waivers to the Ethics Pledge in secret. By all accounts, for months the White House appeared to resist efforts to disclose these secret waivers, and OMB Director Mulvaney even signed a letter questioning OGE's authority to collect them. The waivers were only made public after the concerted effort of the OGE Director and pressure from Congress. You have underscored the importance of transparency and public disclosure with respect to the executive branch ethics program. On September 21, 2017, OGE issued a Program Advisory requiring all executive agencies to provide copies to OGE of any waivers issued to covered employees at the time they are issued. **Will you commit that, if confirmed, you will maintain this policy and ensure that agencies are complying with the requirement to provide waivers to OGE? Will you further commit that, if confirmed, OGE will continue to publish the certification of ethics agreement compliance forms for Senate-confirmed appointees on the OGE website?**

Yes, to both questions. If confirmed as OGE's Director, I would exercise OGE's plenary authority under the Ethics in Government Act to collect such information and records as are necessary to perform OGE's oversight authority, including waivers. I would also continue OGE's current practice of posting certification of ethics agreement compliance forms for Senate-confirmed appointees on OGE's website.

3. You have expressed support for OGE’s Open Government Plan and “to proactively disclose information to advance transparency, accountability, and openness.” At this time, there are a number of ethics-related documents that are not currently collected or posted on the OGE website for public viewing. There are also occasions when this information is not memorialized in writing, including authorizations issued pursuant to 5 CFR § 2635.502 allowing employees to participate in certain matters where their impartiality may be questioned, as well as records from agencies allowing employees to accept outside gifts. **If confirmed, what efforts will you undertake to proactively collect and post previously unpublished information on the OGE website in the interest of transparency?**

OGE must be, and would continue to be, at the “cutting-edge” of good government initiatives. I fully support OGE’s strategic goal of engaging the public in overseeing government integrity by informing the public about OGE and the Executive Branch ethics program and making ethics information publicly available. Toward those efforts, I would continue to seek additional ways for OGE to be proactively transparent, if I am confirmed. To this end, I would commit as an early priority, if I am confirmed, to a continuing review and evaluation of such other data sets that may be amenable to posting. I also fully support OGE’s efforts to better refine its communication efforts to assist the public in knowing what documents are available, where they can access them, and how the documents help them play their part in overseeing government integrity. If confirmed as OGE’s Director, I would work with OGE’s senior leadership to review OGE’s current public engagement initiatives to determine how OGE’s outreach can be made stronger, subject to fiscal and other resource constraints.

4. Former OGE Director Shaub and Acting Director Apol have both, at times, taken strong and creative action in order to uphold the integrity of the executive branch ethics program and a culture of ethical compliance. For example, Acting Director Apol recently sent a public letter to the Designated Agency Ethics Official at the Environmental Protection Agency (EPA) raising concerns about EPA Administrator Pruitt’s pattern of unethical behavior. **To what extent are you prepared to take new or creative actions, or make official statements in novel ways, in support of the ethics program when you identify behavior where it is appropriate to do so? To what extent do you believe that the OGE Director should be a public figure? Do you believe it is appropriate for the OGE Director to raise public awareness about unethical behavior in the executive branch, even unethical behavior by senior officials?**

I intend to use a variety of tools as Director, if I am confirmed, to communicate official statements. It would be clear to OGE’s many audiences – whether Executive Branch officials and civil servants, the public, or outside groups – what is official OGE guidance, policy, and data. I would ensure that substantive OGE policy and process guidance is disseminated in such a way that it is clearly identified as official OGE guidance.

OGE’s Director provides leadership and oversight of the Executive Branch ethics program and initiatives. To this extent, OGE’s Director should play a visible role in

promoting Executive Branch ethics initiatives. If confirmed as Director, I would conduct outreach and increase transparency as necessary to strengthen the Executive Branch ethics program.

5. You have stated repeatedly that a culture of ethics in government must start from the top down. At the same time, President Trump's network of business holdings, from which he has not divested, has created opportunities for conflicts of interest that may be outside the scope of the Ethics in Government Act (EIGA) as currently written. **Do you believe OGE has done what it can within the scope of its current authorities to address the President's conflicts of interest? Do you believe OGE has the tools it needs to meaningfully address the President's conflicts of interest? Will you commit to working with Congress to strengthen the EIGA and provide additional authorities to OGE as appropriate?**

In my opinion, OGE has been steadfast in executing its mission to prevent conflicts of interest of the officers and employees in the Executive Branch using the authority granted by the Ethics in Government Act. If confirmed as Director, I would work with OGE's senior leadership to assess the need for additional authorities. I also would support an initiative for all three of the government's branches to consider the branches' collective "lessons learned" over the past several years with the goal of strengthening each branch's ethics initiatives and authorities under the Ethics in Government Act.

**Opening Statement of Kelly A. Higashi****Nominee to be an Associate Judge of the District of Columbia Superior Court, May 23, 2018**

Good afternoon, Mr. Chairman, and members of the Committee. It is a great honor to be here today and I thank you for considering my nomination to be a Judge of the Superior Court of the District of Columbia. I would like to recognize the leadership of the Honorable Eleanor Holmes Norton, and of the District of Columbia Judicial Nomination Commission, chaired by the Honorable Emmet Sullivan, and thank them for recommending me to the White House. I thank the President for nominating me for this position. I would also like to recognize and acknowledge D.C. Superior Court Chief Judge Robert Morin, who is present today, for his leadership and encouragement.

I am immeasurably grateful for the support and inspiration of my colleagues, family, and friends, many of whom are here with me today. The United States Attorney for the District of Columbia, Ms. Jessie Liu, an exemplary leader of the Office, as well as many of my present and former colleagues, are here today, including Mr. Channing Phillips, the beloved former U.S. Attorney who preceded Ms. Liu. I am joined by my law enforcement partners from the Federal Bureau of Investigation and the D.C. Metropolitan Police Department who serve on the FBI's Child Exploitation Task Force. Many close friends, including one from my childhood days in California, who traveled from far away, are here today. I would like to introduce my family to you: my life partner, Mr. John Marsh, and our children, Mary Marsh, a freshman at Columbia University, and Riley Marsh, a 9<sup>th</sup> grader at the School Without Walls in D.C. They, along with my 14-year-old nephew, Taro Zimmerman, of New York City, are my greatest sources of support and inspiration. I would also like to acknowledge the love and support I have received from my two sisters, and to acknowledge my parents, Robert and Kiyō Higashi, who were unable to travel here from California, but who truly wished they could be here. My mother, who was born and raised in Portland, Oregon, and who, during World War II, spent several years in internment camps for Japanese Americans, is especially proud that I have had the privilege as an Assistant United States Attorney to seek truth and justice within our legal system, and that if I am fortunate enough to be confirmed, that I will contribute to the D.C. Superior Court's mission to provide equal access to justice for all people.

Although I was born and raised in Los Angeles, California, the District of Columbia is my home. I moved here in 1990 to attend law school at the George Washington University School of Law, and I never left. I then had the good fortune to serve as a judicial law clerk to the Honorable Frederick H. Weisberg of the Superior Court of the District of Columbia, who has been a role model and mentor to me throughout my career. After my clerkship, I was sworn in as an Assistant U.S. Attorney in the District of Columbia, where I have served the citizens of the District as a prosecutor for the past 23 ½ years. It would be a privilege and an honor for me to continue my public service, and my commitment to the citizens of the District of Columbia, as an Associate Judge of the Superior Court.

Thank you again for considering my nomination and I look forward to answering your questions.

**REDACTED**

**QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS  
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS,  
UNITED STATES SENATE**

**I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION**

1. **Full name (include any former names used).**

Kelly Ann Higashi

2. **Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).**

I am a citizen of the United States of America.

3. **Current office address and telephone number.**

United States Attorney's Office for the District of Columbia  
555 Fourth Street, N.W., Rm. 10-403  
Washington, D.C. 20530  
(202) 252-7282

4. **Date and place of birth.**

February 1, 1962; Los Angeles, California

5. **Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

I am not married, however, I have a domestic partner, John Marsh, Special Agent, Computer Forensic Examiner at United States Attorney's Office for the District of Columbia, 555 Fourth Street, N.W., Washington, D.C. 20530.

6. **Names and ages of children. List occupation and employer's name if appropriate.**

I do not have children, but my domestic partner and I have joint custody of his two children, Mary Marsh (18 years old) and [REDACTED].

**REDACTED**

7. **Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and date each degree was received. Please list dating back from most recent to earliest.**

George Washington University School of Law, Washington, D.C., Sept. 1990 – May 1992; J.D. received in 1992.

Tulane University School of Law, New Orleans, Louisiana; August 1989 – May 1990; no degree received.

University of Pennsylvania, Philadelphia, Pennsylvania; January 1981 – May 1984; B.A. degree received in December 1988.

Trinity College, Hartford, Connecticut; August 1979 – December 1980; no degree received.

Nanzan University, Nagoya, Japan; September 1983 – December 1983; no degree received.

International Christian University, Mitaka-Shi, Tokyo, Japan; June 1983 – August 1983; no degree received.

University of California, Los Angeles, CA; June 1980 – August 1980 and June 1982 – August 1982; no degree received.

Westlake School for Girls (now Harvard-Westlake School), Los Angeles, CA; August 1976 – June 1979; high school diploma received in June 1979.

8. **Employment record. List all jobs held since college, other than legal experience covered in question 16, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest. If you have served in the US military, please list dates of service, rank or rate, serial number, and type of discharge received.**

May 1991 – August 1991  
Shearman and Sterling  
599 Lexington Ave.  
New York, New York 10022  
Summer Associate

July 1990 – August 1990  
Chaffe, McCall  
1100 Poydras St.  
New Orleans, Louisiana 70163  
Summer Associate

May 1990 – July 1990  
McGlinchey Stafford  
601 Poydras St.  
New Orleans, Louisiana 70130  
Summer Associate

September 1987 – August 1989  
Kiyō Higashi Gallery  
8332 Melrose Ave.  
Los Angeles, California 90069  
Art Gallery Assistant

September 1987 – August 1989  
Robert T. Higashi Accountancy Corporation  
8332 ½ Melrose Ave.  
Los Angeles, California 90069  
Administrative Assistant; Bookkeeper

August 1984 – August 1987  
University of Pennsylvania  
Office of Undergraduate Admissions  
1 College Hall  
Philadelphia, Pennsylvania 19104  
Admissions Officer

9. **Honors and awards. List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.**

Assistant U.S. Attorneys Association, Harold J. Sullivan Award (2016)

FBI-Washington Field Office Service Award (2016)

United States Marshals Service Certificate of Appreciation (2014)

FBI-Washington Field Office Service Award (2014)

U.S. Attorney's Award for Superior Supervisory Performance (2013)

FBI-Washington Field Office Service Award (2012)

Metropolitan Police Department, Youth Investigations Division Certificate of Appreciation (2012)

U.S. Attorney's Award for Excellence in Management (2011)

U.S. Park Police Award (2007)

U.S. Attorney's Award for Creativity and Innovation (2002)

U.S. Attorney's Special Achievement Award, (1999)

U.S. Attorney's Justice for Victims of Crime Award (1998)

U.S. Attorney's Special Achievement Award (1998)

U.S. Attorney's Special Achievement Award (1996)

10. **Business relationships. List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.**

None.

11. **Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.**

Superior Court of the District of Columbia Domestic Violence Rules of Procedure  
Advisory Committee

Member, 2009 – 2017

Children's Justice Act Taskforce

Member, 2016 – present

D.C. Children's Advocacy Center Multi-Disciplinary Team

Member, 2003 – present

D.C. Sexual Assault Response Team

Member, 2003 – present

12. **Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 11. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.**

Assistant U.S. Attorneys Association, District of Columbia

Member, 2004 – present (intermittent)

D.C. Works

Volunteer Tutor and Big Sister, 1993 - 1998

Volunteer Board Member, 1995 – 1998

Cesar Chavez Public Charter School  
Volunteer Tutor, 1998 – 2000

Asian American L.E.A.D.  
Volunteer Mentor/Big Sister, 2007 – 2008

PG Pool  
Member, 2008 – present

Sport and Health Club  
Member, 2016 – present

To my knowledge, none of the organizations listed above formerly discriminated or currently discriminates based on race, sex or religion.

- 13. Court admissions. List all courts in which you have been admitted to practice, with dates of admission and lapses in admission if any such memberships have lapsed. Please explain the reason for any lapse in membership. Please provide the same information for any administrative bodies which require special admission to practice.**

District of Columbia, admitted in May 1995.

Maryland, admitted in December 1993 (inactive).

New York, admitted in December 1993.

On October 24, 2009, I was placed on suspended status for the New York State Bar due to non-payment of dues; I was reinstated on March 22, 2018. In the late 1990's, I requested in writing that my memberships to the Maryland and New York State Bars be converted to inactive status or terminated, as I had been a member of the District of Columbia Bar and was practicing there. In July 2017, when completing my application for the judicial position in D.C. Superior Court, I inquired to verify the date of the change in my status. I learned that while my membership status in the Maryland State Bar was converted to inactive, my request to the New York State Bar was never processed. Thus, my membership was suspended on October 24, 2009, due to non-payment of dues. Upon learning this information, I submitted the applicable registration form and paid the back dues in their entirety, and followed the required steps to apply for reinstatement. On March 22, 2018, after finding that my lapse in payment of dues was the result of a legitimate oversight, and that no client was prejudiced, as I have never practiced law in New York, my membership was reinstated, therefore, I am currently active and in good standing. There have otherwise been no lapses in my memberships.

- 14. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.**

None.

15. **Speeches.** List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with four (4) copies of any of these speeches.

None.

16. **Legal career.**

- A. **Describe chronologically your law practice and experience after graduation from law school, including:**

- (1) **Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;**

From September 1992 to September 1994, I served as a judicial law clerk to the Honorable Frederick H. Weisberg, Superior Court of the District of Columbia.

- (2) **Whether you practiced alone, and if so, the addresses and dates;**

I have not practiced alone.

- (3) **The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.**

September 1994 – present  
U.S. Attorney's Office for the District of Columbia  
555 4<sup>th</sup> Street, N.W.  
Washington, DC 20530

- B. **Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.**

From 1992 – 1994, I served as the judicial law clerk to the Honorable Frederick H. Weisberg, Superior Court of the District of Columbia. During those two years, Judge Weisberg served as the Presiding Judge of the Criminal Division of the Court, and therefore, carried a full docket comprised entirely of criminal matters. I reviewed pretrial and post-conviction motions, conducted legal research, and drafted orders ruling on those motions. I responded to numerous and varied inquiries addressed to Judge Weisberg through telephone calls and written correspondence. I attended each trial and assisted Judge Weisberg by conducting legal research on issues which arose during the course of the trial, and assisted

with drafting jury instructions and verdict forms.

From 1994 to 2000, I served as an Assistant United States Attorney rotating through various sections of the Office, including the Misdemeanor Trial Section, the Felony Trial Section, and the Grand Jury Section, which are all part of the Superior Court Division. I also completed a rotation in the Narcotics Section, which is a part of the federal Criminal Division of the Office. In 1997, I was selected for a senior position in the Sex Offense Section, and handled a caseload of some of the most serious sexual offenses committed on child and adult victims.

From 2000 to 2003, I was selected to serve as the Deputy Chief and later, the Chief, of the Misdemeanor Trial Section of the Superior Court Division. During that period, I appeared in court on a daily or almost-daily basis to supervise the newest AUSAs in our Office in misdemeanor bench trials and other proceedings in the Superior Court.

In 2003, I was selected to serve as the Deputy Chief and later, the Chief, of the Sex Offense and Domestic Violence Section, a position which I currently hold. For many years, my direct first-line supervision of cases focused on felony cases involving domestic violence, sexual abuse, child abuse, and human trafficking, prosecuted in the Superior Court of the District of Columbia. Since 2011, when a reorganization of the U.S. Attorney's Office shifted the prosecution of federal child exploitation, human trafficking, and sex offender registration violation cases in the U.S. District Court from a general crimes section to the Sex Offense and Domestic Violence Section, my direct first-line supervision of cases has included those cases as well.

**C. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.**

During my time at the U.S. Attorney's Office, my client has been the United States of America. My practice area has been entirely in criminal law, and I have focused on a variety of issues, including domestic violence, sexual abuse, and human trafficking.

**D. Describe the general nature of your litigation experience, including:**

**(1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.**

From 1994 to 2000, while I served as an Assistant United States Attorney in various sections of the Office, I appeared in court on a daily or almost-daily basis. I handled a full caseload of cases and I was responsible for all

phases of litigation in my cases except for post-conviction appeals. I was sole counsel in the vast majority of my cases.

From 2000 to 2003, while I served as Deputy Chief and Chief of the Misdemeanor Trial Section, I appeared in court on a daily or almost-daily basis to supervise the newest AUSAs in our Office in misdemeanor bench trials and other proceedings in the Superior Court.

From 2003 to the present, as Deputy Chief and Chief of the Sex Offense and Domestic Violence Section, I appear in court frequently as the first-line supervisor of numerous felony cases involving domestic violence, child abuse, sexual abuse, human trafficking, child exploitation, and violations of the sex offender registration laws.

**(2) What percentage of these appearances was in:**

**(a) Federal courts (including Federal courts in D.C.);**

For an 8-month period in 1996, when I was assigned to the Federal Narcotics Section of the Office, 100% of my court appearances were in the United States District Court for the District of Columbia.

From 2011 to the present, approximately 30% of my appearances in court in a supervisory capacity have been in the United States District Court for the District of Columbia.

**(b) State courts of record (excluding D.C. courts);**

0%

**(c) D.C. courts (Superior Court and D.C. Court of Appeals only);**

From 1994 to 2011, all of my court appearances were in the Superior Court of the District of Columbia.

From 2011 to the present, approximately 70% of my appearances in court in a supervisory capacity have been in the Superior Court of the District of Columbia.

**(d) other courts and administrative bodies.**

0%

**(3) What percentage of your litigation has been:**

(a) civil

0%

(b) criminal

100%

(4) **What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.**

I have tried approximately 50 cases to verdict or judgement. I was sole counsel in the majority of the cases, and co-counsel or second-chair in approximately 15 of them.

(5) **What percentage of these trials was to**

(a) a jury;

60%

(b) the court (include cases decided on motion but tabulate them separately).

40%

17. **Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case, (a) the date of representation; (b) the court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and, telephone number(s) of co-counsel and of the principal counsel for the other parties.**

1. United States v. James Barnes, Superior Court Criminal No. 1997 FEL 5518, Judge Michael Rankin. I was sole counsel for the United States. Dates of representation: March 1997 – May 1998.

On March 26, 1997, the victim accepted a ride from the defendant. Instead of borrowing his parents' car as promised, the defendant forced the victim into a mobile home parked

in the backyard. The defendant raped the victim and threatened to kill her when she fought back. He strangled her and severely beat her until some of her teeth were knocked out and her eyes were swollen shut. He did not let her leave until the morning. The defendant, who was on parole for sexually assaulting a 6-year-old child and also raped another woman in the same mobile home in a separate incident close in time to the rape on March 26, 1997. The grand jury indicted the defendant for both rapes, and the trial of the March 26, 1997 rape proceeded first. After a jury trial, the defendant was found guilty of First Degree Sexual Abuse, Kidnapping, and Aggravated Assault and was sentenced to two life terms plus 40 months to 10 years. The case was a significant prosecution for our office, as it was one of the earlier convictions for First Degree Sexual Abuse with Aggravating Circumstances, under the revised sexual abuse laws, which increased the statutory maximum penalty for sexual assaults when one or more aggravating factors are present.

Opposing Counsel

Claudia Crichlow

[Then at the D.C. Public Defender Service]

D.C. Office of Administrative Hearings

441 Fourth Street N.W.

Washington, D.C. 20001

(202) 442-9094

2. United States v. Robert Morris Simms, Superior Court Criminal No. 1997 FEL 5382, Judge Patricia Wynn. I was sole counsel for the United States. Dates of representation: June 1997 – May 1999.

On June 26, 1997, a 15-year-old girl was asleep in bed when the defendant, a 50-year-old friend of the family, climbed a ladder to the girl's third-floor bedroom window and sexually assaulted her. The defendant initially met the family several years earlier when he was hired as a handyman, but he became such a trusted friend that he sometimes picked up the children from school, had his own set of keys, and was given the code to the alarm system. The defendant "groomed" the victim, giving her money and gifts, and emotionally isolated her from her parents by becoming her closest confidant. The defendant initiated sexual contact with the victim, eventually engaging in sexual intercourse with her on a regular basis from age 12 to 15. The defendant was on parole for Rape and Armed Robbery in Virginia. The defendant was convicted at a jury trial of First Degree Sexual Abuse and was sentenced to 12 to 36 years in prison. This was one of the first trials involving PCR/STR DNA analysis, which eventually replaced a previously used method that required larger amounts of biological material to obtain results. Preparing for testimony of the DNA analysts in this case required a significant amount of time, effort, and training to understand a scientific method that was new and unfamiliar to most AUSAs at the time.

Opposing Counsel

Thomas Heslep

419 Seventh St., N.W.  
Washington, D.C. 20004  
(202) 628-0293

3. United States v. Ronnie Jenkins, 870 A.2d 27 (D.C. 2005), Superior Court Criminal No. 1998 FEL 7056, Judge Ronna Beck. I was sole counsel for the United States in proceedings before the Superior Court. Dates of representation: September 1998 – August 1999.

On September 28, 1998, a 7-year-old girl was sexually molested by her mother's live-in boyfriend in their apartment, and her 12-year-old brother walked in on the assault and immediately told his mother what he had just seen. The defendant then took the boy into his bedroom and violently beat him by placing a pillow over the boy's head and repeatedly punching him, slamming the boy's head into the ground with each blow. The following morning, police were called by the children's grandmother. Subsequently, the 7-year-old girl disclosed the abuse, confirming what her 12-year-old brother had witnessed. On February 4, 1999, after a jury trial, the defendant was found guilty of First Degree Cruelty to Children and Second Degree Child Sexual Abuse. On August 16, 1999, the defendant was sentenced to an aggregate term of 8 to 24 years in prison. On appeal, the conviction was affirmed in all respects except that the D.C. Court of Appeals remanded the case to the trial court for further findings with respect to a correction in the court reporter's official transcription of the jury poll. The D.C. Court of Appeals later affirmed the trial court's denial of a subsequently-filed post-conviction motion in an unpublished memorandum opinion and judgment.

Opposing Counsel

Christopher Swaby  
[Then with the D.C. Public Defender Service]  
The Swaby Law Firm  
17837 First Ave., #520  
Normandy Park, Washington 98148  
(206) 212-6752

4. United States v. Efrain Ramirez, 877 A.2d 1040 (D.C. 2005), Superior Court Criminal No. 1999 FEL 4290, Judge Russell Canan. I was sole counsel for the United States in the first trial before the Superior Court, which resulted in a hung jury. I was co-counsel in the re-trial before the Superior Court. Dates of representation: February 1999 – May 2000.

On February 8, 1999, the victim, a 21-year-old student at George Washington University, was attacked in her own apartment by a workman in the building as she was getting ready to go to her economics class. The defendant used a ruse to gain entry to her apartment, telling her that he had to check on a water leak. After locking the door, he asked the victim if she would go on a date with him. The victim repeatedly refused, but gave him her name and phone number on a piece of paper in an attempt to placate him. When the

defendant refused to leave and the victim tried to open the door, the defendant became violent, throwing her to the ground, punching her, strangling her, biting her, and pulling her hair out. When she grabbed a kitchen knife in self-defense, he grabbed the knife from her and injured both of them. The defendant still attempted to rape the victim, but eventually gave up and left, taking much of the blood-stained evidence with him. The victim was taken to the hospital, and the defendant fled the following day to a small town in New York, where he was arrested over four months later under an assumed identity. The first trial resulted in an acquittal on the Burglary count, and in a hung jury as to the remaining charges. At the re-trial, the defendant testified that he and the victim had a prior sexual relationship, and that he had given her \$100 after each prior encounter, but that on the day of the incident, he only gave her \$50, which angered her, resulting in the violent exchange which left them both injured. On February 22, 2000, after a jury trial, the jury hung on Assault with Intent to Commit First Degree Sexual Abuse, and found the defendant guilty of Assault with a Dangerous Weapon. On May 19, 2000, the defendant was sentenced to 40 months to 10 years in prison. The conviction was affirmed on appeal.

Co-Counsel for re-trial

Whitney Ellerman

[Then at the U.S. Attorney's Office for the District of Columbia]

Ellerman Enzinna PLLC

1050 Thirtieth St., N.W.

Washington, D.C. 20007

(202) 753-5553

Opposing Counsel

Jonathan Rapping

[Then with the D.C. Public Defender Service]

Harvard Law School

1563 Massachusetts Avenue

Cambridge, Massachusetts 02138

(617) 495-3109

Karen Pita-Loor

[Then with the D.C. Public Defender Service]

Boston University School of Law

765 Commonwealth Avenue

Boston, Massachusetts 02215

(617) 353-3131

5. United States v. James Willis, Superior Court Criminal No. 2002 FEL 5280, Judge Henry Greene. I was co-counsel for the United States for the first trial, which resulted in a hung jury. I was sole counsel for the re-trial, which resulted in a conviction. Dates of representation: July 1997 – October 1999.

During the summer of 1997, the victim, a 13-year-old girl, was living with her great-aunt, her 12-year-old cousin, and other relatives in Southeast Washington, D.C. The defendant, the former boyfriend of the great-aunt, was a close friend of the family and had lived in their household intermittently for several years. By 1997, the defendant had become a surrogate grandfather to the children, and was present in their home almost every day. On July 29, 1997, the defendant entered the victim's bedroom while she was asleep. He awakened her and told her to lie on the floor and pull her pants down. He then pulled his pants down and sexually assaulted her. The victim's 12-year-old cousin, who was still awake, walked into the darkened bedroom and discovered the defendant, naked from the waist down, lying on top of the victim. The defendant immediately jumped up and pretended to be watching the television. The 12-year-old cousin awakened the great-aunt, who confronted the defendant. The defendant started yelling at the cousin, telling him to stop lying, which frightened the children. The victim, stunned and frightened, falsely denied to her great-aunt that the defendant had sexually assaulted her. After the defendant left the house, the victim disclosed that the defendant had sexually abused her that night and on numerous prior occasions, usually while the family was asleep. She said that the defendant would regularly give her money and candy, and that she was afraid to tell anyone. Preparing for trial involved significant preparation of two traumatized child witnesses, for whom it was extraordinarily difficult to testify in public about extremely private and humiliating events. The government additionally presented the testimony of two medical experts. The first trial ended with a hung jury. At the re-trial, the defendant was found guilty of Second Degree Child Sexual Abuse with Aggravating Circumstances, and he was sentenced to five to fifteen years in prison.

Co-Counsel (for first trial)

Gary H. Collins  
 [Then at the U.S. Attorney's Office for the District of Columbia]  
 BNP Paribas  
 787 Seventh Avenue  
 New York, NY 10019  
 (212) 841-3000

Opposing Counsel  
 Dorsey G. Jones  
 6924 8<sup>th</sup> Street, N.W.  
 Washington, DC 20012  
 (202) 291-1771

18. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).

As Chief of the Sex Offense and Domestic Violence Section, I have directly supervised the most complex and significant cases involving sexual abuse, domestic violence, and human trafficking in the Superior Court of the District of Columbia. My direct supervision has included interviewing traumatized victims and witnesses and presenting their testimony to the grand jury. One such significant case was a five co-defendant case that was one of the most prolonged violent and high-profile investigations of stranger sexual assaults the U.S. Attorney's Office has prosecuted. Right as the summer was beginning in 2006, a series of 5 gunpoint attacks of tourists on the National Mall from May through July gripped the region and focused national attention on this city and on what law enforcement was doing to solve the crimes and prevent future attacks on this sacred national space.

When one of the attacks resulted in the brutal gunpoint rape and sexual assault of a 17-year-old girl by two men, and the beating of her teenage male companion, the public's fear, the focus on the case by government officials at all levels, and scrutiny by the media rose to an even higher level. In all, there were twelve victims in five separate incidents, all of whom were forced at gunpoint to the ground by multiple assailants, and robbed. Four of the female victims were sexually assaulted (one of whom was raped, as described above), and another four of the victims were a family of tourists, including two children under the age of 12. The case was assigned to two AUSAs, and I was the first-line supervisor on the case. I conducted the interview of the 17-year-old rape victim along with the lead detective, and I presented the testimony of the child victims to the grand jury. I reviewed and edited pleadings, and made decisions about charging, pleas, and sentencing allocutions. After an extremely intense investigation during which we worked for virtually the entire summer without a weekend off, where none of the 12 victims was able to identify their assailants, and where forensic testing of evidence collected from the rape victim yielded no DNA evidence, the investigation team ended up getting a break when the defendants started using the stolen credit cards and made internet purchases. Eventually, all five assailants were identified and arrested. We obtained the cooperation of one of the defendants, which resulted in guilty pleas by all of the defendants. The lead defendant, who was only 17 years old at the time of the offenses, was sentenced to 41 years in prison. I, along with my two colleagues who were the prosecutors of record, received special recognition from the United States Park Police for our exhaustive work on the case.

In 2011, I led the successful transition to the SODV Section of all federal cases involving child exploitation, human trafficking, and sex offender registration violations; and sexual assaults, domestic violence, and child abuse occurring on U.S. government property overseas. We have been extremely successful at bringing more cases and obtaining more convictions in these federal cases since they have been handled in the SODV Section. The specialized group of prosecutors I supervise received an Attorney General's Award in 2016 for their outstanding investigation and prosecution of these federal cases, working hand in hand with the FBI's Child Exploitation Task Force. We have worked with the extraordinarily talented Task Force Officer who serves as an undercover in these

investigations, many of which have resulted in the identification of hands-on child sexual abusers in other jurisdictions, and successful prosecutions were subsequently brought in those jurisdictions. Our involvement in each of these investigations, whether they resulted in a case prosecuted in D.C. or in another jurisdiction, amounted to a record number cases generated by any single district in which children have been rescued from sexual abuse and exploitation.

**19. Have you ever held judicial office?**

No.

**If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide four (4) copies of all opinions you wrote during such service as a judge.**

**A. List all court decisions you have made which were reversed or otherwise criticized on appeal.**

**20. Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).**

No.

**21. Political activities and affiliations.**

- **List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.**

None.

- **List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.**

None.

- **Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last five (5) years of \$50 or more.**

None.

**22. To your knowledge, have you ever been investigated, arrested, charged, or convicted**

**(include pleas of guilty or nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, other than for a minor traffic offense? If so, please provide details.**

No.

- 23. Have you or any business of which you are or were an officer, director or owner ever been a party or otherwise involved as a party in any other legal or administrative proceedings? If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a co-conspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.**

No.

- 24. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.**

No.

## II. POTENTIAL CONFLICTS OF INTEREST

1. **Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?**

Yes.

2. **Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.**

None.

3. **Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.**

My domestic partner, Mr. John Marsh, is a Special Agent for the United States Attorney's Office for the District of Columbia. He is a certified computer forensic examiner. In that capacity, he conducts forensic analyses of digital devices (primarily computers, digital storage devices, and cell phones), and sometimes is called as a witness to testify in court. He is also sometimes an affiant for search warrants and arrest warrants. If I am fortunate enough to be confirmed as an Associate Judge of the Superior Court of the District of Columbia, this might present potential conflicts if he were to serve as a witness in a case or an affiant for a search or arrest warrant for a case over which I would preside. In such cases, I would consult and abide by the applicable District of Columbia Code of Judicial Conduct and any other relevant canons and statutes to ensure that I would avoid or resolve any potential conflict of interest.

4. **Describe any business relationship, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest other than while in a federal government capacity.**

None.

5. **Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy other than while as a federal government employee.**

None.

6. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.**

No.

7. **Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.**

If the issue of a potential conflict of interest is raised by a litigant, I would resolve it on a case-by-case basis pursuant to the District of Columbia Code of Judicial Conduct and any other relevant canons and statutes.

8. **If confirmed, do you expect to serve out your full term?**

Yes.

**III. FINANCIAL DATA**

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

**REDACTED**

**IV. DISTRICT OF COLUMBIA REQUIREMENTS**

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section II - 150 1 (b), as amended.

1. **Are you a citizen of the United States?**

Yes.

2. **Are you a member of the bar of the District of Columbia?**

Yes.

3. **Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.**

Yes. I was admitted to the bar of the District of Columbia on May 5, 1995.

4. **If the answer to Question 3 is "no" --**

A. **Are you a professor of law in a law school in the District of Columbia?**

B. **Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?**

C. **Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?**

D. **Upon what grounds is that eligibility based?**

5. **Are you a bona fide resident of the District of Columbia?**

Yes.

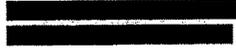
6. **Have you maintained an actual place of abode in the greater Washington, D.C. area for at least five (5) years? Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.**

August 2017 – present

██████████  
██████████

**REDACTED**

September 2010 – July 2017



**REDACTED**

7. **Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?**

No.

8. **Have you been a member of either of these Commissions within the last 12 months?**

No.

9. **Please provide the committee with four (4) copies of your District of Columbia Judicial Nomination commission questionnaire.**

See attached.

AFFIDAVIT

Kelly Higashi, being duly sworn, hereby states that ~~he~~/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of ~~his~~/her knowledge, current, accurate, and complete.



*Kelly Higashi*  
SUBSCRIBED and SWORN TO before me this 23 day of April 2016.

*Medhall Thomas*  
Notary Public

**Response of Kelly A. Higashi  
Nominee to be an Associate Judge, Superior Court of the District of Columbia  
to the Written Question of Ranking Member Claire McCaskill**

- 1. The Superior Court handles a broad range of trial matters and unfortunately an increasing backlog of cases. Currently, the Superior Court is understaffed by nine judges with other announced retirements expected later this year. The Administration has been nominating individuals to fill these Associate Judge vacancies, but this Committee has not advanced five such nominees pending before us even after several months.**

**Given these vacancies, what challenges do you foresee as a new judge entering into an already strained Court?**

Response: If confirmed, I expect that I may be responsible for a larger caseload, and that I may be called upon to handle additional assignments on an *ad hoc* basis, as may be necessary for the Court to fulfill its responsibilities. If confirmed, I will commit to handling these responsibilities and to work cooperatively with the Court's leadership, fellow judges, and staff in any way necessary to deal with the shortage of judicial officers.

**Statement of Frederick M. Nutt**

**Nominee for Controller, Office of Management and Budget**

**United States Senate  
Committee on Homeland Security and Governmental Affairs**

**May 23, 2018**

Good afternoon Chairman Lankford, Ranking Member Peters, Members of the Committee, it is an honor to appear before you today as the Administration's nominee for Controller in the Office of Management and Budget.

I would like to thank the President for nominating me to this position and I'd like to thank Director Mulvaney and Deputy Director for Management Weichert in supporting my nomination.

I would also like to thank my father, Tom Nutt, who is sitting behind me, for being a great father.

I come from a family with a long commitment to public service. My grandfather served in the Iowa House of Representatives, my grandmother was a school teacher and principal, my father served 30 years in the United States Navy and I have nearly 22 years of federal service as a civil servant. After my father's Navy career, my family began farming just 50 miles west of Washington, DC. It was there that I learned how farming was a way of life and a business; a small business subject to factors outside of the farmer's control such as weather, pestilence, and economic decline. I also learned about the importance of being responsible, reliable and consistent.

Years later, my family decided to try our hand at oyster farming in Reedville, Virginia. The Chesapeake Bay's oyster population had been depleted due to overharvesting and other ecological problems. We built a business that produced nearly 600,000 oysters per year, which in addition to providing a food source, filter the Bay's water and reduce the undesirable and excessive algae bloom.

These experiences in farming and oyster aquaculture introduced me to the role that government plays in the everyday lives of the American people. While farming, we interacted with the USDA's Farm Service Agency and the Natural Resources Conservation Service and with oyster farming, we interacted with the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and the state marine resources commission. These experiences gave me an appreciation for the role government plays in our daily lives and how dependent we are for timely and effective interaction with government agencies.

After college, I started my first professional job working as a cost analyst for a defense contractor. Several years later, I worked in the House of Representatives tracking appropriations riders which were important to the Speaker. For the last 15 years, I have worked in management at Federal agencies: the U.S. Environmental Protection Agency; the Millennium Challenge Corporation; and the Overseas Private Investment Corporation. At these agencies I led efforts to track appropriations, modernize, replace and consolidate financial systems, and modernize business systems to improve agency management and achieve savings. My experience leading management professionals in the Federal community taught me that many agencies face the same management issues regardless of size.

At a time when the American people are accessing information instantaneously and ordering food and transportation services over their smart phones, the Federal government needs to modernize and transform the way it operates to be more effective at delivering the mission, to be more customer service oriented to the citizens, and to be good stewards of public assets.

In working to develop solutions for management problems, I've learned how to work with stakeholders with a variety of competing interests and I've learned that improving management in an agency is more than buying new systems. It's about changing the minds of your peers and getting them to adopt bold new ideas. Without the support of internal stakeholders, failure is often a likely outcome.

My experience has given me the knowledge, insight, and desire to lead efforts to address systemic problems including transforming financial management across government. My temperament and ability to convene people with a variety of interests, allows me to lead agency stakeholders to support new solutions. My practical experience has given me a holistic understanding of Federal financial systems and how they interact with other systems. I understand the life-cycle of a Federal dollar from appropriation to disbursement.

My strong interest in improving Federal financial systems across government allows me to work across the "silos" within agencies in the areas of information technology, procurement, and performance management to bring efficiency and transparency to government.

My appreciation for the role government plays in our daily lives; - the need for more efficient and effective government services; - improved transparency, and my experience in working in financial management, - has prepared me to address the issues facing financial management today.

Thank you again Chairman Lankford, Ranking Member Peters, and Members of the Committee for your time and for the opportunity to appear before you today.

I would be glad to take any questions you have.

**REDACTED**

**HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES**

**1. Basic Biographical Information**

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
<b>Name of Position</b>	<b>Date of Nomination</b>
Controller, Office of Federal Financial Management Office of Management and Budget	

<i>Current Legal Name</i>			
<b>First Name</b>	<b>Middle Name</b>	<b>Last Name</b>	<b>Suffix</b>
Frederick	Martin	Nutt	N/A

<i>Addresses</i>					
<b>Residential Address</b> (do not include street address)			<b>Office Address</b> (include street address)		
			Street: 1650 Pennsylvania Ave., NW		
City: Reedville	State: Virginia	Zip: 22539	City: Washington	State: DC	Zip: 20502

<i>Other Names Used</i>						
<b>First Name</b>	<b>Middle Name</b>	<b>Last Name</b>	<b>Suffix</b>	<b>Check if Maiden Name</b>	<b>Name Used From</b> (Month/Year) (Check box if estimate)	<b>Name Used To</b> (Month/Year) (Check box if estimate)
N/A					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Birth Year and Place</i>	
Year of Birth (Do not include month and day.)	Place of Birth
1965	Long Beach, California

<i>Marital Status</i>						
Check All That Describe Your Current Situation:						
Never Married	Married	Separated	Annulled	Divorced	Widowed	
X <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

<i>Spouse's Name (current spouse only)</i>			
Spouse's First Name	Spouse's Middle Name	Spouse's Last Name	Spouse's Suffix
N/A			

<i>Spouse's Other Names Used (current spouse only)</i>						
First Name	Middle Name	Last Name	Suffix	Check if Maiden Name	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
N/A					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Children's Names (if over 18)</i>			
First Name	Middle Name	Last Name	Suffix
N/A			

**2. Education**

List all post-secondary schools attended.

<u>Name of School</u>	<u>Type of School</u> (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	<u>Date Began School</u> (month/year) (check box if estimate)	<u>Date Ended School</u> (month/year) (check box if estimate) (check "present" box if still in school)		<u>Degree</u>	<u>Date Awarded</u>
			Est □	Present □		
Virginia Tech	University	Sept 1983 □	Est □	June 1987 □ Present □	B.S.	June 1987
		Est □	Est □	Present □		
		Est □	Est □	Present □		
		Est □	Est □	Present □		

### 3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

<b>Type of Employment</b> (Active Military Duty Station, National Guard/Reserve, USPS Commissioned Corps, Other Federal employment, State Government (Non-Federal Employment), Self-employment, Unemployment, Federal Contractor, Non-Government Employment (excluding self-employment), Other	<b>Name of Your Employer/Assigned Duty Station</b>	<b>Most Recent Position Title/Rank</b>	<b>Location</b> (City and State only)	<b>Date Employment Began</b> (month/year) (check box if estimate)	<b>Date Employment Ended</b> (month/year) (check box if estimate) (check "present" box if still employed)
Federal Employment	Office of Management and Budget	Senior Advisor	Washington, DC	July 2017	present
Federal Employment	Overseas Private Investment Corporation	Senior Advisor to the Vice President for Management	Washington, DC	October 2012 <input type="checkbox"/> Est	July 2017
Federal Employment	Millennium Challenge Corporation	Director, IT Acquisition	Washington, DC	September 2006 <input type="checkbox"/> Est	October 2012 <input type="checkbox"/> Est
Federal Employment	Environmental Protection Agency	Senior Advisor to the CFO	Washington, DC	October 2002 <input type="checkbox"/> Est	September 2006 <input type="checkbox"/> Est
Non-Government Employment	National Automobile Dealers Association	Legislative Manager	Washington DC	January 2000 <input type="checkbox"/> Est	October 2002 <input type="checkbox"/> Est
Non-Government Employment	American Iron and Steel Institute	Legislative Representative	Washington DC	September 1998 <input type="checkbox"/> Est	January 2000 <input type="checkbox"/> Est
Non-Government Employment	Bitronics Sales	Manager	Catlett, VA	June 1997	September 1998
Federal Employment	U.S House of Representatives	Legislative Assistant	Washington, DC	May 1995	June 1997
Federal Employment	U.S. Senate	Assistant Doorkeeper	Washington, DC	Est X February 1995	May 1995 <input type="checkbox"/> Est
Unemployed	Unemployed	Unemployed	Washington, DC	November 1994	Est X February 1995
Non-Government Employment	Circuit City	Assistant Manager	Richmond, VA	Est X October 1994 <input type="checkbox"/>	Est X November 1994 <input type="checkbox"/>

Non-Government Employment	Citizens for a Sound Economy	Research Assistant	Washington, DC	Est X July 1993 <input type="checkbox"/>	Est X October 1994 <input type="checkbox"/>
Federal Employment	U.S. Department of Commerce	Special Assistant	Washington, DC	Est <input type="checkbox"/> February 1989	Est <input type="checkbox"/> January 1993
Non-Government Employment	Jaycor Technical Services, Inc.	Inventory Manager	Springfield, VA	Est X <input type="checkbox"/> March 1988	Est X <input type="checkbox"/> February 1989
Non-Government Employment	Vredenburg, Inc.	Budget Assistant	Reston, VA	Est X <input type="checkbox"/> September 1987	Est X <input type="checkbox"/> March 1988

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

<u>Name of Government Entity</u>	<u>Name of Position</u>	<u>Date Service Began</u> (month/year) (check box if estimate)	<u>Date Service Ended</u> (month/year) (check box if estimate) (check "present" box if still serving)
N/A		Est <input type="checkbox"/>	Est Present <input type="checkbox"/> <input type="checkbox"/>
		Est <input type="checkbox"/>	Est Present <input type="checkbox"/> <input type="checkbox"/>
		Est <input type="checkbox"/>	Est Present <input type="checkbox"/> <input type="checkbox"/>

**4. Potential Conflict of Interest**

(A) Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated. NONE.

(B) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity. NONE.

**5. Honors and Awards**

List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement. NONE.

**6. Memberships**

List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years.

Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax deductible donation of \$1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

<b><u>Name of Organization</u></b>	<b><u>Dates of Your Membership</u> (You may approximate.)</b>	<b><u>Position(s) Held</u></b>
Project Management Institute	March 2007 to present	Certified Project Management Professional
Grand Lodge of Virginia Mt Carmel Lodge No. 133 Warrenton, VA	1992 to present	Master Mason
BMW Car Club of America	2001 to present	Member
Antique and Classic Boat Society	Sept. 2015 to present	Member
American Radio Relay League	January 2015 to present	Member

**7. Political Activity**

(A) Have you ever been a candidate for or been elected or appointed to a political office?

<u>Name of Office</u>	<u>Elected/Appointed/ Candidate Only</u>	<u>Year(s) Election Held or Appointment Made</u>	<u>Term of Service (if applicable)</u>
N/A			

**(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.**

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>
NRCC	Campaign Volunteer	Get Out The Vote effort	October/November 2006
John McCain for President	Campaign Volunteer	Get Out The Vote effort	October/November 2008
Mitt Romney for President	Campaign Volunteer	Get Out The Vote effort	October/November 2012

**(C) Itemize all individual political contributions of \$200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.**

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>
Mitt Romney for President	1000.00	2012
NRCC	1000.00	2012
Mitt Romney for President	1500.00	2012
Mitt Romney for President	2500.00	2012

Allen West for Congress	500.00	2012
Rob Wittman for Congress	500.00	2012
Republican Party of Virginia	500.00	2014
Ed Gillespie for Senate	500.00	2014
Rob Wittman for Congress	500.00	2014
Fairfax County Republican Committee	500.00	2014
Jeb Bush/Right to Rise PAC	2500.00	2015
Republican Party of Virginia	1000.00	2015
Jeb Bush for President	2700.00	2015
Scott Lingamfeller for Delegate (Virginia)	500.00	2015
Margaret Ransone for Delegate (Virginia)	500.00 (?)	2015
Republican Party of Virginia	2500.00	2016
Rob Wittman for Congress	1500.00	2016
Tom Garrett for Congress	1000.00	2016
Tom Garrett for Congress	250.00	2017

### **8. Publications and Speeches**

**(A) List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet. Please provide**

the Committee with copies of all listed publications. In lieu of hard copies, electronic copies can be provided via e-mail or other digital format.

<u>Title</u>	<u>Publisher</u>	<u>Date(s) of Publication</u>
N/A		

(B) List any formal speeches you have delivered during the last five years and provide the Committee with copies of those speeches relevant to the position for which you have been nominated. Include any testimony to Congress or any other legislative or administrative body. These items can be provided electronically via e-mail or other digital format.

<u>Title/Topic</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
N/A		

(C) List all speeches and testimony you have delivered in the past ten years, except for those the text of which you are providing to the Committee.

<u>Title</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
N/A		

### 9. Criminal History

Since (and including) your 18<sup>th</sup> birthday, has any of the following happened?

- Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Exclude citations involving traffic infractions where the fine was less than \$300 and did not include alcohol or drugs.) **NO.**
- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official? **NO.**
- Have you been charged, convicted, or sentenced of a crime in any court? **NO.**
- Have you been or are you currently on probation or parole? **NO.**
- Are you currently on trial or awaiting a trial on criminal charges? **NO.**

- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation?  
NO.

**If the answer to any of the questions above is yes, please answer the questions below for each criminal event (citation, arrest, investigation, etc.). If the event was an investigation, where the question below asks for information about the offense, please offer information about the offense under investigation (if known).**

- A) Date of offense: N/A
- a. Is this an estimate (Yes/No):
- B) Description of the specific nature of the offense:
- C) Did the offense involve any of the following?
- 1) Domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common: Yes / No
  - 2) Firearms or explosives: Yes / No
  - 3) Alcohol or drugs: Yes / No
- D) Location where the offense occurred (city, county, state, zip code, country):
- E) Were you arrested, summoned, cited or did you receive a ticket to appear as a result of this offense by any police officer, sheriff, marshal or any other type of law enforcement official: Yes / No
- 1) Name of the law enforcement agency that arrested/cited/summoned you:
  - 2) Location of the law enforcement agency (city, county, state, zip code, country):
- F) As a result of this offense were you charged, convicted, currently awaiting trial, and/or ordered to appear in court in a criminal proceeding against you: Yes / No
- 1) If yes, provide the name of the court and the location of the court (city, county, state, zip code, country):
  - 2) If yes, provide all the charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, charge dropped or "nolle pros," etc). If you were found guilty or pleaded guilty to a lesser offense, list separately both the original charge and the lesser offense:
  - 3) If no, provide explanation:
- G) Were you sentenced as a result of this offense: Yes / No
- H) Provide a description of the sentence:
- I) Were you sentenced to imprisonment for a term exceeding one year: Yes / No

- J) Were you incarcerated as a result of that sentence for not less than one year: Yes / No
- K) If the conviction resulted in imprisonment, provide the dates that you actually were incarcerated:
- L) If conviction resulted in probation or parole, provide the dates of probation or parole:
- M) Are you currently on trial, awaiting a trial, or awaiting sentencing on criminal charges for this offense: Yes /  
No
- N) Provide explanation:

**10. Civil Litigation and Administrative or Legislative Proceedings**

(A) Since (and including) your 18th birthday, have you been a party to any public record civil court action or administrative or legislative proceeding of any kind that resulted in (1) a finding of wrongdoing against you, or (2) a settlement agreement for you, or some other person or entity, to make a payment to settle allegations against you, or for you to take, or refrain from taking, some action. Do NOT include small claims proceedings.

<u>Date Claim/Suit Was Filed or Legislative Proceedings Began</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>
Sued tenant for past rent.	DC Landlord Tenant Court	Fred Nutt (landlord) vs Patricia Conrad (tenant)	Sued for past rent for a period of three months.	Awarded judgement for 3 months of rent.

(B) In addition to those listed above, have you or any business of which you were an officer, director or owner ever been involved as a party of interest in any administrative agency proceeding or civil litigation? Please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

<u>Date Claim/Suit Was Filed</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>
N/A				

(C) For responses to the previous question, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity. None.

**11. Breach of Professional Ethics**

(A) Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed.

<u>Name of Agency/Association/</u>	<u>Date Citation/Disciplinary</u>	<u>Describe Citation/Disciplinary Action/Complaint</u>	<u>Results of Disciplinary Action/Complaint</u>
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<u>Committee/Group</u>	<u>Action/Complaint Issued/Initiated</u>		
N/A			

(B) Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy? NO.

**12. Tax Compliance**

(This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

**REDACTED**

**REDACTED**

**13. Lobbying**

**In the past ten years, have you registered as a lobbyist? NO. If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State). N/A**

**14. Outside Positions**

**None.**

See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

For the preceding ten calendar years and the current calendar year, report any positions held, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

<u>Name of Organization</u>	<u>Address of Organization</u>	<u>Type of Organization</u> (corporation, firm, partnership, other business enterprise, other non-profit organization, educational institution)	<u>Position Held</u>	<u>Position Held From</u> (month/year)	<u>Position Held To</u> (month/year)
See OGE Form 278					

**15. Agreements or Arrangements**

See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.

<u>Status and Terms of Any Agreement or Arrangement</u>	<u>Parties</u>	<u>Date</u> (month/year)
N/A		

**16. Additional Financial Data**

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

**REDACTED**

**REDACTED**

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**SIGNATURE AND DATE**

hereby state that I have read the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

*Fredrick Martin North*

*5 September 2017*

This \_\_\_\_\_ day of \_\_\_\_\_, 20



September 6, 2017

Yasaman Sutton  
Alternate Designated Agency Ethics Official  
Office of Management and Budget  
725 17<sup>th</sup> Street, NW  
Washington, DC 20503

Dear Ms. Sutton:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Controller of the Office of Federal Financial Management, Office of Management and Budget.

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.

Upon confirmation, I will resign from my position with BGM Services, Inc. For a period of one year after my resignation from BGM Services, Inc., I will not participate personally and substantially in any particular matter involving specific parties in which I know that BGM Services, Inc. is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

My father and I are owners of Reedville Enterprises LLC and Reedville Oysters LLC. I do not have an active role in any of these entities. I will continue to have a financial interest in each of these entities, but I will not provide services material to the production of income to any of these entities. Instead, I will receive only passive investment income from them. I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on the financial interests of any of these entities, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1).

I will meet in person with you during the first week of my service in the position of Controller of the Office of Federal Financial Management in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will also document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), or obligations of the United States.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order no. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,

  
Frederick Martin Nutt

**REDACTED**

UNITED STATES OFFICE OF  
**GOVERNMENT ETHICS**



October 19, 2017

The Honorable Ron Johnson  
Chairman  
Committee on Homeland Security  
and Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

By letter dated September, 10, 2017, the Office of Government Ethics (OGE) transmitted to the Committee the financial disclosure report of Frederick Martin Nutt in connection with his nomination for the position of Controller, Office of Federal Financial Management, Office of Management and Budget. Enclosed are a letter from the Office of Management and Budget and a letter from Mr. Nutt supplementing his financial disclosure report.

We have reviewed this additional submission and have also obtained advice from the Office of Management and Budget concerning any possible conflict in light of its functions and the nominee's proposed duties. Based on the information provided, OGE continues to believe that Mr. Nutt is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

**DAVID APOI**

Digitally signed by DAVID APOI  
DN: cn=DAVID APOI, o=U.S. Government, ou=Office of  
Government Ethics, email=DAVID.APOI,  
c=US, 1.2.840.113549.1.11=05470219181876  
Date: 2017.10.19 12:21:06 -0400

David J. Apoi  
Acting Director and General Counsel

Enclosures

**REDACTED**





EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

Yasaman Sutton  
Alternate Designated Agency Ethics Official  
Office of the General Counsel  
Office of Management and Budget  
725 17<sup>th</sup> Street, NW  
Washington, D.C. 20503

October 17, 2017

David J. Apol  
Acting Director and General Counsel  
U.S. Office of Government Ethics  
1201 New York Avenue, Suite 500  
Washington, D.C. 20005-3017

Dear Mr. Apol:

Enclosed please find an amendment made by Mr. Fred Nutt to his original 278e. This amendment, signed by Mr. Nutt on October 17, 2017, identifies his ownership interest in Morningstar of Catlett LLC on the day he filed the 278e. Mr. Nutt filed his 278e on May 2, 2017. On May 8, 2017, Mr. Nutt's interest in Morningstar of Catlett LLC and its assets were transferred to his Father and placed into a revocable trust. Mr. Nutt has no present financial interest in the assets of that trust. In addition, to be sure, he is not a trustee of that (or any other) trust.

Based on my review of Mr. Nutt's OGE Form 278e and these amendments, it is my opinion that the report is complete and discloses no conflicts of interest under applicable laws and regulations.

If you have any questions, please do not hesitate to reach me at 202-395-7535.

Very Respectfully,

A handwritten signature in cursive script that reads "Yasaman Sutton".

Yasaman Sutton  
Assistant General Counsel and  
Alternate Designated Agency Ethics Official

Enclosure (as stated) **REDACTED**

**U.S. Senate Committee on Homeland Security and Governmental Affairs  
Pre-hearing Questionnaire  
For the Nomination of Frederick M. Nutt to be  
Controller - Office of Federal Financial Management  
Office of Management and Budget**

**I. Nomination Process and Conflicts of Interest**

1. Did the President give you specific reasons why he nominated you to be the next Controller -- Office of Federal Financial Management (OFFM) at the Office of Management and Budget (OMB) (hereinafter referred to as "Controller")? (ANSWER) No.
2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain. (ANSWER) No.
3. Have you made any commitments with respect to the policies and principles you will attempt to implement as Controller? If so, what are they, and to whom were the commitments made? (ANSWER) No.
4. Are you aware of any business relationship, dealing, or financial transaction that could result in a possible conflict of interest for you or the appearance of a conflict of interest? If so, please explain what procedures you will use to recuse yourself or otherwise address the conflict. And if you will recuse yourself, explain how you will ensure your responsibilities are not affected by your recusal. (ANSWER) I am not aware of any conflicts and went through a thorough review with the OMB Alternate Ethics Official and the Office of Government Ethics.

**II. Background of the Nominee**

5. What specific background, experience, and attributes qualify you to be Controller? (ANSWER) I have over 15 years of Federal management experience including financial management in the Office of the CFO at the Environmental Protection Agency, the Office of the Vice President for Administration and Finance at Millennium Challenge Corporation and the Office of the Vice President for Management and Administration at the Overseas Private Investment Corporation. This experience includes enhanced financial management systems, transitioning an agency's payroll system to a shared service provider, assessing business systems requirements and acquiring new financial, business and reporting systems.
6. Please describe:
  - a. Your leadership and management style. (ANSWER) My leadership style is professional and respectful, offering constructive criticism and encouragement to staff. I prefer to delegate tasks and provide feedback in a positive way. I believe that a happy staff will be a productive staff and look for opportunities to keep them motivated and connected to the mission.

- b. Your experience managing personnel. (ANSWER) I have managed both Federal employees and contractor personnel.
- c. What is the largest number of people that have worked under you? (ANSWER) The largest number of people working under me would be seven Federal employees and approximately 60 contractor personnel.
7. 31 U.S.C. § 504 requires that the President appoint a Controller who possesses “demonstrated ability and practical experience in accounting, financial management and financial systems . . . .” Please describe your ability in these areas. (ANSWER) My experience in accounting, financial management and financial systems includes: Conducting analysis on agencies’ accounting and financial management systems, developing and gathering requirements for the acquisition of new systems, evaluating shared services provided by other Federal agencies, migrating an agency to a new payroll provider. While at the Millennium Challenge Corporation and the Overseas Private Investment Corporation, I lead the annual effort to formulate budgets for the management functions of the agency and worked on a daily basis with the finance and accounting staff on execution, requisitioning, committing and obligating funds and conducting reviews to address unliquidated balances and undelivered orders.
8. The statute also requires that the Controller possess “extensive practical experience in financial management in large governmental or business entities.” Please describe your experience managing the finances of a large entity. (ANSWER) While at the Environmental Protection Agency I worked in the Office of the Chief Financial Officer and supported the budget planning process, working with component offices on their budget requests, the President’s Management Agenda priorities of Improved Financial Management and Budget and Performance Integration. I worked on the transfer of the Environmental Protection Agency’s payroll from an internal system to a shared service provider. I also identified, tracked and reviewed the status of congressional earmarks in the agency’s appropriations.

### III. Role of the Controller

9. Please describe your view of OFFM’s core mission and the Controller’s role in achieving that mission. (ANSWER) The mission of OFFM is to support improved and transparent financial management and reporting and reduce waste, fraud and abuse. The Controller’s role is to facilitate necessary policy and guidance to the agencies so to improve their reporting and to advance policies to improve effectiveness and efficiency in financial management.
10. In your opinion, is OFFM currently fulfilling its financial management policy responsibilities? If not, what would you do differently as Controller? (ANSWER) Yes, I think the office has a highly professional, well-motivated team.

11. How do you view your role as Controller with respect to the CFO Council? (ANSWER)  
The Controller is the chair of the CFO Council and serves as leader and facilitator of the forum where CFOs, their deputies and staff are able discuss financial management issues and collaborate and develop common solutions. If confirmed, I would see my role to lead the council to develop solutions with the agencies and work with policy officials to implement appropriate solutions, legislative or otherwise.

12. **IV. Policy Questions**

*Management*

13. What do you believe are the most pressing internal and external challenges currently facing OFFM? Which challenges will you prioritize and what do you plan to do to address each of those challenges? (ANSWER) It think the office would be more effective if we made a stronger effort to collaborate with the other management functions. The recently announced President's Management Agenda will require improved collaboration to modernize government and make it more efficient and effective.
14. In your view, what are the highest priorities in both urgency and importance for enhancing Federal financial management? Why? (ANSWER) There are improvements to be made in the areas of improper payments, data standardization and transparency, IT cost transparency and shared services. If confirmed, I would make these my priority areas under the President's Management Agenda. The names of these cross agency priority goals are Results Oriented Accountability for Grants, Getting Payments Right, Data as a Strategic Asset, and Sharing Quality Services). Addressing these areas would result less waste, better information leading to improved decision-making, more efficient use of resources and more efficient and effective government.
15. What measurements would you use to determine whether your office is successful? (ANSWER) If confirmed, I would focus on all these priorities and ensure the measures of success are realized. For example, I would focus on the reduction in monetary loss due to improper payments and the reduction in the number of improper payments due to administrative errors and incomplete or processing errors.
16. OMB is expected to have an important role in developing and implementing the President's Management Agenda.
- a. If confirmed as Controller, you will be involved in the execution of President Trump's March 13, 2017 Executive Order on reorganizing government. The previous Controller, David Mader, said that Trump's reorganization plan gives an opportunity for "career executives to put forward their own bold plans on how to make delivery of the mission better." Do you agree with former Controller Mader's assessment of the reorganization process? (ANSWER) I have not been briefed on the details of any reorganization plans, however Yes, I agree. This is a key tenet of the President's

Management Agenda that the agencies, including civil service employees, can propose solutions to improve customer service, efficiency and effectiveness of government programs.

- b. What role do you foresee for OFFM in the development and implementation of reorganization plans? (ANSWER) I have not been in any meetings regarding reorganization and cannot speak to the specifics of any plans.
  - c. What statutory changes do you believe will be necessary in order to properly implement an effective modernization and reorganization? (ANSWER) I have not been in any meetings or discussions regarding reorganization plans.
17. How would you handle employee disciplinary issues within the OFFM? (ANSWER) If confirmed, the only direct report I would have would be the Deputy Controller. If I had a problem with the Deputy Controller, I would discuss the issue(s) with this person and if need be have a meeting with the appropriate Human Resources staff.
- a. How would you respond to underperforming employees within the OFFM? (ANSWER) Except for the Deputy Controller, I would expect the Deputy Controller to address any staff management issues consistent with Federal personnel policy and as needed appropriate Human Resources staff.
  - b. Please explain your views on putting an employee on paid administrative leave pending an investigation or disciplinary action. Under what circumstances, if any, do you believe that might be appropriate? (ANSWER) I would anticipate that might be appropriate if an investigation had to be conducted and the employee needed to be removed from the office/workplace while an investigation was conducted by Human Resources or the Office of General Counsel, whichever is appropriate.
18. What role, if any, should OFFM play in ensuring agency collaboration and greater sharing of data helpful for curbing waste and fraud? If confirmed how do you plan to carry out this role? (ANSWER) If confirmed, I would direct OFFM staff to work with agencies to identify institutional, statutory and other roadblocks to allow agencies access to databases which would reduce or eliminate waste and fraud. Also by leveraging data as a strategic asset and improving spending transparency would also help reduce waste and fraud. I would direct OFFM to work with agencies to identify solutions (legislative or otherwise) to address improper payments and work with appropriate committees and staff to implement them.
19. Do you agree with the importance of publicly disclosing the Federal government's performance goals and the results achieved? (ANSWER) Yes, reporting to the public is critical to transparency which is necessary to maintaining taxpayer support for Federal programs.
20. Protecting whistleblower confidentiality is of the utmost importance to this Committee.

- a. How do you plan to implement policies within the OFFM to encourage employees to bring constructive suggestions forward without the fear of reprisal? (ANSWER) I would tell staff of the importance of following the Whistleblower Act and have a presentation on the act and how an employee would report a violation.
  - b. Do you commit without reservation to work to ensure that any whistleblower within OFFM does not face retaliation? (ANSWER) Yes.
  - c. Do you commit without reservation to take all appropriate action if notified about potential whistleblower retaliation? (ANSWER) Yes.
21. Sec. 1122 of Government Performance and Results Modernization Act of 2010 (GPRAMA) instructs OMB to “issue guidance to ensure that such information is provided in a way that presents a coherent picture of all Federal programs, and the performance of the Federal government as well as individual agencies.” The statute also states that the standards set for transparency and frequency of updates are the minimum.
- a. If confirmed, what steps will you take to ensure that disclosures to the public are provided in a coherent and easily accessible manner? (ANSWER) I would direct that the information be presented in a direct and intuitive way that results in a user friendly experience.
  - b. If confirmed, would you support OMB using its website to provide transparency and accountability to the public, including beyond the statutorily required minimums if necessary for coherence and comprehensiveness? (ANSWER) Yes, I am very supportive of using an appropriately designed website to improve transparency and accountability.

*Improper Payment, Performance, and Transparency*

22. Of the 24 agencies included in the Chief Financial Officers Act of 1990 (CFO Act), only 9 were reported by their inspectors general as compliant with the Improper Payments Elimination and Recover Act of 2010 (IPERA). What steps will you take as Controller to ensure that all agencies comply with improper payments laws? (ANSWER) I understand that Improper Payments is an important issue and if confirmed by the Senate, I would make reducing the monetary loss and the number of improper payments to be one of my top priorities.
- a. The 15 CFO Act agencies that were noncompliant with IPERA accounted for \$132 billion of the \$136.7 billion in improper payments in fiscal year 2015. Other than improving IPERA compliance, what steps will you take to reduce improper payments at these 15 agencies? (ANSWER) If confirmed, I would work to improve IPERA compliance.
23. From 2010 to 2013, total annual improper payments dropped from \$121 billion to \$106 billion. However, the improper payment rates rose sharply over the last 3 years of the

Obama Administration, totaling over \$144 billion in 2016. What lessons can be learned from the declining improper payments at the beginning of the decade, and what steps can be taken to ensure that improper payments are reduced over time? (ANSWER) I understand that each year a different number of agencies were included in the aggregate number of agencies, each with their own different mission oriented programs, conducting their own improper payment projections, and using data from different fiscal years, and that over the years, agencies became better at identifying improper payments. All of these factors contribute to the improper payment numbers we have seen. If confirmed, I would make reducing improper payments one of my top priorities.

24. Prior to the Obama Administration, improper payments were not identified or recorded in a manner that allows us to compare them to previous years. However, we do know that over the course of his presidency, close to \$1 trillion was paid by the Federal government to the wrong recipient, in the incorrect amount, for an improper purpose, or for purposes that were not adequately documented. What initiatives of the previous administration will you incorporate into your strategy to reduce improper payments and which will you abandon? (ANSWER) If confirmed by the Senate, I would focus on stopping improper payments from being made in the first place. I would also focus on the programs with the largest improper payments resulting in monetary loss first, and I would abandon aggregating data across agencies and their programs as this does not help policymakers address the problems with improper payments.
25. The Digital Accountability and Transparency Act of 2014 (DATA Act), was a priority for the Committee during the 113<sup>th</sup> Congress. Key implementation deadlines are approaching. What steps will you take to ensure that the DATA Act implementation stays on track? If confirmed, I would work with the agencies to make sure that they are submitting required data on time.
26. The Committee has worked to pass the Taxpayer's Right to Know Act for several years now. The legislation attempts to link the funding information required by the DATA Act with performance information. What is your opinion of the Taxpayer's Right to Know Act? (ANSWER) I am very supportive of improving transparency in government activities and would like to learn more about the specific provisions in this act.

*Real Property*

27. What do you believe are the principal obstacles that the Federal government faces in the management of and, where appropriate, disposition of Federal real property? (ANSWER) Federal real property is not managed or valued adequately and agencies are not incentivized to properly manage their real property.
28. In 2012, then-Controller Danny Werfel issued a memorandum implementing Executive Order M-12-12 Section 3: Freeze the Footprint. While the savings associated with the Freeze the Footprint policy were later questioned, the effort did succeed in pausing the government's expansion of its real property footprint. Will you commit to continuing efforts to reduce the Federal real property footprint? (ANSWER) Yes.

- a. What changes, if any, do you believe are appropriate to the “Reduce the Footprint” initiative? (ANSWER) I’m not familiar with the specific details to be able to make recommendations to changes in the policy at this time.
29. In December 2016, the Federal Assets Sale and Transfer Act (P.L. 114-578) was signed into law, which establishes a Public Buildings Reform Board to identify and sell excess real property. What steps are you currently taking to ensure the full implementation of this legislation? (ANSWER) I understand that the Public Buildings Reform Board currently has no chair, nor members. What additional steps will you take in the future? (ANSWER) When the board has a chair and enough members to establish a quorum, I would look forward to working with them.
30. What, if any, reforms would you suggest to expedite the process for disposing of excess, underutilized, or surplus real property? (ANSWER) I’m not familiar enough with the specific details to comment on this, but if confirmed, would look forward to learning more about this subject
31. Do you believe that new legislative authority is necessary to make it easier for Federal agencies to better manage their real property holdings? If so, what sort of legislation would address this need? (ANSWER) I’m not familiar enough with the details to suggest that new legislation is required at this time, but if confirmed by the Senate, I would recommend to the President that the board be stood up, and per FASTA, work with the board to identify potential assets for disposal/sale.
32. What do you see as the appropriate role of the Federal Real Property Council in Federal real property management? (ANSWER) I see the role of the Federal Real Property Council to elevate Federal real property issues at the agencies to better manage their real property assets.

*Government Accountability Office (GAO) High Risk List*

33. Every two years GAO releases a list and report on the most critical issues facing the United States Government. Success at remediating the items on the list requires sustained leadership commitment and constant communication with the Comptroller General. If confirmed, will you commit to regular interaction with the Comptroller General and GAO staff on the High Risk List? (ANSWER) Yes.
34. This year, the U.S. Census was included on the High Risk List due escalating costs, delays, and a lack of attention to GAO’s recommendations by previous Census Director Thompson. Will you commit to prioritizing the financial management of this important national program and to working with the Commerce Department CFO to improve financial management at the Census Bureau? (ANSWER) Yes.

*Financial Management Systems*

35. What is your view of the government's current financial reporting requirements? (ANSWER) The current financial reporting requirements force the agencies to go through a rigorous process resulting in improved financial management. I understand there are some concerns that the process is overly burdensome.
- a) Would you support any revisions to OMB Circular A-136, Financial Reporting Requirements? (ANSWER) Yes, if confirmed, I would be open to consider making changes to the A-136, Financial Reporting.
- b) If so, what are they? If not, why not? (ANSWER) I would consider changes that make the reporting less burdensome, more transparent and useful to the public without degrading the quality that the current process has produced.
36. The Obama Administration emphasized the importance of having appropriate risk management processes and systems to identify challenges early, to bring them to the attention of Agency leadership, and to develop solutions. As part of this effort, OMB updated Circular A-123 in July 2016, to adopt a more integrated risk management structure. The updated Circular A-123 requires Agencies to implement an enterprise risk management capability coordinated with the strategic planning and strategic review process established by the GPRA Modernization Act, and the internal control processes required by the Federal Managers' Financial Integrity Act (FMFIA) and GAO's Green Book.
- a. Do you support the integrated approach detailed in Circular A-123? If not, please explain your view on the appropriate approach to ensuring agencies maintain appropriate risk management practices. (ANSWER) Yes, I support the enterprise risk management approach in A-123.
37. A recent GAO report found that DATA Act reporting across the Federal government has serious problems with data accuracy, completeness, and consistency. In particular, reported records of award payments were very often inconsistent with agency data. What is your view of the appropriate approach to improving the quality of data reporting under the DATA Act? (ANSWER) Yes, I am aware that there are data quality issues with DATA Act reporting. If confirmed, I would work with the appropriate staff and agencies to make improvements in the quality and timeliness of the data.
38. OFFM plays an important role in coordinating Federal grant administration. Do you believe that any changes are appropriate in the current limits on administrative cost recovery for grant recipients? (ANSWER) I understand that there has been interest in capping indirect costs on Federal grants and that parts of the grants recipient community have voiced their concern. I would have to work to familiarize myself further on the issue.

## V. Relations with Congress

39. Do you agree without reservation to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed? (ANSWER) Yes.
40. Do you agree without reservation to make any subordinate official or employee available to appear and testify before, or provide information to, any duly constituted committee of Congress if you are confirmed? (ANSWER) Yes.
41. Do you agree without reservation to comply fully, completely, and promptly to any request for documents, communications, or any other agency material or information from any duly constituted committee of the Congress if you are confirmed? (ANSWER) Yes.

**VI. Assistance**

42. Are these answers your own? (ANSWER) Yes. Have you consulted with OMB or any other interested parties? (ANSWER) ) Yes. I have consulted with members of OMB's Management, Legislative Affairs and General Counsel staff in addition to OPIC's Human Resources Office to seek clarification on the technical aspects of some of these questions.

**Minority  
Supplemental Pre-hearing Questionnaire  
For the Nomination of Frederick Nutt to be  
Controller of the Office of Federal Financial Management – Office of Management and  
Budget**

**I. Nomination Process and Conflicts of Interest**

1. Has the President or his staff asked you to sign a confidentiality or non-disclosure agreement? (ANSWER) No.
2. Has the President or his staff asked you to pledge loyalty to the President or the Administration? (ANSWER) No.
3. During your tenure have you asked any Federal employee or potential hire to pledge loyalty to the President, Administration, or any other government official? (ANSWER) No.

**II. Background of Nominee**

4. Do you seek out dissenting views and how do you encourage constructive critical dialogue with subordinates? (ANSWER) Yes, I do seek out different views and I think it's helpful hear alternate views to better understand an issue.
5. Please give examples of times in your career when you disagreed with your superiors and aggressively advocated your position. (ANSWER) I was put in charge of an office which was not following a consistent policy. Were you ever successful? (ANSWER) Yes, I made my case to various senior leaders and sought their support for my position.
6. Please list and describe examples of when you made difficult choices that you thought were in the best interest of the country. (ANSWER) In the previous example, I thought that a consistent policy, which was recognized across government was for the overall benefit of the country and the agency I worked at.
7. What would you consider your greatest success as an employee at OMB? (ANSWER) During my time at OMB the work that I have put into the cross agency priority (CAP) goals has been my greatest success. My effort has resulted in CAP goals for addressing improper payments, improving transparency in IT spending, and improving accountability in grants.
8. What would you consider your greatest failure as an employee at OMB? What lessons did you learn from that experience? (ANSWER) As with coming to any new organization there is a period of getting to know the organization, the people and the culture. I had to face some challenges in getting to know how OMB works and how to accomplish tasks in a busy environment, and this was further complicated by having the deputy controller retire during this period.

9. In July 2017, you began working at OMB as a senior advisor to the OMB Director.
- a. Please describe your current role and responsibilities as Senior Advisor at OMB.  
(ANSWER) My role has been to advise the Deputy Director for Management and the Director on policy matters relating to financial management, financial reporting, real property, grants and Federal assistance.
  - b. Please provide a list of your direct reports and those individuals to whom you directly report. (ANSWER) As a senior advisor, I have no direct reports. I report to the Deputy Director for Management.
  - c. Have you received any guidance regarding compliance with the Federal Vacancies Reform Act? If so, please describe what guidance you have received. (ANSWER) I have not received any guidance regarding the Federal Vacancies Act.
  - d. Have you received copies of delegation of authorities applicable to the position of Controller or to your current position as Senior Advisor to the OMB Director? (ANSWER) No.
  - e. Please explain what specific tasks assigned to the Controller that you are barred from performing in your current capacity as Senior Advisor. Please explain what steps OMB has taken to ensure that you and OMB staff comply with these limitations. (ANSWER) I report to and advise the Deputy Director for Management and do not issue any directives, memoranda, or guidance.

### III. Accountability

24. During your career as a Federal employee, have you ever used a personal email account or device to conduct official government business? (ANSWER) No.
- a. If so, please list in what government positions you have used a personal email account or device to conduct official government business. (ANSWER) Not applicable.
  - b. If you used a personal device, please describe your general practice for doing so, and what specific steps you have taken to ensure that Federal records created using personal devices and accounts were preserved. (ANSWER) Not applicable.
  - c. During your tenure as a Federal employee or member of the beachhead team, have you used a smartphone app including, but not limited to, WhatsApp, Signal, Confide, and others that support encryption or the ability to automatically delete messages after they are read or sent, for work-related communications? If so, please indicate which application, when it was use, how often and with whom. (ANSWER) Not applicable.

25. What is your assessment of the oversight work performed by the IGs over the past decade? What do you view as the greatest challenges facing the IG community? What do you see OMB's role in addressing these challenges? (ANSWER) I am very supportive of the role the IG community performs in the Executive Branch. I'm not aware of particular challenges.
26. During your career, has your conduct as a Federal employee ever been subject to an investigation or audit by an Inspector General, Office of Special Counsel, Equal Employment Opportunity Commission, Department of Justice, or any other Federal investigative entity? If so, please describe the investigation or audit and its outcome. (ANSWER) My conduct as a Federal employee has never been subject to investigation or audit by any Federal investigative entity.
- When I was a managing director at OPIC, an employee who worked for me was charged with three instances of misconduct. As a result, I recommended that OPIC remove him from employment. The employee appealed the action to the Merit Systems Protection Board and filed an EEO complaint against OPIC, alleging discrimination on the basis of race and religion. I participated as a witness and provided information to OPIC in these two matters. OPIC has since settled the matters with the employee.
27. During your career as a Federal employee, have you ever declined to implement recommendations made by CIGIE, the Office of Government Ethics, the Office of Special Counsel or the Government Accountability Office? (ANSWER) No. If so, please describe the recommendations that were made and your reasoning for not implementing them.
28. If confirmed, do you pledge to implement recommendations made by CIGIE, the Office of Special Counsel and the Government Accountability Office? (ANSWER) Yes.
29. Please describe any prior experience you have working with whistleblowers and what steps you would take, if confirmed, to ensure that your employees feel comfortable reporting waste, fraud, and abuse without fear of reprisal? (ANSWER) I have never worked with a whistleblower. I am supportive of the role whistleblowers play in the Executive Branch.

#### **IV. Relations with Congress and the Public**

30. If confirmed, how will you make certain that you will respond in a timely manner to Member requests for information? (ANSWER) I will prioritize responses to Member requests for information.

31. If confirmed, do you agree without reservation to reply to any reasonable request for information from the Ranking Member of any duly constituted committee of the Congress? (ANSWER) Yes.
32. If confirmed, do you agree without reservation to reply to any reasonable request for information from members of Congress? (ANSWER) Yes. If you are directed to ignore requests from minority members, will you comply? (ANSWER) I will reply to any reasonable request from minority and majority Members of Congress.
33. If confirmed, do you commit to protect subordinate officials or employees from reprisal or retaliation for any testimony, briefings or communications with Members of Congress? (ANSWER) Yes.
34. If confirmed, will you ensure that your staff will fully and promptly provide information and access to appropriate documents and officials in response to requests made by the Government Accountability Office (GAO) and the Congressional Research Service? (ANSWER) Yes.
35. If confirmed, will you agree to work with representatives from this Committee and the GAO to promptly implement recommendations for improving OMB's operations and effectiveness? (ANSWER) Yes.
36. If confirmed, will you direct your staff to fully and promptly respond to Freedom of Information Act requests submitted by the American people? (ANSWER) Yes.
37. If confirmed, will you ensure that political appointees are not inappropriately involved in the review and release of Freedom of Information Act requests? (ANSWER) Yes.
38. If confirmed, will you keep this Committee apprised of new information if it materially impacts the accuracy of information your agency's officials have provided us? (ANSWER) Yes.

#### V. Assistance

39. Are these answers completely your own? If not, who has provided you with assistance? (ANSWER) Yes. I have consulted with members of OMB's Management, Legislative Affairs and General Counsel staff in addition to OPIC's Human Resources Office to seek clarification on the technical aspects of some of these questions.
40. Have you consulted with OMB or any other interested parties? If so, please indicate which entities. (ANSWER) Yes, I have consulted with members of OMB's Management, Legislative Affairs and General Counsel staff in addition to OPIC's Human Resources Office to seek clarification on the technical aspects of some of these questions.

I, Frederick M. Nott hereby state that I have read the foregoing Pre-Hearing Questionnaire and Supplemental Questionnaires and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

  
(Signature)

This 11<sup>th</sup> day of May, 2018

**Senator James Lankford  
Post-Hearing Questions for the Record  
Submitted to Mr. Frederick Nutt**

**Nominations of Emory Rounds to be Director, U.S. Office of Government Ethics;  
Kelly Higashi to be an Associate Judge, Superior Court of the District of Columbia;  
and Frederick Nutt to be Controller, Office of Federal Financial Management,  
Office of Management and Budget  
Wednesday May 23, 2018**

- 1) The Administration released infrastructure priorities last year, and among them was a section emphasizing the need to divest unneeded properties in a more timely and efficient manner. Though some of this timely and efficient divestment may need to be addressed through statutory change, what can be done at OMB to streamline and speed some of the process along?

(ANSWER) The Administration is committed to divesting unneeded properties to save taxpayer dollars and improve the efficiency of the federal real property portfolio. The Reduce the Footprint policy and the National Strategy for the Efficient Use of Real Property are successfully driving the divestiture of unneeded properties. The Administration is working to improve agencies' long-term planning capabilities to fully identify assets for divestiture in a timely manner. It has fully implemented all the requirements of the Federal Property Management Reform Act of 2016 and the agencies have developed the recommended disposition actions required under the Federal Assets Sale and Transfer Act of 2016 to drive divestiture as well.

- 2) In line with this property disposal effort, the Army Corps has been directed to evaluate all of their assets to determine which are central to their mission and which are unneeded several years ago in the Water Resources Development Act. This study will likely go through OMB before being released. Can you commit to working collaboratively with the Army Corps to help Congress relieve some of the burden brought on by these holdings?

(ANSWER) I understand the Administration policy is to dispose of property that agencies no longer require to carry out their missions. If confirmed I would look forward to working with the Army Corps on relieving burden associated with these holdings.

- 3) As you know, the Federal Asset Sale and Transfer Act (FASTA) became law in December of 2016. It is my understanding that the civilian FASTA board has not yet been appointed, possibly in part because GSA has had limited success to solicit recommendations on high value properties that can be disposed of. The success of

FASTA relies on agency cooperation. What efforts do you believe OMB should take to ensure that agencies are taking their role in this process seriously?

(ANSWER) I know of no relationship between the high value property recommendations the Administration has received from the agencies and the status of the Public Buildings Reform Board created by FASTA. The processes of identifying, assessing, and reviewing high value properties is ongoing within the Administration and at this time it is premature to characterize the results.

- 4) DATA Act for Government-wide Financial Management: Now that the DATA Act of 2014 has required agencies to report their spending information as open data, using a single, searchable format, how will your office use that data to inform government-wide financial management?

(ANSWER) As of this month, agencies have completed their first full year of DATA Act Reporting, which has continued to improve for each quarter. Further, this spring OMB released the President's Management Agenda which prioritizes Data, Accountability and Transparency, with a Cross-Agency Priority (CAP) goal on "Leveraging Data as a Strategic Asset". As this reporting continues to mature, we are working with agencies based on the results of OIG and GAO reports to improve their internal controls over DATA Act reporting and to provide reasonable assurances over these controls in their annual assurance statement. At the same time, we are actively exploring new ways that this data can be used to inform Federal financial management policy more broadly. For example, we are beginning to explore whether this data could be useful in better managing IT spending, and also whether we can begin to connect this spending data to other open data sets that provide information about results.

I look forward to exploring this issue with you and the Committee further.

- 5) Grants Modernization and Presidential Management Agenda: You are one of the three federal executives responsible for the Administration's goal of "Results-Oriented Accountability for Grants," published as one of the Cross-Agency Priority Goals in the President's Management Agenda. The first step toward that goal is creating a single, searchable data format for the core information reported by federal grantees, just as the DATA Act mandated for the core spending information reported by agencies. When the Controller and the Treasury Department created the DATA Act format, the Controller's office published proposed data fields for spending information, before finalizing them, so that transparency advocates and spending leaders could comment. Will you do the same with grant information and publish the proposed grant data fields before they are finalized?

(ANSWER) As reflected in the Cross-Agency Priority goal action plan, the CAP goal leaders recognize the need to solicit stakeholder feedback and input on all three strategies, including the development of a comprehensive taxonomy for core grants management data standards. By the end of this year, the CAP goal leaders expect to have more detailed information on how formal stakeholder feedback will be solicited and will consider the lessons learned under DATA Act implementation and other similar efforts as formalizing the outreach strategy. The core capabilities that are informing the data standards are already available online at:

<https://www.ussm.gov/fibf-gm/>.

**Ranking Member Claire McCaskill  
Post-Hearing Questions for the Record  
Submitted to Mr. Frederick Nutt**

**Nominations of Emory Rounds to be Director, U.S. Office of Government Ethics; Kelly Higashi to be an Associate Judge, Superior Court of the District of Columbia; and Frederick Nutt to be Controller, Office of Federal Financial Management, Office of Management and Budget  
Wednesday May 23, 2018**

**QUESTIONS**

**COOPERATION WITH CONGRESS**

Q: If confirmed, will you ensure that you and your staff cooperate with oversight requests issued by the relevant ranking members?

(ANSWER) Yes, if confirmed, I would look forward to working with the Members of the Committee on answering their requests.

Q: Based on your prior experience, how do you plan to work with Congress to address improper payments across the federal government?

(ANSWER) If confirmed, and as a goal leader for the Getting Payments Right CAP goal, my intent would be to continue to prioritize preventing monetary losses to the government. In addition, I am aware of a new improper payments bill, S.2948 which you recently introduced and was referred to HSGAC. If confirmed I look forward to working with you and the committee on this legislation. I also look forward to working collaboratively with Congress, GAO, the Inspectors General community, and the Chief Financial Officers Council to focus on the prevention of improper payments. I am committed to finding lasting solutions to put improper payment rates on a declining path and look forward to working with Congress to achieve this goal.

**IMPROPER PAYMENTS**

Improper payments by the federal government have been a problem for a number of years, and OFFM has the responsibility for coordinating federal agency efforts to combat the problem.

Q: What do you regard as the best measure of success in OFFM's efforts to reduce improper payments?

(ANSWER) I believe the best measure of success is reducing the amount of monetary loss to the government. Since each program which makes payments is structured differently, I would focus at the program level and prioritize those programs with the greatest monetary loss. The most accurate way to assess whether the Government is

making progress is by reviewing the changes in the individual program improper payment estimates over time. In addition, I also believe the changes in program monetary loss estimates is a key metric to track.

- Q: You have said that you do not support calculating and publishing a government-wide improper payments rate. Why not, and what alternative do you propose for promoting transparency about improper payments?

(ANSWER) My concern with the aggregated number is that it does not lend itself to addressing the root causes each agency faces. Focusing on program level improper payment estimates is a more accurate method and allows OMB to develop policy aimed at preventing improper payments. The publication of a government-wide rate is misleading due to the wide array of statistical methods used by programs. In addition, the years represented in each individual program estimate vary, which causes misrepresentation when aggregated to represent a fiscal year government-wide rate. The number and composition of the agencies reporting changes from year to year; by aggregating, one agency's success at reducing improper payments can be obscured by another agency's poor performance. My proposal for promoting transparency is to continue to publish the improper payment rates for each agency on the [paymentaccuracy.gov](http://paymentaccuracy.gov) website. It is my understanding that the Office of Federal Financial Management posts improper payment data, including rates for all programs which are required by law on [www.paymentaccuracy.gov](http://www.paymentaccuracy.gov). This site has a new chart engine which promotes transparency in the posted data by allowing the public to visually display improper payment data in easy to read charts and graphs.

#### **GOVERNMENT REORGANIZATION**

- Q: During your tenure at OMB, have you been involved in the development of the President's Management Agenda?

(ANSWER) Yes, and I am a Cross-Agency Priority (CAP) goal leader on three of the CAP goals: Getting Payments Right; Results Oriented Accountability for Grants; and Improving Outcomes through Federal IT Spending Transparency.

- Q: Do you expect OFFM to play an important role in this forthcoming reorganization? What do you expect OFFM's role to be?

(ANSWER) The Administration has a strong vision for improving and modernizing the Federal Government and recognizes that no single channel of action can accomplish this task alone. The President's Management Agenda (PMA) lays out a broad framework for strengthening our ability to deliver mission outcomes, provide excellent service, and effectively steward taxpayer dollars on behalf of the American people and explicitly notes reorganization is one of multiple tools for achieving this transformation. OFFM will support these closely connected efforts in all appropriate ways.

**REAL PROPERTY MANAGEMENT**

The Federal Assets Sale and Transfer Act established a Public Buildings Reform Board to identify and sell excess federal real property. The act was signed into law in December of 2016.

Q: Has the Board been established?

(ANSWER) The Board has not been established as of May, 2018.

Q: If not, when do you expect that the Board will be established?

(ANSWER) The Administration is working to identify individuals with the appropriate experience and credentials to serve on the Board. I understand the Board could not be established absent the required budget appropriation, and that the required budget appropriation was not provided until March, 2018.

**Senator Thomas R. Carper  
Post-Hearing Questions for the Record  
Submitted to Mr. Frederick Nutt**

**Nominations of Emory Rounds to be Director, U.S. Office of Government Ethics; Kelly Higashi to be an Associate Judge, Superior Court of the District of Columbia; and Frederick Nutt to be Controller, Office of Federal Financial Management, Office of Management and Budget  
Wednesday May 23, 2018**

**1. DOD Financial Auditing**

This committee has for years pressed for strong accounting and auditing standards so that federal agencies understand how the money is spent, and agencies can ensure that federal dollars are spent appropriately. One federal agency has yet to conduct a clean financial audit: the Department of Defense.

If confirmed, how do you plan on ensuring that the Department of Defense meet not only the requirements of law, but basic accounting standards and eventually have a clean financial audit?

(ANSWER) If confirmed, I will work with the Department of Defense to ensure it is able to implement its Financial Improvement and Audit Readiness (FIAR) Plan as it conducts its first full financial statement audit for FY 2018. In addition, I will work with the DOD Chief Financial Officer as he develops audit remediation plans and moves from being able to conduct an audit, to being able to address auditor recommendations, and to ultimately getting a clean opinion.

I understand that an issue arose in the recent past pertaining to DOD's accounting and reporting of property, plant, and equipment (PP&E). Because the existing Federal Accounting Standards Advisory Board (FASAB) accounting standards did not address some PP&E circumstances unique to DOD, over the past year FASAB issued additional guidance that will help DOD and can also be applied to other agencies, if needed. This guidance consists of a standard on August 4, 2016, and a technical release on April 10, 2017. FASAB is currently working on additional guidance to address other issues unique to DOD and unaddressed in existing standards.

If confirmed, I will work to ensure that any additional FASAB guidance needed is issued and I will also work to ensure that any necessary updates to OMB's Circular A-136, Financial Reporting Requirements, are made in a timely manner. In addition, I will work with the Department of the Treasury's Bureau of Fiscal Service, as necessary, to ensure that DOD's financial information is properly reflected in the Government-wide Financial Report.

**2. GAO High Risk List**

Each new Congress, the GAO issues its High Risk report, highlighting areas across government which may be susceptible to fraud, waste, abuse, or mismanagement. One criterion that GAO uses to remove an issue from the list is sustained leadership commitment. I believe OMB can play a critical role in this regard.

If confirmed, how do you plan to work with GAO to address issues on this list?

(ANSWER) I understand that for more than ten years, OMB has regularly convened meetings between senior leadership at GAO and agencies identified on the high-risk list to discuss status updates and drive progress on addressing the identified risks. If confirmed, I plan to continue this practice by focusing on the financial management issues that are on the high-risk list and participating in the high risk program portfolio review meetings with the OMB Deputy Director for Management, agency leaders, and GAO. I will also remain committed to improving and supporting the Federal government's management of real property, DoD's efforts to achieve audit, and Medicare and Medicaid's efforts to prevent improper payments, all of which are included in the GAO high-risk list.

Are there issues on the list that you think are within striking distance of being removed?

(ANSWER) OMB issued guidance in April 2018 (M-18-15) requiring agencies to submit to OMB an update on issues identified on GAO's High Risk list. As part of the update, agencies will be providing an assessment of when the agency anticipates being able to address or partially address these areas with GAO. OMB will be actively reviewing these assessments from agencies throughout the summer and meeting with agencies in the coming months, to discuss next steps for achieving progress in addressing these issues.

**Senator Heidi Heitkamp  
Post-Hearing Questions for the Record  
Submitted to Mr. Frederick Nutt**

**Nominations of Emory Rounds to be Director, U.S. Office of Government Ethics; Kelly Higashi to be an Associate Judge, Superior Court of the District of Columbia; and Frederick Nutt to be Controller, Office of Federal Financial Management, Office of Management and Budget  
Wednesday May 23, 2018**

1. I want to ask you a few questions about the Federal Agency Reorganization effort and the President's Management Agenda. When the President announced the agency reorganization effort in March of 2017, he said in part:

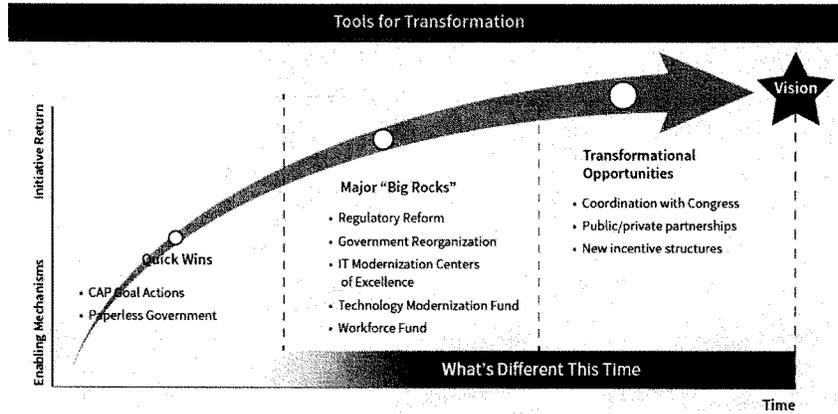
*"This order requires a thorough examination of every executive department and agency to see where money is being wasted, how services can be improved, and whether programs are truly serving American citizens."*

Then, on March 20, 2018, the Administration released its Presidential Management Agenda. In the intro to the Agenda, the document lays out its goals:

*"...A long-term vision for modernizing the Federal Government in key areas that will improve the ability of agencies to deliver mission outcomes, provide excellent service, and effectively steward taxpayer dollars on behalf of the American people."*

**a. Do those two goals sound strikingly similar to you?**

(ANSWER) The Administration has a strong vision for improving and modernizing the Federal Government and recognizes that no single channel of action can accomplish this task alone. The President's Management Agenda (PMA) lays out a broad framework for strengthening our ability to deliver mission outcomes, provide excellent service, and effectively steward taxpayer dollars on behalf of the American people and explicitly notes that reorganization is one of multiple tools for achieving this transformation. The graphic below, which appears in the PMA, underscores this connection:



2. During your recent staff interview, you talked about how one of your key focuses during your recent work as a Senior Advisor at OMB was on the President's Management Agenda. However, you also said you had not been briefed on the Agency Reorganization plans and couldn't comment on that initiative.

a. **In your current role as a Senior Advisor at OMB, do you believe that OMB sees these as two separate initiatives? Why or why not?**

(ANSWER) The President's Management Agenda explicitly recognizes reorganization as one of multiple tools that the Administration will use to advance its important work to strengthen mission, service, and stewardship on behalf of Americans. These two initiatives are closely connected, mutually reinforcing, and fully aligned.

b. **Is it a good idea that these are two separate initiatives?**

(ANSWER) These two initiatives are closely connected, mutually reinforcing, and fully aligned in strengthening mission, service, and stewardship on behalf of Americans.

c. **Should OMB take steps to coordinate between these two initiatives? If so, what steps should they take?**

(ANSWER) These two initiatives are closely connected, mutually reinforcing, and fully aligned in strengthening mission, service, and stewardship on behalf of Americans.

- d. If confirmed to a leadership position within OMB, what steps will you commit to taking to ensure that there is not duplication of effort between the ongoing Agency Reorganization effort and the President's Management Agenda?**

(ANSWER) As envisioned by the President's Management Agenda, I will work alongside my OMB colleagues to ensure that these two initiatives are closely connected, mutually reinforcing, and fully aligned in strengthening mission, service, and stewardship on behalf of Americans.

- e. What role has and will feedback from the public play in the ongoing development and execution of the President's Management Agenda?**

(ANSWER) We strive to keep the American public engaged on our performance initiatives, and value their input into how Government can improve to serve them. We seek to enable feedback from the public. For example, one of the CAP Goals is to improve the customer experience with Federal services, working across a range of agencies and programs and using data to capture and analyze the voices of citizens. Our openness to feedback is also exemplified by the launch of the President's Management Agenda, which occurred outside of the Beltway in Kansas City, MO. Leaders from OMB, OPM, GSA, and USDA conducted a listening tour that reached farmers, small business owners, veterans, community leaders represented in the local Chamber of Commerce, and Federal employees from across agencies.

- f. Should that same standard apply to OMB's efforts to manage the Agency Reorganization process? Should the public have a role in providing comments to that effort as well?**

(ANSWER) The Administration welcomes the public's comments and recently sought input from the public through the OMB website.

- g. Is it important, in your opinion, for agencies to receive and use public comments while executing initiatives such as the President's Management Agenda or the Agency Reorganization effort? Why?**

(ANSWER) The Administration welcomes the public's comments and values their input into how Government can improve to serve them.

- 3. It has been reported that OMB has lost more than 100,000 comments that the public submitted during the agency reorganization process. Those reports are extremely troubling, and the American people deserve better.**

- a. What steps should OMB take to prevent a repeat of this incident?**

(ANSWER) I understand that OMB has not lost any public comments. On May 15, 2017, the Federal Register published a Notice of Request for Comments on the agency reorganization process on behalf of OMB. Between May 15 and June 12, 2017 more than 100,000 comments were submitted. The public comments were transmitted to agencies in rolling tranches for review and incorporation into the initial reform ideas they submitted to OMB.

4. The federal government has long struggled to solve its Information Technology (IT) programs. Successful Financial Management obviously relies a great deal on having robust IT to maximize efficiency.

**a. Why has the federal government struggled so much with IT challenges?**

(ANSWER) The federal government has struggled with IT challenges due to cybersecurity risks, lack of IT service effectiveness, significant cost overruns, slow adaptation of cutting edge technologies, and outdated, insecure legacy systems. Agencies are faced with the structural challenge of reconciling the annual appropriations with planning their long-term IT projects. Specifically regarding financial management, many of the systems used throughout government have had challenges as a result of lengthy IT investment planning, a lack of standards that result in inertia once systems are in place, costly and lengthy change processes, and IT that is not easily upgraded or replaced with modern capabilities. Further, CFOs spend a significant portion of time and resources on system challenges versus on analysis and other value add tasks.

**b. What steps would you take in your new role to overcome these types of challenges?**

(ANSWER) I am confident that, if confirmed, my office will work with the Office of the Federal CIO (OFCIO), Federal agencies, and industry to effectively overcome the government's IT challenges. Specifically, I will work to support the priorities identified in the President's Management Agenda (PMA) regarding IT modernization: (1) Enhancing Mission Effectiveness; (2) Reducing Cybersecurity Risks to the Federal Mission, and (3) Building a Modern IT Workforce. Additionally, with respect to financial management systems, I will ensure the government has the most modern systems possible with the best value for the government, which requires less duplication and more standardization. Both IT modernization and Financial Management Systems are included as PMA CAP goals.

**Senator Gary C. Peters**  
**Post-Hearing Questions for the Record**  
**Submitted to Mr. Frederick Nutt**

**Nominations of Emory Rounds to be Director, U.S. Office of Government Ethics; Kelly Higashi to be an Associate Judge, Superior Court of the District of Columbia; and Frederick Nutt to be Controller, Office of Federal Financial Management, Office of Management and Budget**  
**Wednesday May 23, 2018**

1. The federal government has been working to reduce its real property portfolio by disposing of unneeded and underutilized properties and reducing the number of short-term leases used for office space. In order to facilitate this, agencies may want to move employees into newly consolidated offices, but such moves can be hampered by rules or regulations created by the Office of Management and Budget (OMB) or Congress. For example, OMB limits the ability for agencies to enter into capital leases that would culminate in government ownership of property. Additionally, laws passed by Congress prevent most federal agencies from entering into leaseback agreements that would allow for the disposal of property but allow the government to lease space within it. **If confirmed as Controller, will you commit to examining and, if necessary, revising OMB rules that prevent the federal government from making cost-saving property management decisions? Will you further commit to working with Congress to identify laws, rules, and regulations that are an impediment to the disposal of unneeded or underutilized federal property?**

(ANSWER) OMB is continually reviewing its policies to improve the efficiency and cost effectiveness of government operations. This Administration has prioritized the repeal of redundant, outdated, and overlapping policy and regulation since its inception. The Administration's Infrastructure Initiative proposed to streamline the disposal process by eliminating all public benefit conveyance processes and allowing agencies to take unneeded federal property directly to sale and retain the net proceeds, maximizing the value of assets to the taxpayer. The Administration's initiative also proposed the expanded use of the GSA Disposal Fund to allow GSA to support agency disposal costs prior to the Report of Excess and recoup those costs from the gross proceeds of sale. This additional authority would help agencies to move unneeded properties to disposal when the discretionary funds may not be available within the agency. The OMB policies and guidance for real property facilitate, rather than hinder, agencies identifying cost savings opportunities. The Reduce the Footprint policy and the National Strategy for the Efficient Use of Real Property provide a framework that incentivizes agencies to prioritize cost savings and cost avoidance actions. Agencies' results are publicly reported on Performance.gov, and annual cost avoidance generated by the agencies is reported to GAO and congressional oversight committees.

The scoring rules that apply to capital leases and leasebacks are the result of a triparty agreement among OMB, the Congressional Budget Office, and Congressional Budget Committees. The scoring rules are designed to ensure that there is transparency into the full cost of the transaction, to acquire assets in the most cost effective manner, and to ensure that there is a level playing field for deciding which capital projects to fund, regardless of how they are financed.

2. Cost savings can be achieved through better processes to help federal agencies manage personal property, including equipment, office supplies and furniture, and technology. The Government Accountability Office has found that federal agencies often need reminders to ensure that excess personal property is disposed of in a regular and timely manner. **As Controller, how would you view OMB's role in working with the General Services Administration (GSA) and other federal agencies to ensure these processes are taking place?**

(ANSWER) OMB is reviewing the existing personal property policy framework to determine whether additional action/authority is needed to more efficiently manage the government's personal property. OMB worked closely with GAO on its personal property report (GAO-18-257, "Opportunities Exist to Improve Identification of Unneeded Property for Disposal") and is assessing GAO's recommendation.

3. Whenever federal agencies make purchases, enter into leases, or enter into rental agreements for equipment, they are supposed to conduct a cost analysis to compare all available options and ensure the government is getting the best deal possible. **In your view, what role does the OMB Controller play in ensuring these cost analyses are conducted as frequently, and as rigorously, as possible?**

(ANSWER) In my view, agencies conducting the appropriate cost analysis prior to entering into a purchase, lease or rental agreement is essential to the strong stewardship of taxpayer dollars. The OMB Controller has a critical role in providing the policy framework and leadership to support agencies' efforts to ensure that these analyses are completed in a consistent, repeatable manner. OMB provides the policy framework for this oversight via Circular A-94, "Guidelines And Discount Rates For Benefit-Cost Analysis of Federal Programs," along with the budget guidelines provided in OMB Circular A-11, so that agencies have clear guidance to conduct a full benefit cost analysis for any action that provides benefits/costs three or more years into the future. Further, the Reduce the Footprint policy requires that agencies are only to retrofit office space if that retrofit is demonstrated to be cost effective. If confirmed, I look forward to working with agencies and the committee on these issues.

4. In your pre-hearing questionnaire, you agreed without reservation to reply to any reasonable request for information from members of Congress, whether in the majority or minority. As the Ranking Member of the Federal Spending Oversight and Emergency Management Subcommittee, I frequently conduct oversight of issues that would fall under your portfolio as Controller at OMB. Unfortunately, in the last year, OMB has not been sufficiently cooperative or responsive to our oversight. **If confirmed, how will you do better at being responsive to Congress? What good faith efforts will you undertake to respond in a timely manner to reasonable requests for information from members of Congress, whether they are in the majority or minority?**

(ANSWER) If confirmed for the position of Controller, I would look forward to working with Members of the Committee and would make it a priority to respond to questions or requests for information.