

**NOMINATIONS OF HON. COLLEEN D. KIKO,
HON. ANNE M. WAGNER, AND DAVID HUITEMA**

HEARING

BEFORE THE

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

SECOND SESSION

NOMINATIONS OF HON. COLLEEN D. KIKO AND
HON. ANNE M. WAGNER TO BE MEMBERS, FEDERAL LABOR
RELATIONS AUTHORITY, AND DAVID HUITEMA TO BE DIRECTOR,
OFFICE OF GOVERNMENT ETHICS

APRIL 17, 2024

Available via the World Wide Web: <http://www.govinfo.gov>

Printed for the use of the
Committee on Homeland Security and Governmental Affairs



U.S. GOVERNMENT PUBLISHING OFFICE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

GARY C. PETERS, Michigan, *Chairman*

THOMAS R. CARPER, Delaware	RAND PAUL, Kentucky
MAGGIE HASSAN, New Hampshire	RON JOHNSON, Wisconsin
KYRSTEN SINEMA, Arizona	JAMES LANKFORD, Oklahoma
JACKY ROSEN, Nevada	MITT ROMNEY, Utah
JON OSSOFF, Georgia	RICK SCOTT, Florida
RICHARD BLUMENTHAL, Connecticut	JOSH HAWLEY, Missouri
LAPHONZA BUTLER, California	ROGER MARSHALL, Kansas

DAVID M. WEINBERG, *Staff Director*

CLAUDINE J. BRENNER, *Senior Counsel*

DEVIN M. PARSONS, *Professional Staff Member*

WILLIAM E. HENDERSON III, *Minority Staff Director*

CHRISTINA N. SALAZAR, *Minority Chief Counsel*

ANDREW J. HOPKINS, *Minority Counsel*

LAURA W. KILBRIDE, *Chief Clerk*

ASHLEY A. GONZALEZ, *Hearing Clerk*

CONTENTS

Opening statements:	Page
Senator Blumenthal	1
Senator Marshall	2
Senator Peters	11
Senator Hawley	13
Senator Rosen	15
Prepared statements:	
Senator Blumenthal	19
Senator Marshall	20

WITNESSES

WEDNESDAY, APRIL 17, 2024

Hon. Colleen D. Kiko, to be member, Federal Labor Relations Authority	
Testimony	3
Prepared statement	22
Biographical and professional information	24
Letter from U.S. Office of Government Ethics	47
Responses to pre-hearing questions	50
Responses to post-hearing questions	64
Hon. Anne Wagner, to be member, Federal Labor Relations Authority	
Testimony	5
Prepared statement	68
Biographical and professional information	70
Letter from U.S. Office of Government Ethics	89
Responses to pre-hearing questions	92
Letter of Support	104
David Huitema, to be Director, Office of Government Ethics	
Testimony	6
Prepared statement	106
Biographical and professional information	108
Letter from U.S. Office of Government Ethics	131
Responses to pre-hearing questions	134
Responses to post-hearing questions	156

**NOMINATIONS OF
HON. COLLEEN D. KIKO,
HON. ANNE WAGNER, AND DAVID HUITEMA**

WEDNESDAY, APRIL 17, 2024

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

The Committee met, pursuant to notice, at 9:31 a.m., in room SD-342, Dirksen Senate Office Building, Hon. Gary Peters, Chair of the Committee, presiding.

Present: Senators Peters [presiding], Hassan, Rosen, Blumenthal, Ossoff, Scott, Hawley, and Marshall.

OPENING STATEMENT OF SENATOR BLUMENTHAL¹

Senator BLUMENTHAL. This hearing of the U.S. Senate Committee on Homeland Security and Governmental Affairs (HSGAC). We are here to discuss two important agencies within our government. The Federal Labor Relations Authority (FLRA) and the Office of Government Ethics (OGE).

The FLRA is an independent administrative agency, as you all know, responsible for enforcing Federal employees collective bargaining rights. The OGE is an independent agency that leads and oversees the Executive Branch ethics program.

Together, these two bodies ensure that Federal employees' rights are protected and our government adheres to the highest standards of ethics. These are vital functions and I look forward to exploring more with our nominees here today.

I want to welcome our nominees and their families if they are here with them. Congratulations, thank you, each of you for your public service, as well as your willingness to serve in these important positions. I am going to be chairing this hearing until Senator Peters arrives. We want to move forward with this hearing right on time because we have another afterward and I am going to turn to the Ranking Member.

¹The prepared statement of Senator Blumenthal appears in the Appendix on page 19.

OPENING STATEMENT OF SENATOR MARSHALL¹

Senator MARSHALL. Thank you Chairman. Today as Chair Blumenthal just mentioned, the Homeland Security and Governmental Affairs Committee will hold a hearing on three nominations. I am honored to welcome Colleen Kiko, Anne Wagner and David Huitema.

I want to thank the three of you for your intention to serve our country as public servants. While preparing for this hearing, I was struck by how many of you drew inspiration to enter public service from those close to you. Like yourselves, I was surrounded by individuals who dedicated their lives to serving their fellow Americans, including my father, who was a police officer for 30 years, but also a long lineage of people serving in the military and now continued by my son serving in the military as well.

Combined with the lessons you have learned from those individuals, you have also added the experiences of your professional careers. Together, these have prepared the three of you for this opportunity to serve the Nation.

Ms. Kiko, and Ms. Wagner, should you be confirmed to these positions with the advice and consent of the U.S. Senate, you will be charged with resolving complaints of unfair labor practices, determining the appropriateness of units for labor, organization representation, adjudicating exceptions for arbitrators' awards, adjudicating legal issues relating to the duty to bargain, and resolving impasses during negotiations.

Both of you have the track records to fulfill these duties. You, Ms. Kiko, have already served a term as the FLRA chairwoman and you, Ms. Wagner, have a long career in this field, with your most recent work being as the Associate Special Counsel (ASC) with the Office of Special Counsel (OSC). I look forward to hearing both of your testimonies and asking you further questions to determine your suitability for these roles.

Finally, Mr. Huitema, should you be confirmed as Director of the Office of Government Ethics, you must be able to lead and oversee the Executive Branch ethics program by making and interpreting ethics laws and regulations, support and train Executive Branch ethics officials, administer the Executive Branch Financial Disclosure Systems, monitor senior leaders compliance with Ethics Committee, ensure agencies comply with ethics programs requirements, and make ethics information available to the public.

Like Ms. Kiko, Ms. Wagner, your resume speaks for itself, as you have a long history with the State Department (DOS) and currently manage the department's ethics program. Thank you for being here. I look forward to hearing your testimony and asking you questions.

Once again, I would like to thank all the nominees for their desire and willingness to serve. I look forward to learning more about your qualifications and hearing your testimonies. Thank you, Mr. Chairman.

Senator BLUMENTHAL. Thanks, Senator Marshall. I will introduce the nominees in the order that they are seated. Colleen Kiko, nominated to serve an additional term as member of the Federal

¹The prepared statement of Senator Marshall appears in the Appendix on page 20.

Labor Relations Authority, has served since 2017 in that capacity and has led the agency's chairman from 2017 to 2021. She holds a Juris Doctor (JD) from Scalia Law School and a Bachelor of Science (BS) degree from North Dakota State University.

Anne Wagner, nominated to be a member of the Federal Labor Relations Authority, currently serves as an Associate Special Counsel in the Office of Special Counsel. That's a role she's held since 2015. Ms. Wagner received her bachelor's degree from the University of Notre Dame and her law degree from George Washington University (GWU) School of Law.

Mr. David Huitema, nominated to be director of the Office of Government Ethics, served as the Department of State's Assistant Legal Advisor for Ethics and Financial Disclosure since 2016. He holds a JD from Stanford Law School, an a Master of Arts (MA) from the University of Texas at Austin, and a Bachelor of Arts (BA) from the University of North Carolina (UNC) at Chapel Hill.

Our custom, as you may know, is to swear the witnesses. If you would please stand and raise your right hand. Do you swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you, God?

Ms. KIKO. I do.

Ms. WAGNER. I do.

Mr. HUITEMA. I do.

Senator BLUMENTHAL. Thank you. If any of you have opening statements, we would be pleased to hear them. Ms. Kiko.

TESTIMONY OF COLLEEN D. KIKO,¹ TO BE MEMBER, FEDERAL LABOR RELATIONS AUTHORITY

Ms. KIKO. Good morning, Chair Blumenthal, Ranking Member Marshall, Members of the Committee. I thank you and your staff for all the kindness that you have shown me as I prepared for this hearing. My daughter Sarah, is with me today. My husband, Phil Kiko, is tied up on a matter on the other side of the hill, or he would be here today. I appreciate all the love and support provided by him and all my family during this process.

I would also like to thank Anna Molpus, Murray Duncan, David Eddy, and Rebecca Osborne from the FLRA for their kind assistance throughout this process. I am especially grateful for Chairman Grundmann, who has been ever so supportive and a pleasure to work with.

As someone who started their Federal career as a general service (GS-3) clerk-typist, I am truly honored to have been re-nominated to serve as a Member of the Federal Labor Relations Authority.

I thank President Biden for the opportunity to serve in this capacity, should I be confirmed. My dedication to Federal service was influenced by my parents. My father, Lawrence E. Duffy, proudly spent over 49 years, almost a half a century in the Federal service before retiring. After a stint in the U.S. Army, he was a railway mail carrier for the U.S. Postal Service (USPS) in North Dakota and later became a U.S. Customs Inspector at the North Dakota/Canada border. His work ethic, extreme pride in his job and impec-

¹The prepared statement of Ms. Kiko appears in the Appendix on page 22.

cable character were examples for me. To this day, I strive to live up to them.

My mother, Angie Duffy, always encouraged all of us to strive for careers to broaden our horizons. She pushed all of us to be strong and independent. I would like to point out a few areas of my career that make me particularly qualified for this position. I was an employee of this agency at its inception when the duties of the Assistant Secretary of Labor for Labor Management Relations were transferred into the new FLRA in 1979. I was there when the agency opened its doors, and I was there celebrating with its first birthday cake.

After joining the newly established FLRA, I worked in almost every component of the agency. In a regional office, I investigated unfair labor practice charges, chaired representational hearings, monitored Federal union elections, and conducted training for unions and agencies. In the Authority component, I reviewed representational disputes, administrative law judge (ALJ) decisions and drafted decisions for the Authority Members. My last position before I left to attend law school was a supervisory labor relations specialist managing procedural motions for the agency. The FLRA has played an important role in shaping me into a professional employee. I graduated from Antonin Scalia Law School in Arlington in 1986. Just 19 years later, I would find myself back at the FLRA serving as a Senate confirmed General Counsel (GC).

Another 12 years later, I was confirmed to serve as Member of the Authority and designated by the President to serve as Chairman. My career keeps taking me back to my FLRA roots. My time as Chairman of the Agency provided me with unique insights into the challenges facing the agency. Steering the agency through the unprecedented Coronavirus Disease 2019 (COVID-19) public health challenge was one of the greatest challenges and most significant accomplishments of my career in public service.

As Chairman, I also partnered with the Federal Mediation and Conciliation Service (FMCS) to create a successful pilot program for mediating negotiable disputes. Oversaw many elements of the agency's ongoing transition from paper to electronic files, including significant improvements in its e-filing and case management systems, and involved employees from all agency components in innovative teams to implement the FLRA's strategic plan and address opportunities for improvement from the Federal Employee Viewpoint Survey (FEVS).

As Chairman and Member, I have worked with my colleagues to resolve unfair labor practice disputes, determine the appropriateness of units for labor representation, adjudicated exceptions to arbitrator's awards, and resolve legal issues relating to the duty to bargain.

I am continually impressed with the FLRA's employees who are some of the most dedicated public employees I have ever met. I believe my 35 years in the Federal Government, 20 years in the labor field, will continue to serve me well in this agency where we are commissioned to provide leadership relating to matters under the Federal Service Labor Management Relations Statute, and to effectively administer the nine specific mandates of the statute.

I greatly appreciate the opportunity to appear before you, and I am ready to answer your questions. Thank you.

Senator BLUMENTHAL. Thanks very much Ms. Kiko. Ms. Wagner.

TESTIMONY OF ANNE M. WAGNER,¹ TO BE MEMBER, FEDERAL LABOR RELATIONS AUTHORITY

Ms. WAGNER. Good morning, Chair Blumenthal, Ranking Member Marshall. I would like to also thank the Members of the Committee for the opportunity to speak with you today. It is an honor to have been nominated by President Biden to serve as a Member of the Federal Labor Relations Authority and a privilege to appear before you to seek Senate confirmation of my nomination.

I would also like to take a moment to express my deep appreciation to those without whom I would not be here today. First to my parents, George and Kay Wagner, for their unfailing love and support during my childhood and throughout my life. To my sisters, brother and their families, for their friendship, humor, and encouragement. To my friends and colleagues throughout my career for their generous guidance and inspiring dedication to the law. Finally, to my dear family, my husband, Allynn, and daughters, Katie and Nora, who are here today and Carlin in Texas, whose love has carried me on this journey every step of the way.

In 1978, Congress enacted the Federal Service Labor Management Relations Statute as part of its comprehensive legislative reform of the Federal civil service. It established the FLRA as the agency responsible for providing leadership in Federal sector labor management relations through policies, guidance, and case law. Although much has changed since its inception, the FLRA's role remains as vital today as it was over 45 years ago. The public interest in ensuring that Federal workers and management fully engage with each other to achieve the most effective and efficient government remains clear.

I wholeheartedly support the Authority's mission. If confirmed, will commit myself to ensuring that the FLRA fulfills the critical purpose that Congress entrusted to it. In my decades long career, I have represented Federal employees as a labor union staff attorney. I have worked as a neutral adjudicator of Federal employee claims and served at the highest levels of agency management in the Senior Executive Service (SES).

If confirmed, I believe that my substantial experience in addressing employment and labor law issues from all sides will be valuable in carrying out my duties as an FLRA member. If confirmed, I also very much look forward to working again with Chairman Susan Grundmann and with Member Colleen Kiko to fulfill the FLRA's important mission of providing robust leadership in the Federal Labor Management Relations (FLMR) sphere.

I am humbled by, and thank you for the opportunity to be with you today and I am happy to answer any questions that you may have. Thank you.

Senator BLUMENTHAL. Thanks so much, Ms. Wagner. Mr. Huitema

¹The prepared statement of Ms. Wagner appears in the Appendix on page 68.

TESTIMONY OF DAVID HUITEMA,¹ TO BE DIRECTOR, OFFICE OF GOVERNMENT ETHICS

Mr. HUITEMA. Good morning. Thank you, Chair Blumenthal and Ranking Member Marshall. I thank you for the opportunity to appear before the Committee today. I would like to acknowledge Senator Peters, Senator Paul, and the other Members of the Committee as well. I am honored that President Biden has nominated me to serve as the Director of the Office of Government Ethics (OGE).

I would like to recognize the support I have received from the Office of Government Ethics at the State Department and throughout the Executive Branch ethics community with regard to my nomination, but also throughout my career as an ethics official and in public service. I would also like to recognize my family, my wife, Carolyn, and my sons Owen and Miles, all of whom I love so very much, and who are with me this morning. They motivate and inspire me and fill me with pride every day.

I would also like to acknowledge the love and support I have always received from my parents, Jim and Mollie Huitema. They both had careers in public service. My mother as a teacher and my father working for the Federal Government. Most importantly, they have always modeled a high degree of integrity and a commitment to helping others. I am fortunate to have a wonderful brother, John, and I want to remember my brother Philip, who is no longer with us, and recognize my extended family, including my mother-in-law and father-in-law, Pat and Cy Robbins.

OGE's mission has never been more critical as its work forms one part of a broader struggle against the growing cynicism and distrust that can undermine our democratic self-government. The ethics laws promote integrity in government, requiring that official's decisions and use of public resources must not be influenced by their personal financial interests, their personal connections and relationships or by any desire to benefit themselves or others rather than the national interest. Beyond that, the ethics laws recognize the importance of public trust, and they are designed to bolster public confidence in the integrity of the Federal workforce.

There is good news. Federal employees do have a strong sense of mission and a desire to do things the right way. There are outliers, of course, which is why OGE supports the Inspectors General (IG), the Department of Justice (DOJ), and others who investigate and pursue accountability for ethics breaches. But for the most part, ethics officials are in a position to support Federal employees in achieving a goal they already share. There's more good news. Agency ethics programs are full of ethics officials who are smart, earnest and committed to this cause.

I know because I have worked with them. I see OGE's role as providing overall direction, but also partnering with agency ethics programs and supporting their good work. OGE itself is full of talented and committed officials.

In my years leading the State Department ethics program, I have worked with many colleagues at OGE on a wide range of topics. If I am fortunate enough to be confirmed, I would be proud to be part

¹The prepared statement of Mr. Huitema appears in the Appendix on page 106.

of the OGE team. While people are the strength of the Executive Branch ethics program, I am open-eyed about the challenges.

The breakdown in trust that I mentioned earlier increases scrutiny of Federal employees and the Executive Branch ethics program. This means we must be ever more effective in supporting employees and deepening the culture of ethics compliance. We must be clear in explaining what the law requires both to the Federal workforce and the public. We must support each other in courageously providing sound ethics guidance, even when it is unwelcome. In pursuing enforcement of the ethics laws where necessary. As the pace of change in our society and economy picks up, we must be nimble in updating outdated requirements and in providing guidance and an appropriate regulatory structure to address emerging issues.

Of course, we must do all of this with limited resources. In his confirmation hearing, the previous director of OGE noted that OGE finds itself underfunded, understaffed, and over missioned. That remains the case both for OGE and for many agency ethics programs. As we consider any changes in the Executive Branch ethics program, we must keep practicality in mind and seek to leverage support and adopt efficient approaches to the greatest degree possible.

I am open-minded about how best to tackle these challenges. I do believe that my experience in managing a complex ethics program at the State Department offers a valuable perspective. If confirmed, I would also rely on the strong foundation and expertise already in place at OGE. I would seek to cultivate an even deeper sense of partnership with the broader Executive Branch ethics community.

I would welcome input from outside government as well. I know that many in Congress have an interest in ethics reform. I look forward to answering your questions today, and I pledge to work with the Congress on these issues if I am confirmed. So, thank you again for considering my nomination.

Senator BLUMENTHAL. Thank you. Thank you very much to all of you for your opening statements. I have a couple of preliminary questions that are standard for all nominees, and I think they are answerable by yes or no. First, 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?

Ms. KIKO. No

Ms. WAGNER. No

Mr. HUITEMA. No

Senator BLUMENTHAL. Second, 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?

Ms. KIKO. No.

Ms. WAGNER. No.

Mr. HUITEMA. No.

Senator BLUMENTHAL. Finally, do you agree without reservation to comply with any requests, summons to appear and testify before any duly constituted Committee of Congress if you are confirmed?

Ms. KIKO. Yes

Ms. WAGNER. Yes.

Mr. HUITEMA. Yes.

Senator BLUMENTHAL. Thank you. I have a couple more questions. Maybe I can ask Ms. Kiko and Ms. Wagner. Could you speak to the challenges that the FLRA experiences when faced with a flat budget as it has been for many years? Go ahead.

Ms. KIKO. Yes. Thank you for that question. Yes, the Federal Labor Relations Authority has been flat funded for quite a few years. When that happens, we have approximately 80 percent of our budget is personnel. When that happens, you have to look at new ways to try and figure out how to meet the budgets. Generally, it's difficult.

In the past, what we have had to do is to close some regional offices down and in an effort to save the people, we decided to get rid of some of the space. Just recently, the Federal Labor Relations Authority in the headquarters office had two floors in their building, and now we have consolidated to one floor. We are trying to do what we can to live within our budget, but it's challenging not only to get the cases done, but also to continue to serve our customers. That should answer your question.

Senator BLUMENTHAL. Ms. Wagner, and whether do you have any thoughts on that topic?

Ms. WAGNER. Senator Blumenthal, I have not had the privilege of being at the FLRA. I do not really have an insider's view in terms of the particular internal challenges that the authority might be facing. But I think the budget for a flat line budget is difficult when an agency is responsible for a producing high-quality efficient adjudication of caseloads that continue to go up.

If confirmed, I would certainly do whatever I can to support the efforts that I believe Chairman Grundmann has already undertaken with the other members of the authority to pursue an enhanced budget for the future.

Senator BLUMENTHAL. Thank you. Mr. Huitema.

Mr. HUITEMA. Thank you.

Senator BLUMENTHAL. I know you have had experience at the Department of State in this kind of ethics review and enforcement. Would you anticipate the challenges or the issues are the same now in this present position for which you have been nominated as they were at the Department of State?

Mr. HUITEMA. Thank you for the question, Senator. I think in some ways, one of the nice features of working at the State Department is the breadth of the agency's mission and the breadth of the ethics issues we have the opportunity to encounter. Obviously the work of OGE is at a completely different scale, and it's important to recognize just how diverse and varied agencies, their missions, their workforces, the ethics challenges they face are.

While I think I have solid preparation there will also be chance to learn and will be important to be open-minded about how the Executive Branch ethics program as a whole, but also how specific agencies should target and tailor their efforts to uphold integrity to the highest degree possible.

Senator BLUMENTHAL. Your service has been nonpartisan over these years, correct?

Mr. HUITEMA. Absolutely. Partisanship never enters into my work. I have been proud to serve in the Federal Government and

as head of the ethics office throughout multiple administrations of different parties. That would continue to be my approach.

Senator BLUMENTHAL. Thank you. I will turn to Senator Marshall.

Senator MARSHALL. Thank you, Mr. Chair. I am not as familiar perhaps with the jobs that you all have, and the departments that you represent as a fairly new senator. I would like for you to take one or two minutes each and tell me, in your cases Ms. Wagner and Ms. Kiko, what is the role of the FLRA? What is your job? What is your purpose? And think it like you are talking to a high school government class, dumb it down to that level for me. Ms. Wagner.

Ms. WAGNER. Thank you Senator Marshall. The role of the FLRA is one that Congress established to provide leadership in the area of Federal labor relations programs throughout the Executive Branch. It does this by issuing policies, guidance, but primarily through ruling on cases that come before it. So, cases such as unfair labor practice cases, negotiability appeals.

Cases that member Kiko alluded to in her opening statement. It is through this the development of case law that allows the sort of predictability to come into the Federal labor relations programs throughout the government and I do think my experience has seen that it promotes efficiency and effective government.

Senator MARSHALL. OK. Ms. Kiko, would you follow up? I know it's the same department, but you have had some more experience, so.

Ms. KIKO. I will go backwards just a little bit. Collective bargaining was something new in the Federal Government. Back then was an Executive Order (EO) 10988 that was originally established collective bargaining in the Federal Government. Then that Executive Order was moved to Executive Order 11491, which was also allowing collective bargaining in the Federal Government. It was in 1978 when a statute was finally created to allow collective bargaining in the Federal Government. Consistent with Anne Wagner's response, we are providing leadership and guidance to matters related to the statute.

We issued decisions based on unfair labor practices that might be occurring in the agencies between unions and agencies in the Federal Government. We also determined the appropriateness of units as to who can be consolidated into a unit to be represented by a union.

We also resolve duty-to-bargain issues. If they are sitting at the bargaining table trying to figure out is this particular language negotiable or not, we will make a ruling on that. When there are grievances that go on in the agencies between the unions and the agencies as to something that might be wrong those grievances can be then taken to an arbitrator.

Arbitration awards can come to us on exceptions to arbitration awards, for example, if the arbitrator's award was contrary to law or something to that effect. We also, as our responsibility, we must train the parties to make sure they understand the statute. The FLRA has been very forefront in providing training to the parties on what the statute says and how it acts.

Senator MARSHALL. OK. Thank you. Mr. Huitema. Kind of the same question. What is the OGE? What is your purpose?

Mr. HUITEMA. Thank you for the question, Senator. The OGE's mission is to help and support Federal employees in avoiding conflicts of interest in meeting their own obligations under the Federal ethics laws and regulations, and in general, and in acting and carrying out their duties as public servants with the high degree of integrity. By extension, the hope is to cultivate public trust in the integrity of the Federal workforce as well.

OGE does this, first by providing overall direction and leadership for the Executive Branch ethics program, issuing regulations, issuing interpretive guidance, issuing kind of program, establishing programs and procedures. It's important to recognize that much of the Executive Branch ethics work is decentralized. Each agency has its own ethics program.

It's those agency ethics programs that are closest to and in most direct contact with Federal workers. OGE provides guidance and support to those agency ethics programs, tries to hold them to a high standard as well, monitoring their work evaluating whether they are complying with programmatic requirements and generally sort of upholding the importance of acting with courage when necessary and implementing a sound program.

Beyond that, OGE has a role in explaining ethics laws to the public as well. Obviously as director, I personally would have a role in supporting the team at OGE just as a manager of the agency.

Senator MARSHALL. I am convinced that organizations either get better or worse. They never stay the same, and I think priorities is so very important, whether it's amount of financial resources or otherwise. Each of you, take a minute or less and tell me what your top priorities would be if confirmed. Mr. Huitema we will start with you this time. Your priorities please.

Mr. HUITEMA. Thank you, Senator. The first priority I would say is, one thing to step back and recognize is that OGE experiences a surge in its work every four years or so following a Presidential election.

Because one of its core functions that it has a direct implementing role in is the vetting of nominees, helping any administration kind of staff up important leadership positions, supporting the Senate's work in evaluating those nominees.

I know that OGE already is focused on this as they are every four years and is undertaking a lot of work to prepare for that surge in nominee vetting. I would seek to support that that has to be priority one. Because that will dominate the next year.

Beyond that, I would seek to spend some time on relationship building both with agency ethics officials, with department leadership where that would be useful and with the constituencies that are relevant for the ethics community and the work that we do. Those would be my first priorities.

Senator MARSHALL. Thank you. Ann Wagner, what would be your priorities?

Ms. WAGNER. Senator, my priorities would be to deal with the increased caseload that the authority is facing with the limited resources that it has. I think to maximize technology to the extent

possible to achieve efficiencies in productivity and addressing the caseload in a fair and efficient way.

Beyond that, in my experience at OSC has certainly instilled in me the idea that training and education with regard to employee and labor organization, agency management, rights and responsibilities could be a vital tool to preventing labor disputes arising in the Federal sector arena.

I think that preventing labor disputes is as important as resolving them once they occur. I would hope to make that one of my priorities.

Senator MARSHALL. Thank you. Ms. Kiko, what would be your priorities?

Ms. KIKO. Yes, Senator. I think first of all we have a job to do and that is to issue decisions that come before us. We want to do that in an efficient way as we can. I would also want to support the chairman in any activities and priorities that she might have in attempting to manage our flat budgets.

I would also like to continue the good work of the FLRA in its training programs as it continues to offer an innumerable number of training courses and YouTube videos and that sort of thing to assist the stakeholders in understanding our statute and learning how to solve some of their disputes on their own without necessarily having to come to us.

Senator MARSHALL. Thank you so much.

OPENING STATEMENT OF CHAIRMAN PETERS

Chairman Peters [presiding]. Thank you, Senator Marshall. I would also like to thank Senator Blumenthal for starting off this hearing with you, Senator Marshall. Thank you for kicking it off. It's a busy day today. We are running around which is why people have been coming and going as we go forward.

But I want to welcome each of our nominees. Thank you for being here and congratulations to each of you on these nominations and your willingness to do this important work.

Ms. Kiko, I will start with you. After you became Chairman of the FLRA in 2017. Employee morale at the agency dropped significantly, employee engagement and satisfaction scores based on the annual Federal employee viewpoint survey fell to their lowest levels in a decade.

During your first two years as Chair, my question is how did you respond to the drop in morale, and what changes did you make to your management approach, and how would you see things moving forward?

Ms. KIKO. Thank you Chair Peters. I appreciate the question. Certainly, we had some challenges when I first became chairman and being chairman, you have to make some very difficult decisions, and a lot of that had to do with our flat budgeting. We had to close two regional offices, and that was a very big, difficult time for our agency.

I spent an awful lot of time identifying what some of the concerns were in the Federal employee viewpoint survey, and attacked them one by one to make sure that each of the employees concerns were addressed under the FEVS.

At the same time that the FEVS reports were coming out, we were in the middle of building a new strategic plan for the agency. As such, I created teams so that every employee in the agency was able to be involved in building that strategic plan, hoping that every aspect of their concerns were addressed in the strategic plan.

We had many different teams, employee engagement teams, performance accountability teams, digest teams, health and wellness teams, everything to attempt to address some of the concerns that the employees had. Based on a lot of those issues that we did. The other issue that I recognized is that there had not been a General Counsel in the general counsel's office for quite some time. I took the opportunity to fill that position so that there would be some leadership in the general counsel's office.

I think as a result of a lot of those efforts our scores did rise 20 points while I was chairman in 2020. I believe that the efforts that we made, made a difference in attempting to raise those scores.

Chairman PETERS. Well are you committed to taking the Federal employee viewpoint survey results into account as you move forward and prioritizing employee engagement morale at the FLRA?

Ms. KIKO. Absolutely.

Chairman PETERS. Give me a sense of how you will do that?

Ms. KIKO. Yes, absolutely. It's a very important survey of employees viewpoints. It's really important to understand what people are feeling and how they are. An engaged employee is an excellent employee. We want to make sure that that's the highest priority. Absolutely.

Chairman PETERS. Very well. Mr. Huitema, I worked with Senator Grassley on the Executive Branch Accountability and Transparency Act, which would make it easier for the public to access the ethics disclosures of government officials. This kind of transparency, I think is absolutely vital so the public can hold folks accountable. My question for you, sir, is if confirmed, how will you work to make transparency a priority and increased public access to this important ethics information?

Mr. HUITEMA. Thank you, Chair Peters I too believe in the value of transparency and access to information about our most senior officials and information that allows the public to evaluate decisions that the government is making.

In terms of how I would prioritize that issue, I would say it would be built into kind of everything that we do at OGE. OGE already has a track record of considering sort of ways it can use its platform to sort of affirmatively make some information available to the public in a less onerous way.

We would continually evaluate additional categories of information in OGE's custody and control. Especially, is there information about OGE's own decisionmaking priorities, et cetera, that we could explain our own work better to the public.

Chairman PETERS. Mr. Huitema, as you know, one of OGE's key responsibility is conducting oversight of agency ethics programs all across the government. My question for you is, how are you preparing to make this transition from serving as an agency ethics official to actually one conducting rigorous oversight of agency ethics officials across the government?

Mr. HUITEMA. Thank you. That role in monitoring the work of agency ethics programs, holding them to a high standard is a core part of OGE's mission. It's one I am committed to. I think that having the perspective of coming from an agency and knowing what it's like to administer an ethics program day in, day out, will offer some valuable perspective.

I would say there are kind of two aspects. One is that having open communication and a strong relationship with the agency ethics programs actually is a tool for effective monitoring and compliance work as well. OGE needs to understand the agency ethics programs, the challenges they are facing, the constraints they operate under, and how they work to evaluate whether they are doing that work effectively or not.

Beyond that it's important for the director of OGE and OGE as a whole to hold agencies to a high standard. I need to be in a position to communicate that. If we want agencies to have the courage to offer firm ethics guidance, even in unwelcome circumstances, to sort of make the demand for program support that they need then they need to know that that's a standard and an expectation we have and that we are there to support them as well.

Chairman PETERS. Great. Thank you. Senator Hawley, you are recognized for your questions.

OPENING STATEMENT OF SENATOR HAWLEY

Senator HAWLEY. Thank you very much, Mr. Chair. Thanks to the nominees for being here. Mr. Huitema, if I could just start with you. You just said that you have experience administering an agency ethics program. You are at the State Department right now; is that right?

Mr. HUITEMA. Yes, that's right, Senator.

Senator HAWLEY. Among other things, you have been the legal advisor for ethics and financial disclosures?

Mr. HUITEMA. Yes, I am the assistant legal advisor for Ethics and Financial Disclosure, which is the ethics office for the State Department.

Senator HAWLEY. Right. Very good. Are you familiar we have been tracking what's going on with the U.S. Department of Energy (DOE) when it comes to ethics, financial disclosures, and stock trading. Are you familiar? Do you know what I am talking about?

Mr. HUITEMA. I know what you are talking about, Senator. I obviously have not been involved and do not have a depth of knowledge.

Senator HAWLEY. Let me give you just a little flavor of it. Last year, the Wall Street Journal reported that hundreds of Energy department officials hold stocks related to the agency's work, despite repeated warnings, that there were conflicts of interest here. How does that strike you? Good practice?

Mr. HUITEMA. Senator, I guess a couple of observations. Obviously, I cannot speak to the specific facts of any employee at the Department of Energy or guidance that the energy ethics program has provided. But this relates to the question Chair Peters asked.

I would say it's important for OGE to be in a position to evaluate the work of any agency ethics program and to make clear that we

hold them to a high standard and want them to hold their employees to a high standard and follow through, right.

It's not just explaining the rules, it's communicating them and doing what you can to build a culture of ethics. Ultimately, it's each employee's responsibility to abide by the ethics laws. But we have high expectations for our ethics program as well.

Senator HAWLEY. You have high expectations, and the public, frankly, has high expectations for public officials. I just have to tell you, this is a governmentwide problem. It's a problem in this Congress. You have elected officials, members of this Congress who are trading stock and making profits. Like the public looks at this, and they say, oh my gosh, how do these people manage to do it? It is unbelievable.

They come, they get elected to Congress, and they become the most savvy stock market traders in the world. It's amazing. There are whole websites devoted to tracking Members of Congress's stock trades. It's incredible. It's absolutely incredible, which is why I again, call on this Congress as I have for years now to take action, to ban stock trading and stock holding by Members of Congress. But it's not just in Congress, it's in the Executive Branch.

I can just tell you, when you have hundreds of members of the Energy Department and other Executive Branch agencies who hold stocks in companies that they supposedly regulate, that is incredibly destructive of public trust.

Yesterday, I talked to the Secretary of the Department of Energy. She has held stock, she has violated, she personally has violated the Stock Act, nine separate times.

That was before she misled the U.S. Senate by saying she no longer held any individual stocks.

She told us she had sold all of them. Turns out that was false. She had not sold them. It turns out she still held individual stocks, including stocks her department regulates in companies her department regulates. This is outrageous. It's absolutely outrageous. It's endemic. My message to you is, I hope that if you are confirmed that you will be absolutely a bulldog about going after this and telling Executive Branch officials, listen, you cannot own stocks in companies that you regulate.

We cannot allow hundreds of government officials to continue to willfully violate the law and we ought to update the law by the way, I mean, there's a simple solution to this. We ought to just ban executive officials at a leadership level from owning individual stocks. That would do it, but we at least should be complying with the laws on the books.

I just think it is outrageous. Outrageous, that Executive Branch officials, and I am sure this goes on by the way, in all administrations. But it is outrageous that these people are trading stock in companies that they regulate. It raises the question, who is running the department? Is it the corporations whose stock that these officers are so attentive to?

My point in this Mr. Huitema, is I hope that you will be very firm in this, and I hope that if you are confirmed, you will work to make sure that Executive Branch officials, No. 1, understand the law, but No. 2, comply with the law and do not willfully violate it over and over and over.

All I can say is when you have the head of the department, the head of an agency, the head of the Energy department violating the Stock Act nine separate times, and continuing to frankly lie about it to Congress, that is a big problem. In my few remaining moments here, let me shift gears. Ms. Wagner, let me ask you, from a Federal labor relations point of view, when it comes to labor contracting within the Federal Government, this Committee recently passed, and I am delighted to say unanimously passed my legislation along with Senator Booker that would make it impossible for the Federal Government to contract with companies that have child labor in their supply chain.

Does that sound like a good thing to ban to you, I mean, to stop the use of child labor in Federal contracting?

Ms. WAGNER. Yes, Senator, it does.

Senator HAWLEY. I am glad to hear that. This is a very serious issue since 2018 that the Labor department has seen a 70 percent increase in children being illegally employed by companies. The New York Times has published reports about, well-known brands such as Tyson Foods who have done business in many States, including mine, that have illegal child labor running rampant in their facilities.

A lot of these companies get contracts as it relates to contracts with the Federal Government. They are bidding on getting Federal contracts, they are getting Federal money, and yet they have child labor in their supply chain.

I am glad to hear you say that you are opposed to this. I hope this legislation will soon become law. I hope that you will support efforts to root out any kind of child labor in Federal contracting, in Federal Government employment practices with these independent contractors. Do I have your commitment that you would do that?

Ms. WAGNER. Senator Hawley, I share your outrage at that practice. I would have to note that the FLRA regulates in the sphere of labor unions that represent Federal employees, not Federal contractor employees.

I am not sure the scope of the FLRA's authority to intercede in that practice to address that. I suspect that's a Department of Labor.

Senator HAWLEY. But you support the effort, you support this legislation. You support the effort to root out child labor from Federal contracting, Federal Government?

Ms. WAGNER. Yes

Senator HAWLEY. Fantastic. My time's expired, and I know there are other senators who want to ask questions. Thank you very much, Mr. Chair.

Chairman PETERS. Thank you, Senator Hawley. Senator Rosen, you are recognized for your questions.

OPENING STATEMENT OF SENATOR ROSEN

Senator ROSEN. Thank you, Chair Peters. I really appreciate you holding this hearing. I want to thank the nominees for being here for testifying today. Mr. Huitema, we are going to continue with you because current law allows former Members of Congress who

have committed a felony related to their time in office to keep their tax payer funded pensions even after a conviction.

They must forfeit this government benefit only after exhausting all their appeals, which can drag the process on clearly for years, and provide a windfall of hundreds of thousands of dollars to convicted felons. I think it's unacceptable that corrupt government officials can continue to benefit off the back of taxpayers.

That's why last year I introduced the No Corruption Act, it's bipartisan legislation with Senator Scott to close this loophole by barring Members of Congress who are convicted of felonies related to their official duties from collecting taxpayer funded pensions.

After advancing this through Committee, our bill unanimously passed the Senate. Mr. Huitema could confirm, would you be supportive of a similar policy for member of the president's cabinet or other high ranking Executive Branch officials convicted of felonies related to their time in office?

Mr. HUITEMA. Thank you, Senator for the question. The specifics of that issue are one that I would need to study more and consider. But I will say that while the Office of Government Ethics primary role is to support ethics officials in complying with their ethics obligations in the first place.

There is an important accountability and penalties where necessary for violations of the ethics obligations are critical as well. If I am confirmed as director of OGE, I am committed to supporting accountability efforts, investigations, and so forth, whether by inspectors general, the Department of Justice, whoever it may be.

Senator ROSEN. Thank you. I am going to continue with you also because the Office of Government Ethics, it lacks a statutory authority to enforce sometimes these ethics violations. Current law only allows OGE to make recommendations to an agency when one of its employees is alleged to have violated ethics laws.

Should the agency in question ignore or reject the recommendation of OGE, OGE are only able to inform the President of the agency's actions, not overrule them, or make a further recommendation.

Mr. Huitema, how does this lack of enforcement authority limit OGE's ability to maintain the integrity of the Executive Branch? If confirmed, would you like to see OGE receive additional authority so it could take disciplinary actions against wrongdoers?

Mr. HUITEMA. Thank you for that question as well, Senator. I think that as I mentioned in my previous answer two sides of the coin are both important. OGE's fundamental role is supporting compliance upfront, right. Cultivating a culture of compliance among Federal workforce, including our most senior officials and supporting them in meeting their ethics obligations. At the same time, supporting appropriate accountability is important.

I will say that in my experience, in providing guidance to cabinet officials, brand new employees, people who are considering joining the State Department employees at all levels, it has been effective and helpful to have that role as advisor. Someone who's there to support them and employees are genuinely appreciative.

I do think that a distinction between guidance and advice on the one hand and enforcement on the other in most cases is helpful and useful.

Whether there are specific authorities that would benefit OGE in instances where it has identified a violation of the ethics regulations or something that it considers to pose an unacceptable risk of a conflict, for example, something like that. It would need to consider and appreciate the opportunity to consult further if confirmed.

I do think that in most cases, OGE's work in directing agencies to take appropriate action is effective. There can be cases at the highest profile and most often where agencies or the administration refuses to take action. In those cases, I think what's important for OGE is to be clear and transparent about its position, its understanding of the appropriate application of the law so the public can understand what OGE is doing and kind of where it stands in those cases.

Senator ROSEN. Thank you. I look forward to working with you on that because advising and guiding, that's great. But if people know that there's no consequence, then that could lead to more significant problems. We talk about a culture of transparency and accountability. Transparency plays that critical role in increasing public trust in the Federal Government. That's where I am leading with all of this.

One of the office of government ethics, foremost responsibility is to ensure that ethics documents, like disclosure forms are readily available to and accessible for the general public. How do you plan to ensure that executive agencies increase visibility of their own ethics documents, particularly when you can't compel them to do so. Would it be helpful for you to be able to compel them to do that?

Mr. HUITEMA. Thank you, Senator. OGE does have authority to establish programmatic requirements for agency ethics programs. There are provisions in the ethics regulations for public access to public financial disclosure reports. In some ways, this is a space where OGE has current authority already.

I am committed to always considering with regard to any category of documents either new or existing. Does it serve the public interest to make information proactively available. How can we build that into a normal standard operating procedure? In my mind, it would be information as Director of OGE, information about OGE's own programs, the guidance that it's providing, its own activities, and transparency about that would be critically important.

Beyond that, when we come to information about our public officials, that too can play an important role in informing the public and providing confidence that those officials do not have conflicts of interest.

I would say there's a little bit of a spectrum here. Where information about our most senior officials, our political appointees, those who have a broad range of discretion and authority is most important, while also taking into account either programmatic limitations or constraints or privacy interests for other Federal employees.

Senator ROSEN. Thank you very much. Thank you, Mr. Chair.

Chairman PETERS. Thank you, Senator Rosen. I want to thank our nominees once again for being with us here today and your

willingness to serve in these very important positions. The nominees have filed responses to biographical and financial questionnaires.¹ Without objection, this information will be made part of the hearing record² with the exception of financial data³ which is on file and available for public inspection at the Committee offices.

The hearing record will remain open till 12 p.m., tomorrow April 18th for the submission of statements and questions for the record (QFRs). This hearing is now adjourned.

[Whereupon, at 10:26 a.m., the hearing was adjourned.]

¹The information on Ms. Kiko appears in the Appendix on page 24.

²The information on Ms. Wagner appears in the Appendix on page 70.

³The information on Mr. Huitema appears in the Appendix on page 108.

A P P E N D I X

U.S. Senator Richard Blumenthal

U.S. Senate Committee on Homeland Security and Governmental Affairs

**Hearing on Federal Labor Relations Authority and Office of Government
Ethics Nominations**

Wednesday, April 17, 2024, 9:30 a.m. – SD-342

OPENING STATEMENT

We are here to discuss two important agencies within our government – the Federal Labor Relations Authority (FLRA) and the Office of Government Ethics (OGE).

The FLRA is an independent administrative agency responsible for enforcing federal employees' collective bargaining rights.

The OGE is an independent agency that leads and oversees the executive branch ethics program.

Together, these two bodies ensure that federal employees' rights are protected and our government adheres to the highest standards of ethics.

These are vital functions, and I look forward to exploring them more with our nominees here today.

I want to welcome our nominees – and their families, if they're here with them. Congratulations.

Thank you, each of you, for your public service – as well as your willingness to serve in these important positions.

U.S. Senator Roger Marshall

Opening Statement:

Thank you, Chairman **Blumenthal**.

Today, as Chairman Blumenthal just mentioned, the Homeland Security and Governmental Affairs Committee will hold a hearing on three nominations. I am honored to welcome Colleen Kiko, Anne Wagner, and David Huitema.

Firstly, I want to thank the three of you for your intention to serve our great country as public servants. While preparing for this hearing, I was struck by how many of you drew inspiration to enter public service from those close to you.

Like yourselves, I was surrounded by individuals who dedicated their lives to serving their fellow Americans, and no one made a bigger impact on me personally than my father, who served as chief of police in my hometown of El Dorado, Kansas for 30 years. He instilled in me the values separating right from wrong and to be completely transparent with those he served. I have done my best to learn from his example, as you have done with your role models.

Combined with the lessons you have learned from those individuals, you have also added the experiences of your professional careers. Together, these have prepared you, Ms. Kiko and Ms. Wagner, for positions with the Federal Labor Relations Authority, and you, Mr. Huitema, as Director of the Office of Government Ethics.

Ms. Kiko and Ms. Wagner, should you be confirmed to these positions with the advice and consent of the United States Senate, you will be charged with:

- resolving complaints of unfair labor practices
- determining the appropriateness of units for labor organization representation
- adjudicating exceptions to arbitrators' awards
- adjudicating legal issues relating to the duty to bargain
- and resolving impasses during negotiations.

Both of you have the track records to fulfill these duties. You, Ms. Kiko, have already served a term as the FLRA Chairwoman, and you, Ms. Wagner, have a long career in this field, with your most recent work being as the Associate Special Counsel with the Office of Special Counsel. I look forward to hearing both of your testimonies and asking you further questions to determine your suitability for these roles.

And, finally, Mr. Huitema. Should you be confirmed as the Director of the Office of Government Ethics you must be able to:

- lead and oversee the executive branch ethics program by making and interpreting ethics laws and regulations
- support and train executive branch ethics officials
- administer the executive branch financial disclosure systems
- monitor senior leaders' compliance with ethics commitments
- ensure agencies comply with ethics program requirements
- and make ethics information available to the public.

Like Ms. Kiko and Ms. Wagner, your resume speaks for itself, as you have a long history with the State Department and currently manage the Department's ethics program. Thank you for being here, and I look forward to hearing your testimony and asking you questions.

Once again, I would like to thank all of the nominees for their desire and willingness to serve. I look forward to learning more about your qualifications and hearing your testimonies.

Thank you.

Statement of Colleen Duffy Kiko
to be a Member of the Federal Labor Relations Authority
Before the Committee on
Homeland Security and Governmental Affairs
United States Senate
April 17, 2024

Chairman Peters, Ranking Member Paul, Members of the Committee, I thank you and your staff for all the kindness that you've shown to me as I've prepared for this hearing.

I would like to introduce my family members who are here today. I appreciate all the love and support provided by my family during this process.

I'd also like to thank Anna Molpus, Murray Duncan, David Eddy, and Rebecca Osborne from the FLRA for their kind assistance throughout this process. And I am especially grateful for Chairman Grundmann – who has been ever so supportive and a pleasure to work with.

As someone who started their federal career as a GS-3 clerk-typist, I'm truly honored to have been re-nominated to serve as a Member of the Federal Labor Relations Authority. I thank President Biden for the opportunity to serve in this capacity, should I be confirmed.

My dedication to federal service was influenced by my parents. My father, Lawrence E. Duffy, proudly spent over 49 years (almost a half century) in the Federal service before retiring. After a stint in the U.S. Army, he was a railway mail carrier for the Postal Service in North Dakota and later became a U.S. Customs Inspector at the North Dakota/Canada border. His work ethic, extreme pride in his job, and impeccable character were examples for me, and to this day, I strive to live up to them. My mother, Angie Duffy, always encouraged her sons and her daughters to strive for careers to broaden our horizons. She pushed all of us to be strong and independent.

I would like to point out a few areas of my career that make me particularly qualified for this position. I was an employee of this agency at its inception – when the duties of the Assistant Secretary of Labor for Labor-Management Relations were transferred into the new FLRA in 1979. So, I was there when the agency opened its doors, and I was there celebrating with its first birthday cake.

After joining the newly established FLRA, I worked in almost every component of the agency. In a regional office, I investigated unfair-labor-practice charges, chaired representational hearings, monitored federal union elections, and conducted training for unions and agencies. In the Authority component, I reviewed representational disputes, administrative law judge decisions, and drafted decisions for the Authority Members. My last position before I left to attend law school was a supervisory labor-relations specialist managing procedural motions for the agency. The FLRA has played an important role in shaping me into a professional employee.

I graduated from the Antonin Scalia Law School in Arlington, Virginia in 1986, and, just 19 years later, I would find myself back at the FLRA serving as the Senate-confirmed General

Counsel. Another 12 years later, I was confirmed to serve as a Member of the Authority and designated by the President to serve as Chairman. My career keeps taking me back to my FLRA roots.

My time as Chairman of the Agency from 2017 to 2021 provides me with unique insights into the challenges facing the agency. Steering the agency through the unprecedented COVID-19 public-health emergency was one of the greatest challenges – and most significant accomplishments – of my career in public service. As Chairman, I also: partnered with the Federal Mediation and Conciliation Service to create a successful pilot program for mediating negotiability disputes; oversaw many elements of the agency’s ongoing transition from paper to electronic files, including significant improvements in its e-filing and case management systems; and involved employees from all agency components in innovative teams to implement the FLRA’s strategic plan and address opportunities for improvement from the Federal Employee Viewpoint Survey. As Chairman and Member, I have worked with my colleagues to resolve unfair-labor-practice disputes, determine the appropriateness of units for labor representation, adjudicate exceptions to arbitrators’ awards, and resolve legal issues relating to the duty to bargain. I am continually impressed with the FLRA’s employees, who are some of the most dedicated public servants I have ever met.

I believe my 35 years in the Federal government (20 years in the labor field) will continue to serve me well in this agency, where we are commissioned to provide leadership relating to matters under the Federal Service Labor-Management Relations Statute and to effectively administer the nine specific mandates of the Statute. I greatly appreciate the opportunity to appear before you and am ready to answer any questions.

HSGAC BIOGRAPHICAL QUESTIONS FOR
EXECUTIVE NOMINEES

REDACTED

1. Basic Biographical Information

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
<u>Name of Position</u>	<u>Date of Nomination</u>
<u>Member, Federal Labor Relations Authority</u>	

<i>Current Legal Name</i>			
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>
Colleen	Duffy	Kiko	

<i>Addresses</i>					
<u>Residential Address</u> (do not include street address)			<u>Office Address</u> (include street address)		
			Street: 1400 K Street, N.W., Suite 300		
<u>City:</u> Arlington	<u>State:</u> Virginia	<u>Zip:</u> 22204	<u>City:</u> Washington, D.C.	<u>State:</u> D.C.	<u>Zip:</u> 20424

<i>Other Names Used</i>

<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	C h e c k i f M a i d e n N a m e	<u>Name Used From</u> (Month/Year) (Check box if estimate)	<u>Name Used To</u> (Month/Year) (Check box if estimate)
Colleen	Margaret	Duffy		X	10/15/1950	8/1972 <input type="checkbox"/>
Colleen	Duffy	Raap			8/1972 Est <input type="checkbox"/>	1/1982 Est <input type="checkbox"/>

<i>Birth Year and Place</i>	
Year of Birth (Do not include month and day.)	Place of Birth
1950	Fargo, North Dakota

<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 checked="" type="checkbox"/>	<input type="checkbox"/>

<i>Spouse's Name</i> (current spouse only)			
<u>Spouse's First Name</u>	<u>Spouse's Middle Name</u>	<u>Spouse's Last Name</u>	<u>Spouse's Suffix</u>
Philip	George	Kiko	

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

<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	C h e c k i f M a i d e n N a m e	<u>Name Used From</u> (Month/Year) (Check box if estimate)	<u>Name Used To</u> (Month/Year) (Check box if estimate)
NONE					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
Jamie	Lynn	Raap	
Sarah	Kiko	Leiby	
Philip	George	Kiko	Jr.
Michael	Ryan	Kiko	

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>
North Dakota State University	University	8/1968 Est x	5/1972 Est Present x □	B.S.	5/1972
George Mason University Antonin Scalia Law School	Law School	8/1983 Est x	5/1986 Est Present x □	J.D.	5/1986
		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.

Type of Employment (Active Military Duty Station, National Guard/Reserve, USPHS 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)
Federal Employment	Federal Labor Relations Authority	Member	Wash., D.C.	1/2021 Est <input type="checkbox"/>	Present Est <input type="checkbox"/>
Federal Employment	Federal Labor Relations Authority	Chairman	Wash. D.C.	11/2017 Est <input type="checkbox"/>	1/2021
Federal Employment	Department of Labor, Employees' Compensation Appeals Board	Judge/Member	Wash. D.C.	3/2008	11/2017
Federal Employment	Federal Labor Relations Authority	General Counsel	Wash., D.C.	10/2005	3/2008
Federal Employment	Department of Labor, Employees' Compensation Appeals Board	Judge/Member	Wash., D.C.	2/2002	10/2005
Non-Federal Employment - Law Firm	Ronald M. Cohen & Assoc., P.C.	Associate Attorney	Arlington, VA	11/1999	2/2002
Non-Federal Employment - Law Firm	Law Offices of Colleen Duffy Kiko, P.C.	Sole Practitioner	McLean, VA	9/1996	11/1999
Non-Federal Employment	St. Charles School and St. Charles Church	Finance Officer (part-time)	Arlington, VA	8/1991 EST	2/2002 EST
Not Working Full Time	Stay at Home Mom		Arlington, VA	11/1989 EST	9/1996 EST
Federal/Congressional	Committee on the Judiciary, Civil and Constitutional Rights Subcommittee	Minority Counsel	Wash., D.C.	3/1989	11/1989

Federal Employment	Department of Justice, Civil Rights Division	Attorney Advisor	Wash. D.C.	12/1986	3/1989
Federal Employment	Department of Justice, U.S. Attorney's Office	Special Assistant US Attorney (detail during DOJ position)	Alexandria, VA	9/1988	3/1989
Not Working	Studying for the Bar exam and had my third child the day after the bar exam		Arlington, VA	5/1986	12/1986
State Government	Fairfax County Attorney's Office	Law Clerk (Part-time position during law school)	Fairfax, VA	11/1985 EST	2/1986 EST
Not Working	Attended Law School		Arlington, VA	8/1983 EST	5/1986
Federal Employment	Federal Labor Relations Authority	Supervisory Labor Relations Specialist	Wash., D.C.	4/1981 EST	8/1983 EST
Federal Employment	Federal Labor Relations Authority	Labor Relations Specialist	Wash., D.C.	12/1979 EST	4/1981 EST
Federal Employment	Federal Labor Relations Authority, Washington Regional Office	Labor Relations Specialist	Wash., D.C.	1/1979	12/1979 EST
Federal Employment	Department of Labor, Labor Management Services Administration, Washington Regional Office	Compliance Officer	Wash. D.C.	8/1976	1/1979
Federal Employment	Department of Treasury, U.S. Customs Service, Office of Personnel	Employee Relations Specialist	Wash., D.C.	8/1975	8/1976
Federal Employment	Department of Treasury, U.S. Customs Service, Office of Personnel	Labor and Employee Relations Specialist	Wash., D.C.	12/1974	8/1975
Federal Employment	Department of Treasury, U.S. Customs Service	Employee Relations Specialist	Wash., D.C.	12/1973	12/1974
Federal Employment	Department of Treasury, Office of the Secretary, Office of Personnel	Clerk-Typist	Wash., D.C.	3/1973	12/1973
Not Working	Moved from North Dakota to Washington, D.C.			2/1973	3/1973

Non-Federal Employment	Souris River School District	School Teacher	Wawanesa, Manitoba, Canada	8/1972	2/1973
Non-Federal Employment	Dawson Hail Insurance	Policy Examiner (Summer Job)	Fargo, N.D.	5/1972	8/1972
Non-Federal Employment	North Dakota State University	Resident Assistant (working on campus during two school years)	Fargo, N.D.	8/1969 EST 8/1971 EST	5/1970 EST 5/1972 EST
Non-Federal Employment	Westhope Swimming Pool	Lifeguard (Summer Job)	Westhope, N.D.	5/1971 EST	8/1971 EST
Non-Federal Employment	Hall Allen Shoe Store	Shoe Salesperson (Summer Job)	Moorhead, MN	5/1969 EST	8/1969 EST
Not Working Full Time	Attended College	North Dakota State University	Fargo, N.D.	8/1968	5/1972

(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)
None		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.

Special Achievement Awards/Quality Step Increases (Various) 1975-1983

Distinguished Alumni Award, George Mason University Antonin Scalia School of Law - 2020

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).

<u>Name of Organization</u>	<u>Dates of Your Membership</u> (You may approximate.)	<u>Position(s) Held</u>
Virginia State Bar	1986 to Present	Member
District of Columbia Bar	1986 to Present	Member
Supreme Court Bar	2022 to Present	Admitted
Arlington Diocese Cursillo	1979 to Present 2022 to Present 2008-2021	Member Evangelization Chair Weekend Committee Chair
Reagan/Bush Alumni Association Bush/Quayle Alumni Association	1990 to Present 1994 to Present	Member Member
Lake Mohawk Property Owners Association	2021 to Present	Member

St. Charles Borromeo Catholic Church	1979 to 2021	Parishioner
Cathedral of St. Thomas More Catholic Church	2021 to Present	Parishioner
Association of Republican Presidential Appointees	2021 to Present	Member
www.legacylife.photo – Faithbooking Group	2017 to Present	Two of us put together a retreat each year for folks to share their faith journeys
Youngevity (Health and Wellness Products)	2020 to Present	Consultant
Forever (Digital Storage and Scrapbook Company)	2015 to Present	Ambassador
Jafra Cosmetics	2009 to Present	Consultant
The CM Group (Scrapbooking Company)	2104 to November 2017	Scrapbook Sales Consultant
Future With Hope Women, LLC	2015 to November 2017	Partner – we put on religious conference/retreat twice a year – LLC still exists but I am no longer a partner.
Arlington County Bar Association Fairfax County Bar Association	1996 to 2002 1996 to 2002	Member Member
National Rifle Association	1982 (est.) to Present	Member

7. Political Activity

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

No

<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>

(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

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>

(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>
Johnny F. Mautz	200	2018
Glenn Youngkin	263	2021
Donald Trump	250	2020

Mitch McConnell	200	2020
Johnny F. Mautz	250	2020

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

<u>Title</u>	<u>Publisher</u>	<u>Date(s) of Publication</u>

9. Criminal History

Since (and including) your 18th 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:

- 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 of 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. No

<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>
None				

(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>
2/8/1980	Alexandria Circuit Court	Loren D. Raap Colleen Duffy Raap	Uncontested Divorce	Divorce

(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.

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

<u>Name of Agency/Association/Committee/Group</u>	<u>Date Citation/Disciplinary Action/Complaint Issued/Initiated</u>	<u>Describe Citation/Disciplinary Action/Complaint</u>	<u>Results of Disciplinary Action/Complaint</u>

(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? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State). No

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.

<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)
-----------------------------	--------------------------------	--	----------------------	---	---

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.

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)

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.

Colleen Duffy Kiko

This 13th day of ^{Sept}, 2023

January 11, 2024

The Honorable Gary C. Peters
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Colleen Kiko, who has been nominated by President Biden for the position of Member, Federal Labor Relations Authority.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

We are returning the report and ethics agreement that we previously provided you and our previous letter indicating that the filer was in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

DAVID APOL

Digitally signed by DAVID
APOL
Date: 2024.01.11 15:37:29
-0500

David J. Apol
General Counsel

Enclosures

REDACTED

August 16, 2023

Thomas Tso, Esq.
Designated Agency Ethics Official
Federal Labor Relations Authority
1400 K Street, NW
Washington, D.C. 20424

Dear Mr. Tso:

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 Member of the Federal Labor Relations Authority. It is my responsibility to understand and comply with commitments outlined in this agreement.

SECTION 1 – GENERAL COMMITMENTS

As required by the criminal conflicts of interest law at 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the particular matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me:

- Any spouse or minor child of mine;
- Any general partner of a partnership in which I am a limited or general partner;
- Any organization in which I serve as an officer, director, trustee, general partner, or employee; and
- Any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

In the event that an actual or potential conflict of interest arises during my appointment, I will consult with an agency ethics official and take the measures necessary to resolve the conflict, such as recusal from the particular matter or divestiture of an asset.

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

I will receive a live ethics briefing from a member of the ethics office after my confirmation but not later than 15 days after my appointment pursuant to the ethics program regulation at 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will submit my

Certification of Ethics Agreement Compliance which documents my compliance with this ethics agreement.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order No. 13989) and that I will be bound by it. Among other obligations, I will be required to recuse from particular matters involving specific parties involving my former employer or former clients for a period of two years after I am appointed, with the exception of federal, state and local government.

I will not modify this ethics agreement without your approval and the approval of the U.S. Office of Government Ethics pursuant to the ethics agreement requirements contained in the financial disclosure regulation at 5 C.F.R. § 2634.803(a)(4).

SECTION 1 – SPOUSE EMPLOYMENT

My spouse is a Principal at Williams & Jensen PLLC. My spouse may receive bonuses based on the firm's profitability. 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 Williams & Jensen PLLC, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1). Pursuant to the impartiality regulation at 5 C.F.R. § 2635.502, I also will not participate personally and substantially in any particular matter involving specific parties in which I know a client of my spouse 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 also the sole proprietor of his consulting firm, which does business as Kiko Strategies, Inc. 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 Kiko Strategies, Inc., unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1). Pursuant to the impartiality regulation at 5 C.F.R. § 2635.502, I also will not participate personally and substantially in any particular matter involving specific parties in which I know a client of my spouse is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

SECTION 2 – PUBLIC POSTING

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

Sincerely,


Colleen Kiko

**U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing Questionnaire
For the Nomination of Colleen Kiko to be a Member,
Federal Labor Relations Authority**

I. Nomination Process and Conflicts of Interest

1. Did the President give you specific reasons why he nominated you to serve as a Member of the Federal Labor Relations Authority (FLRA), and if so, what were they? *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 a Member of the FLRA? If so, what are they, and to whom were the 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. *In connection with the nomination process, I consulted with the Office of Government Ethics and the FLRA's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement I signed, which has been provided to the Committee. I am unaware of any other potential conflicts of interest at this time.*
5. Please provide the name of any individual, law firm, consulting firm, lobbying firm, public relations firm, or other entity you have formally retained or contracted with regarding this nomination, including any amounts paid in fees or otherwise. *None.*
6. Have you or any organization of which you were an officer, director or owner, or have or had a significant financial interest in been the recipient of any Federal grants, loans, or other financial assistance (such as, but not limited to, Paycheck Protection Program Loans, Economic Injury Disaster Loans, Restaurant Revitalization Grants, etc.) within the past 10 years. If so, please list the program, amount, and date of receipt. *No.*

II. Background of the Nominee

7. Why do you want to serve as a Member of the FLRA? *Labor-management relations in the federal sector safeguards the public interest, contributes to the effective conduct of public business, and facilitates and encourages the amicable settlements of disputes between employees and their employers. These are critical for ensuring the efficient accomplishment of the operations of the government. Having a role in that arena is very rewarding.*

8. What specific background, experience, and attributes affirmatively qualify you to be a Member of the FLRA? *I have served approximately 15 years at this agency, nine in leadership positions. I served as General Counsel from 2005 to 2008, Chairman from 2017 to 2021, and Member from 2021 to the present. I was an employee of this agency at its inception – when the duties of the Assistant Secretary of Labor for Labor Management Relations were transferred into the newly created FLRA. In addition, my prior service as Special Assistant United States Attorney, a practicing attorney in the private sector, and counsel for the Subcommittee on Civil and Constitutional Rights in the U.S. House of Representatives provided me hands-on experience as a practitioner before various forums. This broad experience qualifies me to serve in this capacity.*
9. Please describe:
 - a. Your leadership and management style. *My leadership and management style emphasize open communication and collaboration. I seek out ways to energize and motivate people to lend their best selves to the mission. I believe decisions should not be made in a vacuum and that all points should be considered before finalizing a decision, if possible. I make sure to recognize people for their good work and encourage through positive support. It is important that managers and employees know their input is valued and respected. Yet, at the end of the day, I maintain accountability for my decisions.*
 - b. Your experience managing personnel. *As Chairman of the FLRA from 2017 to 2021, I served as the Chief Executive and Administrative Officer for the agency, managing a budget of approximately \$26 million and a staff of approximately 115 employees. During that time, I was responsible for all human capital, performance management, budget, policy development, staff and customer training, etc. In a similar role, as FLRA General Counsel from 2005 to 2008, I managed the regional and headquarters staff of the Office of General Counsel. I have further experience in managing personnel while serving for 3 years from 2002 to 2005 as Member of the Employees' Compensation Appeals Board. As a part of that management team, overseeing a staff of approximately 35 employees, we updated performance standards, initiated mentor programs, and developed an updated case tracking system to monitor case-processing efficiency.*
 - c. What is the largest number of people that have worked under your supervision? *In my role as Chairman of the FLRA, I served as the head of an agency employing approximately 115 employees.*
10. What would you consider your greatest successes as a leader? *As Chairman of the FLRA, my greatest success was ushering the agency through the once-in-a-century global pandemic, COVID-19. Employees faced all kinds of uncertainty. Schools were being closed, child/family care options were being eliminated, public transportation was dramatically reduced, and people were acclimating to a new "virtual world." In addition to employees' concerns about the health and well-being of themselves and their loved ones, the unpredictable – and often abrupt – elimination of social support structures unavoidably permeated employees' work lives. Under my leadership, the FLRA recognized the unprecedented challenges that COVID created. With the health and well-being of the*

employees as my paramount concern, I took a number of critical actions. First, I instituted broad, flexible telework options so that employees could remain safe but still contribute to, and accomplish, the agency's mission. To support this change, I fast-tracked the rollout of videoconferencing in order to facilitate virtual meetings, temporarily halted in-person filings due to the public-health emergency, and established protocols for virtual representation hearings. Second, I eliminated core hours; this gave employees the flexibility to care for themselves and their loved ones while still producing the excellent work they have always produced for the agency. Third, I created a Pandemic Task Force comprised of representatives from all components of the agency in order to gather and disseminate information agency-wide. This Task Force was instrumental in relating the most recent guidance from the White House, the Office of Management and Budget, and the Centers for Disease Control and Prevention, obtaining real-time information from our regions across the nation, and recommending courses of action to ensure our agency was prepared for continued mission success during this emergency. And fourth, I prioritized employee connections. For example, I scheduled regular agency-wide virtual events to enable employees to stay connected, share ideas, find best practices, etc. We spent a lot of time creating interesting and fun events to allow us all to remember we were in this together. I believe these efforts helped us reduce turnover and strengthen morale during the unprecedented challenges presented by COVID-19.

I am also proud of my role in instituting the Office of the General Counsel's training program, while serving as General Counsel to the FLRA. We devised that program to provide free nationwide training on the Federal Service Labor-Management Relations Statute at regional offices to federal unions and agencies. Prior to these offerings, training was ad hoc and provided to agencies and labor unions as requested. It demanded a lot of time, preparation, and travel for our staff. We thought: "If you build it...they will come." Those trainings are still ongoing. Under my leadership as Chairman, the FLRA created numerous training videos and posted them to a YouTube channel (<https://www.youtube.com/c/federallaborrelationsauthority>), which became very beneficial during COVID-19 when the FLRA could not offer in-person training. The FLRA continues to update that YouTube channel even now.

I also find the performance metrics we created when I served as a Member of the Employees' Compensations Appeals Board in the Department of Labor to be a very successful tool for evaluating the quality, quantity, and timeliness of written legal decisions. They were fair, easily understood, and if utilized properly, provided the employees with immediate supervisory feedback on each and every decision.

11. *What would you consider your greatest failure as a leader? What lessons did you take away from that experience? Very early in my career when I first became a supervisor, I occasionally made decisions by relying on the advice of others without doing my own research to verify the accuracy of the advice. In one instance, I found out that advice I had provided was inaccurate. I was terribly embarrassed to have been responsible for providing incorrect information. Since then, I have always been cautious about taking advice without doing my own research first. Trust but verify. This experience also reminded me to dig deeper to consider facts and arguments that might not be immediately*

apparent before rendering a judgment, and to thoroughly consider the future implications and ramifications of decisions. Things are not always as they seem. This has made me more thoughtful in assessing all circumstances and facts before rendering a judgment.

12. Please give examples of times in your career when you disagreed with your superiors and advocated your position. Were you ever successful? *While serving as a counsel to a committee in the House of Representatives, a remedy was being fashioned for a topic that concerned many at that time. Legislation had been drafted and my Member was asked to support it. He had been inclined to support it, but we had a very long discussion about whether that was the right way to go. I suggested that the statutory remedy would be found unconstitutional as it violated the right to free speech. Taking a stand against the prevailing sentiment at the time, he adopted my recommendation and did not support the legislation. The United States Supreme Court ultimately vindicated our position, finding the statute's infringement on free speech unconstitutional.*

13. Do you seek out dissenting views and encourage constructive critical dialogue with subordinates? Please provide examples of times in your career when you have done so. *Whenever I am faced with a tough decision, I seek out the strongest arguments for and against any course of action. While serving as Chairman, I would hold weekly meetings with senior leadership from several agency divisions to discuss matters facing the agency and hear their perspectives. I was always open to frank – even sometimes contentious – discussions on any topic. Without that open exchange of ideas, I would not have been as prepared to make decisions. Often, I would have an intended plan of action; yet after listening and considering the differing viewpoints, I changed my mind. The greatest practical resource comes from open exchanges of diverse viewpoints, and I have been fortunate to work at an agency with so many sharp and diverse legal minds. Similarly, in decisional matters that come before me, I open the discussion to my staff to get their ideas and viewpoints before making a final decision.*

14. Please list and describe examples of when you made politically difficult choices that you thought were in the best interest of the country or your organization. *One of the most difficult decisions I had to make was to close two regional offices in order to align our expenditures with the flat funding the FLRA received. The agency had already implemented many cost-cutting efforts prior to the final decision to close those offices. These included (1) a hiring freeze, (2) a reduction of the travel budget by 25%, (3) a reduction of the agency-wide training budget by 25%, (4) increasing the use of electronic case files (reducing shipping and mailing costs), (5) implementing electronic voting on decisions for the Authority component, (6) utilizing in-house IT staff to develop an intranet site, (7) using existing government-wide shared services for payroll, financial services, and travel, and (8) using multi-agency procurement and contracting venues where possible. Despite those significant cost-cutting measures, additional restructuring was still needed to align our budget with our funding. A regional office consolidation plan had been developed by my predecessor which recommended reducing the regional offices from seven to five. Under this plan, which was based on a detailed statistical metric, the FLRA would close the Boston and Dallas regional offices, but retain all of the affected employees by offering them paid relocation to one of the other regional offices or headquarters. In order*

to reduce costs, I faced the difficult decision of reducing personnel or reducing space, and I chose the option that enabled the FLRA to retain its employees. Closing offices was extremely painful for the morale of the affected employees and for the agency as a whole. A majority of the Members voted to close the regional offices. On September 13, 2018, the FLRA closed the Dallas Regional Office and on November 1, 2018, the FLRA closed the Boston Regional Office. Although all of the 16 affected employees were offered positions in one of the FLRA's five other regional offices, nine employees did not remain with the agency. Ultimately, as a result of the global pandemic, that decision was rendered fiscally prudent, as there were two fewer buildings for which to pay rent and utilities during the COVID-19 pandemic when those offices would have been unoccupied. With more and more employees working from home, the need for physical offices has become less critical. The year-over-year cost savings to the agency was \$578,000 a year.

15. *Please describe how you build credibility and trust among staff as a leader. Primarily, you must earn trust from others and credibility is proven through time and actions. First and foremost, I try to listen to others and be as transparent as possible. As described in my response to question 9 above, I welcome input from a variety of sources – my decision-making can only be strengthened by considering all available viewpoints. I believe that credibility and trust are strengthened when employees see that their perspectives are considered. During my time as Chairman, I closely reviewed input from the Federal Employee Viewpoint Survey (FEVS). As discussed in more detail in my response to question 28 below, I tasked different agency workgroups with developing recommendations – many of which we implemented – in order to address employees' articulated concerns. I also build credibility by following through on my commitments. As the ground shifted beneath us with each new COVID-related effect on our way of life, employees were concerned about the measures the FLRA would take to protect their health. In order to assuage those fears and build trust, I committed to employees that I would not direct employees to return to the office unless certain metrics were achieved. I kept this commitment, which is just one demonstration of my credibility.*
16. *During your career, has your conduct as a government employee ever been subject to an investigation or audit by the Office of Special Counsel, Department of Justice, agency Equal Opportunity office or investigator, agency Inspector General, or any other similar federal, state, or local investigative entity? If so, please describe the nature of the allegations/conduct and the outcome(s) of the investigation(s) or audit(s). No. However, in the interest of complete transparency, an employee in my office contacted an EEO counselor to express a concern about personal conversations during our staff meetings, and I participated in a pre-complaint mediation process. Having successfully mediated a solution with the employee, no formal action was ever filed.*
17. *Have you ever represented a party in a matter before or involving the Federal Labor Relations Authority? If so, please describe the matter(s) and the nature of the representation. No.*
18. *Please describe what you believe are your most significant accomplishments during your tenure at the FLRA to date. I am exceptionally proud of how the FLRA adapted to the*

challenges presented by the COVID-19 pandemic and, as described in detail in response to question 10 above, I consider my leadership of the FLRA through that unprecedented public health emergency to be one of my most significant accomplishments in public service. Additionally, during my time as Chairman, I discovered that many agency policies had not been updated for quite some time, many in over 30 years. In response, I made a concerted effort to review, update (to reflect new statutes, government-wide rules, etc.), revise (as appropriate), rescind (where appropriate), circulate, and implement updated policies. As a result, the FLRA updated 24 agency policies under my leadership, which I also consider a significant accomplishment. Further, while I was Chairman, I took steps to increase the agency's accountability and compliance with internal – as well as government-wide – goals and mandates. For example, I reestablished the agency's Records Management Program, hired a full-time Records Management Specialist and, through the diligence of that specialist, brought the agency into compliance with the National Archives and Records Act (NARA). I also redesigned the agency's internal productivity report from a manually inputted (and often inaccurate) report to an automatically generated report that electronically captures data from our case management databases. At the same time, I worked with all agency components to align our productivity goals with the experience of our customers. This entailed measuring the timeliness of our case processing benchmarks from the date the customer files a case. These efforts to increase accountability are all accomplishments of which I am proud.

19. Please describe what you believe are the greatest challenges you have faced during your tenure at the FLRA to date and how you have addressed them. *Two of my greatest challenges have been navigating the agency through the COVID-19 pandemic, as described in detail in response to question 10 above, and making the difficult decision to close two regional offices, as described in detail in response to question 14 above. Another of my greatest challenges was increasing the speed with which the Authority resolves its cases. As part of my initiative to increase productivity, the FLRA entered into a successful pilot partnership with the Federal Mediation and Conciliation Service (FMCS) to resolve negotiability cases with the assistance of FMCS mediators and at no cost to the parties. I also focused on prioritizing – and eliminating – the Authority's backlog of overage cases. Cases requiring merits decisions – i.e., those that could not be resolved or dismissed on procedural grounds – often posed the biggest obstacles. Even with a full complement of Members in place, the Members may agree on the proper disposition of a case, but disagree over the underlying rationale. Emphasizing communication and collaboration, I worked with the other Members and their staffs to identify the logjams, collaborate on issuance strategies, and ensure we did not let our oldest cases fester. Under my leadership, the Authority continuously improved the rate at which it decided cases on their merits, from an average of 8 per month in FY19, to 11 per month in FY20, to 14 per month in FY21.*

III. Role of Member, FLRA

20. Please describe your view of the FLRA's mission and a Member's role in achieving that mission. *Congress having found that labor organizations and collective bargaining are in the public interest, the Federal Service Labor-Management Relations Statute (the Statute) prescribes certain rights and obligations and establishes procedures designed to meet the special requirements and needs of the Federal government, while directing that the provisions of the Statute should be interpreted in a manner consistent with an effective and efficient government. The FLRA's mission is to "provide leadership in establishing policies and guidance relating to matters" under the Statute. My role as a Member is to render decisions and take actions consistent with the Statute, its regulations and policies. It has been an honor to devote much of my time in government service to such an important mission.*
21. In your view, how should FLRA Members work together to promote the agency's core mission? *I have worked for the last 6 years to do just that – working with both Democratic and Republican appointees – to promote the agency's core mission. It is imperative to respect others' opinions, carefully weigh the facts of each case against the law and work together on a resolution. I intend to continue to maintain that same collegial method of doing business in the FLRA.*
22. What has been your approach to working with FLRA Members of a different party affiliation, both as Chairman and as a Member? *As Chairman, I treated each Member as I would wish to be treated – with respect and collegiality. I frequently sought the advice of the other Members, and notified them or included them in decisions that I made, as appropriate. Serving as Chairman often felt like acting as a mediator. I was continually trying to facilitate communication among Member staffs, manage disagreements, and seek consensus. If a Member preferred a certain course of action on a particular matter, I made every effort to listen to that Member and fully consider their perspective, even if I ultimately disagreed with their position. I often held meetings of the Members and their chief advisors for this very purpose.*
- As a Member, I still play a pivotal role in the decisional process. However, I respect the Office of the Chairman as the Chief Executive and Administrative Officer of the FLRA. Drawing from my experience as Chairman, I offer suggestions and express concerns on the various matters that are within the Chairman's decisional authority. I expect and appreciate the opportunity to be heard; yet I understand and respect that the Chairman is the final decision-maker on all things administrative.*
23. The federal labor-management and employment programs are administered by a number of different agencies and offices. Please describe what you believe the relative roles and relationships should be between the FLRA and (a) the Office of Personnel Management, (b) the Merit Systems Protection Board, (c) the Equal Employment Opportunity Commission, and (d) the Office of Special Counsel. *The FLRA is a unique agency within the federal government. It plays a specialized role that no other agency does in federal sector labor-management relations. The FLRA's sister agencies, such as the MSPB and EEOC, also*

have unique roles in the Federal government. For the most part, there is little overlap between these agencies as each operates in a distinct manner within the large field that is federal labor and employment law. There are, however, certain connections between these agencies. For example:

(a) The FLRA, like all Executive agencies, follows the government-wide personnel policies and regulations that are promulgated by the Office of Personnel Management (OPM). In our decisions, we occasionally need to interpret OPM regulations and policies to ensure, for example, that federal-sector arbitration awards and collective-bargaining proposals/provisions are consistent with any applicable OPM regulations. When there are questions as to such an interpretation, the FLRA can and does request advisory opinions from OPM.

(b) When a disciplinary action relates to an adverse action, the MSPB has jurisdiction. However, personnel decisions that relate to lesser disciplinary decisions can proceed through grievance-arbitration, resulting in arbitration awards that can come before the FLRA upon appeal. A case that comes to one or the other forum can be dismissed for failure to bring the appeal before the proper forum.

(c) While the EEOC is a stand-alone agency managing EEO complaints from employees throughout the government and the private sector, an employee can allege an EEO violation through provisions negotiated into a collective bargaining agreement, and depending on the type of EEO violation at issue, we may have jurisdiction over the resulting arbitration award. We look to the EEOC for guidance on their rulings as we review EEO matters that come before us.

(d) The Office of Special Counsel is an investigative and prosecutorial agency which investigates and prosecutes Hatch Act (or political activity) issues, Uniformed Services Employment and Reemployment Rights Act complaints, prohibited personnel practice cases, and whistleblower cases. As is the case with the EEOC, certain OSC matters can come before the FLRA during a review of arbitration awards.

IV. Policy Questions

24. What are the most significant challenges facing the FLRA as an institution? If confirmed, what steps will you take to address those challenges? *The FLRA works best when it has a full complement of its statutory leadership – three Members, a General Counsel, and an appointed Federal Service Impasses Panel. Vacancies detrimentally affect the work of the agency and employee morale.*

Budgetary constraints continue to be a challenge facing the FLRA, especially because we are so small. Because the FLRA's budget is approximately 80% personnel costs, any reduction in budget often results in a reduction in staff which, in turn, directly affects the agency's ability to accomplish its mission. In order to cut costs, the FLRA recently reduced its physical footprint by consolidating its Washington, DC headquarters from two floors to one. Although this consolidation will reduce costs, the FLRA's lease at its current

headquarters is set to expire in 2025. As the FLRA works with the General Services Administration to secure a new headquarters location, I will continue to advocate for fiscal prudence.

25. What is your assessment of the current state of federal labor-management relations? If you believe that improvements can be made, in what areas should there be improvement and how can this be accomplished? *I believe that labor-management relations in the federal sector are fairly stable. While the focus of the Authority changes from administration to administration, generally there is a fairly stable framework of law that underpins the Statute. Ever since I served as General Counsel, I have believed that training is an important part of supporting stable federal labor-management relations. That is why, when I was General Counsel and as Chairman, I started a process to develop in-person and online training that could be used repeatedly and accessed as needed, as described in my response to question 10 above. When parties have a shared, well-informed understanding of their rights and obligations under the Statute, they are less likely to resolve their differences using litigation. That is why training of managers and union representatives is instrumental in alleviating conflicts between labor and management. The Chairman and I have directed our staffs to reprioritize training in order to build upon our previous training successes.*
26. Do you believe that improvements should be made to the Federal Service Labor-Management Relations statute? If so, what improvements can and should be made? *This Statute was issued in 1978 and has stood the test of time. Many areas of the law are fairly well resolved. As technology, working conditions, and world situations change (such as the pandemic), new issues arise that require interpreting the Statute through new lenses. All Authority Members take seriously our obligation to apply the Statute as written. It would be for Congress and the President to determine whether changes are needed to the Statute itself.*
27. Are there improvements to the FLRA's internal review process that you believe can be improved upon to ensure fewer cases ultimately are overturned by the courts, and that all evidence is properly considered in a given case? *As for cases litigated by the courts over the last 4 years, only seven out of 17 decisions were completely overturned. Where the FLRA has been overturned, the courts have not questioned the Authority's jurisdiction to interpret its Statute, but sometimes have criticized the brevity of the supporting analysis, especially where the Authority overturned its own precedent. I believe the FLRA has consistently and properly considered all appropriate evidence, but I acknowledge that providing more robust explanations for our legal conclusions – especially where they depart from prior statutory interpretations – is necessary in order to fare better on judicial review.*
28. During your 2017 nomination to be an FLRA Member, you stated in your responses to HSGAC's pre-hearing questionnaire: "I will do all in my power to maintain and hopefully improve the progress made by the FLRA in maintaining employee morale. All of FLRA leadership staff needs to find methods to engage employees and connect on a person-to-person basis to best carry out the mission of the agency." Please describe the steps you took to maintain or improve employee morale and engage employees during your tenure as

FLRA Chairman. *Consistent with my commitment to connect on a person-to-person basis with employees, I held regular all-employee meetings at which I responded to employee questions. My door was always open, and I met frequently with leadership from the Office of the General Counsel (OGC) to make sure I was hearing about the concerns of our OGC employees across the country. I made personal visits to the Chicago, Denver and San Francisco Regional Offices to hear about their accomplishments, concerns, and resource needs firsthand; unfortunately, my plans to visit the Atlanta regional office were cancelled due to the pandemic. However, I continued to hold all-employee meetings virtually throughout the pandemic.*

*Upon becoming Chairman, one of my first responsibilities was to develop the FLRA's new Strategic Plan for FY18-22. Recognizing the importance of employee buy-in, I developed the Strategic Plan with input from employees and managers in all agency components. In order to solicit recommendations from employees across the agency on how to best accomplish the goals identified in the Strategic Plan, I developed Strategic Plan Implementation Teams. Over 50% of FLRA employees served on one or more of these teams, and I sought to capitalize on these employees' insights, expertise, and demonstrated capacity for innovation. Accordingly, I ensured that not only were these strategic implementation teams a cross-component effort, but the teams' objectives included areas of concern identified in employees' FEVS responses. In order to accomplish the FLRA's strategic goals **and** improve employee morale, I enacted many of the teams' recommendations, including:*

- *Worked with the Performance Communication Team to update performance standards for all positions to ensure alignment with the FLRA's strategic goals. In making these updates, the teams always first sought input from employees occupying the positions before revising their performance standards.*
- *Adopted the recommendations of the Professional Development Team to provide more leadership training opportunities and to obtain a subscription to a legal training resource enabling employees to acquire Continuing Legal Education (CLE) or Professional Education Credits (PEC) at no personal cost.*
- *Approved the recommendations of the Health and Wellness Team to proactively address the mental and emotional toll of the pandemic by disseminating health and wellness information about stress management, the benefits of physical activity, and other aspects of self-care. The team also hosted agency-wide health and wellness events to encourage employee well-being and foster connectedness during a time of isolation.*
- *At the recommendation of the Employee Engagement Team, hired a consultant to conduct focus groups in order to identify employees' areas of concern and discern how to address them. I adopted many of the resulting recommendations including reimbursing bar/professional dues, updating the FLRA's administrative leave policy to allow occasional early release options, transporting additional office equipment – such as monitors and headsets – to employees working at home due to the pandemic, and, in response to employee concerns about upward mobility, many promotional opportunities were posted first – or only – internally, resulting in many employees moving into higher graded positions.*

29. According to the annual *Best Places to Work* rankings compiled by the Partnership for Public Service, which is based on data collected in the Federal Employee Viewpoint Survey, employee engagement and satisfaction scores at the FLRA fell significantly during your tenure as Chairman (2018-2020).¹ To what do you attribute this decline? *As is not unusual during a change of administrations, the FLRA experienced a large degree of turnover and these vacancies affected employees' workloads and ability to fulfill the agency's mission. The absence of a General Counsel, accompanied by my difficult decision to close two regional offices – as discussed in response to question 14 above – had a detrimental effect on employee morale. Additionally, I withdrew recognition of an employee organization known as the Union of Authority Employees. I believe all of these factors contributed to the decline in FEVS scores for 2018 and 2019. Recognizing that the FLRA's employees are its most valuable resource, I made proactive efforts to address employee engagement and satisfaction by ensuring that the Strategic Plan Implementation Teams – described in response to question 28 above – were empowered to explore, and make recommendations addressing, each of the major areas for improvement identified in the FEVS. The work of these teams was still in progress when employees took the (pandemic-delayed) FEVS in the fall of 2020, and the FLRA's scores rose significantly. Although the results of that survey were not released until early 2021, after my service as Chairman had ended, employee engagement and satisfaction scores rose more than 20 percent, which are attributable to the actions I took at the recommendation of the Strategic Plan Implementation Teams, as well as my efforts to protect employees' safety during the COVID-19 public health emergency.*

V. Accountability

Whistleblower Protections

30. Protecting whistleblowers and their confidentiality is of the utmost importance to this Committee.
- a. Please describe any previous experience with handling whistleblower complaints. What steps did you take to ensure those individuals did not face retaliation and that their claims were thoroughly investigated? *I encourage employees to disclose any FLRA wrongdoing to agency leadership (including me), the FLRA Office of Inspector General, or the U.S. Office of Special Counsel. It is vital that the FLRA foster an environment in which employees feel they can make such disclosures without fear of retaliation, and I will continue to promote open communication and celebrate accountability. During my career, I have never had to address any whistleblower complaints related to my conduct.*
 - b. If confirmed, what steps will you take to ensure that whistleblower complaints are handled appropriately at the FLRA? *We have annual training for all employees,*

¹ From 2018 – 2020 the FLRA received its lowest Engagement and Satisfaction Scores of the 10 most recent years available: 69.7 (2013), 79.2 (2014), 85.2 (2015), 80.2 (2016), 72.6 (2017), 41.6 (2018), 41.8 (2019), 64.6 (2020), 78.4 (2021), 81.2 (2022). <https://bestplacetowork.org/rankings/detail/?c=AU00>

along with notices on the agency's intranet site and on the bulletin boards of the physical offices advising employees of their rights and how to disclose concerns to the Office of Special Counsel. In addition, we have an element in all managers' performance plans regarding their contributions toward ensuring that whistleblowers are protected from illegal discrimination or retaliation, consistent with the Whistleblower Protection Act.

- c. If confirmed, what steps will you take to ensure that whistleblowers at the FLRA do not face retaliation, that whistleblower identifiers are protected, and that complaints of retaliation are handled appropriately? *I commit that I will take all appropriate action consistent with the Whistleblower Protection Act.*

Cooperation with Inspectors General

31. What is your view of the role of the FLRA Office of Inspector General (OIG)? Please describe what you think the relationship between a FLRA Member and the OIG should be. If confirmed, what steps would you take to establish a working relationship with the Inspector General? *One of the primary roles of the IG is to oversee and conduct independent investigations, audits, and reviews of FLRA programs and operations to assure there is no waste, fraud, or abuse. The OIG is independent of all FLRA divisions and offices, and is obligated to comply with all the requirements and duties set forth in the Inspector General Act. The relationship between an FLRA Member and the OIG should be one of mutual respect and concern for the integrity of the agency. I have always had a good working relationship with the IG. If confirmed, I would continue to cooperate with the IG in any manner that would assist in accomplishing these essential functions.*
32. If confirmed, do you commit to ensuring that all recommendations made by the FLRA Inspector General are reviewed, responded to, if necessary, and, unless the agency justifies its disagreements with the recommendations, implemented to the fullest extent possible within a reasonable time period? *Yes.*
33. If confirmed, do you commit without reservation to ensuring the FLRA OIG receives timely access to agency records and to interview agency employees? *Yes.*
34. If confirmed, what steps will you take to ensure all FLRA offices and employees cooperate fully and promptly with OIG requests? *I fully understand the significance of timely response to, and cooperation with, the OIG. I would ensure that all employees under my supervision will promptly comply with such requests.*

Cooperation with GAO

35. If confirmed, do you commit without reservation to ensuring GAO receives timely, comprehensive responses to requests for information, including for records and meetings? *Yes.*

36. If confirmed, do you commit to fully cooperate in a timely manner with any audits, investigations, and other reviews and related requests for information from GAO? *Yes.*
37. If confirmed, what steps would you take to facilitate and encourage timely cooperation by federal agencies with GAO? *If confirmed, I would ensure FLRA will timely cooperate with such requests.*
38. If confirmed, what steps will you take to ensure all FLRA functions and employees cooperate fully and promptly with GAO requests? *If confirmed, I would ensure that all employees and functions under my supervision will cooperate with such requests fully and promptly.*
39. If confirmed, will you agree to work with representatives from this Committee and the GAO to promptly implement recommendations for improving the FLRA's operations and effectiveness? *Yes.*

VI. Relations with Congress

40. 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.*
41. 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.*
42. Do you agree without reservation to comply fully, completely, and promptly with 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.*
43. If confirmed, how will you make certain that you will respond in a timely manner to Member requests for information? *I will ensure that any and all requests for information from a Congressional Member be routed to me and I will ensure that such requests be answered in a timely manner.*
44. If confirmed, will you direct your staff to adopt a presumption of openness where practical, including identifying documents that can and should be proactively released to the public, without requiring a Freedom of Information Act request? *Yes.*
45. 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? *Yes.*

VII. Assistance

46. Are these answers completely your own? If not, who has provided you with assistance?
These answers are completely my own.
47. Have you consulted with the FLRA, or any other interested parties? If so, please indicate which entities. *Yes, I have consulted with staff in the FLRA in preparing my responses.*

I, Colleen Duffy Kiko, hereby state that I have read the foregoing Pre-Hearing Questionnaire and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

COLLEEN KIKO Digitally signed by COLLEEN KIKO
Date: 2024.04.04 16:00:30 -04'00'

(Signature)

This 4th day of April, 2024.

**Post-Hearing Questions for the Record
Submitted to Colleen Kiko
From Senator Gary C. Peters**

**Nominations of Colleen D. Kiko and Anne M. Wagner to be Members, Federal Labor
Relations Authority and David Huitema to be Director, Office of Government Ethics
April 17, 2024**

1. During your tenure as FLRA Chairman, you made several decisions that departed from longstanding agency precedent, some of which were overturned by the U.S. Court of Appeals for the District of Columbia Circuit.

Have you made changes in how you approach decisions before the FLRA in light of recent court decisions?

In resolving cases that come before the Federal Labor Relations Authority (“FLRA”), I continue to examine the dispute itself, the legal issues involved, the parties’ various contentions, the factual background, and any potentially applicable laws, regulations, and precedent. Decisions that may have departed from previous precedent were based on interpretations of the Federal Service Labor-Management Relations Statute (the “Statute”)—the guiding law for our agency. Of the 685 decisions that carry my name, 17 of them were appealed and only seven were overturned. Where the FLRA has been overturned, the courts have not questioned the Authority’s jurisdiction to interpret its Statute, but sometimes criticized the brevity of the supporting analysis. Based on some of these court decisions, I have placed an additional emphasis on more thoroughly and comprehensively elucidating the reasoning behind any decision that bears my name. My hope is that this change will lead to greater decisional clarity and allow the courts to conduct more meaningful reviews of any appealed Authority decisions. With that said, the Authority’s decision-making process is a joint effort among the three Members. Although I exert great influence in that collaborative process, I represent just one cog in a three-cog wheel.

Please explain the weight that you give to FLRA precedent when making decisions and what factors you consider when deviating from precedent.

To me, the principal of stare decisis is of the utmost importance. In any dispute, I first and foremost familiarize myself with any applicable precedent. To the extent that I have reversed or altered Authority precedent, I’ve done so infrequently. In the vast majority of the approximately 685 decisions in which I have participated, the FLRA has applied its established precedent to resolve the case. Ultimately, the primary authority in all FLRA cases is the Statute. Accordingly, I have reconsidered Authority precedent when a conflict emerged between that precedent and the wording of the Statute. Further, I believe decisions should not be made in a vacuum, so I make sure to carefully consider whether the federal sector workplace has changed in a manner that might necessitate reexamining precedent. However, the decision to overturn precedent does not belong to any one Member. If confirmed, I will continue to respect the principal of stare decisis, and approach the notion of

overturning precedent with careful consideration and deliberation, as I have in the past seven years.

In your view, does overturning FLRA precedent impact the stability of labor-management relations across the federal government?

Every decision the Authority issues has the potential to impact the stability of labor-management relations, regardless of whether that decision overturns or upholds Authority precedent. Refining and improving legal frameworks to better serve the interests of FLRA stakeholders can have a positive effect on labor relations. It's also the Authority's role to ensure that its own legal principles remain relevant in the face of contemporary workplace dynamics and the ever-evolving laws and regulations that govern other aspects of federal employment.

**Post-Hearing Questions for the Record
Submitted to Colleen Duffy Kiko
From Senator Kyrsten Sinema**

**Nominations of Colleen D. Kiko and Anne M. Wagner to be Members, Federal Labor Relations Authority and David Huitema to be Director, Office of Government Ethics
April 17, 2024**

- 1) You have worked for the FLRA since its creation in 1979. This long history of service on the FLRA creates both opportunities and disadvantages. First, due to your extensive record as a member of the FLRA, how do you respond to detractors who do not agree with many of the positions you have taken? Second, considering the longevity of your service what are your goals, if confirmed, for this next term?

Although I have worked in the labor field for 20 years, I have worked at the Federal Labor Relations Authority (“FLRA”) for approximately 15 years. I started with the FLRA when it was created in 1979 and then left to attend law school in 1982. I was asked to return to serve as the General Counsel from 2005-2008; and I was again asked to return to serve as a Member from 2017 to the present. I served as Chairman from 2017 -2021.

The legal issues that come before the FLRA, particularly those concerning the interpretation and application of the Federal Service Labor-Management Relations Statute (the “Statute”), are often complex. As a result, I have always looked to the Statute’s wording as the primary authority in my work at the FLRA, while also taking into account relevant agency and court precedent. I regularly resolve tough questions that necessitate the balancing of competing viewpoints, as reasonable minds may differ on the “correct” result. With every dispute I am asked to resolve, I examine the legal issues involved, the parties’ various contentions, the factual background, and any potentially applicable laws, regulations, and precedent. If confirmed, I will continue to be guided by the Statute, and I will consider all viewpoints presented to me.

If confirmed as a Member of the FLRA, my primary goal would be to work with the rest of the Authority Members to continue to issue timely, clear, and well-reasoned decisions. As I have in the past, I would continue to support the FLRA’s efforts to train and educate its stakeholders, including the production of YouTube training videos. Additionally, I would support and assist the Chairman in making decisions about the FLRA’s future physical footprint, particularly as the agency relocates its headquarters in 2026.

- 2) The mission of the FLRA is unique, regulating the relationship between the federal government and its employees. During your tenure as Chair, the number of unfair labor practice prosecutions declined. What caused this decline during the referenced period of time, and, if confirmed, what actions will you prioritize to protect the interests of both federal employees and management?

The Statute establishes distinct components within the FLRA, including the Authority and the Office of General Counsel (OGC). The OGC operates under the direction of the General Counsel, who is appointed by the President, with the advice and consent of the Senate. The General Counsel has the statutory authority, among other things, to investigate unfair-labor-practice (ULP) charges filed in the regional offices and to prosecute ULP complaints. In the absence of a General Counsel (or an Acting General Counsel), the OGC cannot prosecute ULP complaints. The General Counsel position became vacant in the months before I became Chairman of the FLRA in 2017, and it was vacant the whole time I served as Chairman. This vacancy directly caused the decline in ULP prosecutions during my time as Chairman. In those ULP cases that did reach the Authority – through appeals from Administrative Law Judge decisions or arbitration awards resolving ULP grievances – I have, and will continue to, issue decisions as efficiently as possible.

- 3) During your tenure as Chair, you decertified the agency's own union, ending forty years of precedent. Your interpretation of the statute runs counter to a 1980 opinion issued by DOJ's Office of Legal Counsel. You've faced considerable criticism and have had numerous opinions reversed on appeal. If confirmed, what will you do to ensure your actions are consistent with statutory law and not guided by preconception?

In my time as a Member of the Authority, I have issued 685 decisions. Of those 685 decisions, seventeen were appealed and only seven were overturned. As one of three Members of a quasi-judicial body, I'm troubled whenever any decision that bears my name is overturned. The Plain Writing Act of 2010 requires federal agencies to use plain language when communicating with the public and the Authority had heard complaints from our parties that our decisions were long and not easily understood. Accordingly, the Authority endeavored to keep our decisions more succinct. However, in our efforts to keep our decisions short and readable, we may have overprioritized conciseness. Many of the criticisms that the courts levied against those overturned decisions critiqued the thoroughness of the analysis. As a result of the courts' decisions, I've placed a greater emphasis on ensuring that the Authority's decisions provide a more thorough and comprehensive explanation of their reasoning. This emphasis should lead to better decisional clarity and allow the courts to conduct more meaningful reviews of any appealed Authority decisions. With that said, the Authority's decision-making process is a joint effort among at least two Members. Through that collaborative process, I will strive to ensure that all Authority decisions are well supported and explained.

**U.S Senate Committee on Homeland Security and Governmental Affairs
Confirmation Hearing
Statement of the Record
Submitted by
Anne M. Wagner, Nominee to be
A Member of the Federal Labor Relations Authority**

April 17, 2024

Good morning, Chairman Peters, Ranking Member Paul, and members of the Committee. It is an honor to have been nominated by President Biden to serve as a Member of the Federal Labor Relations Authority (FLRA) and a privilege to appear before you to seek Senate confirmation of my nomination.

I would also like to take a moment to express my deep appreciation to those without whom I would not be here today. First, to my parents, George and Kay Wagner for their unfailing love and support during my childhood and throughout my life. To my sisters, brother and their families for their friendship, humor, and encouragement. To my friends and colleagues throughout my career for their generous guidance and inspiring dedication to the law. Finally, to my dear family, my husband, Allynn, and daughters, Katie and Nora, who are here today, and Carlin in Texas, whose love has carried me on this journey every step of the way.

In 1978, Congress enacted the Federal Service Labor-Management Relations Statute (the Statute) as part of its comprehensive legislative reform of the federal civil service. It established the FLRA as the agency responsible for providing leadership in federal sector labor-management relations through policies, guidance, and caselaw. Although much has changed since its inception, the FLRA's role remains as vital today as it was over forty-five years ago. The public interest in ensuring that federal workers and management fully engage with each other to achieve the most effective and efficient government remains clear. I wholeheartedly support the Authority's mission, and if confirmed, will commit myself to ensuring that the FLRA fulfills the critical purpose that Congress entrusted to it.

In my decades-long legal career, I have represented federal employees as a labor union staff attorney, worked as a neutral adjudicator of federal employee claims, and served at the highest levels of agency management in the Senior Executive Service. If confirmed, I believe that my substantial experience

addressing employment and labor law issues from all sides will be valuable in carrying out my duties as an FLRA Member.

If confirmed, I also very much look forward to working again with Chairman Susan Grundmann, and with Member Colleen Kiko, to fulfill the FLRA's important mission of providing robust leadership in the federal labor-management relations sphere. I am humbled by, and thank you for, the opportunity to be with you today and am happy to answer any questions that you may have.

HSGAC BIOGRAPHICAL QUESTIONS FOR
EXECUTIVE NOMINEES

REDACTED

1. Basic Biographical Information

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
<u>Name of Position</u>	<u>Date of Nomination</u>
Member, Federal Labor Relations Authority	January 11, 2024

<i>Current Legal Name</i>			
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>
Anne	Marie	Wagner	

<i>Addresses</i>					
<u>Residential Address</u> (do not include street address)			<u>Office Address</u> (include street address)		
			Street: 1730 M Street NW		
<u>City:</u> Fairfax	<u>State:</u> VA	<u>Zip:</u> 22030	<u>City:</u> Washington, DC	<u>State:</u>	<u>Zip:</u> 20036

<i>Other Names Used</i>						
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	<small>Check if Maiden Name</small>	<u>Name Used From</u> (Month/Year) (Check box if estimate)	<u>Name Used To</u> (Month/Year) (Check box if estimate)
					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
1957	Chicago, Illinois

<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</i> (current spouse only)			
Spouse's First Name	Spouse's Middle Name	Spouse's Last Name	Spouse's Suffix
Allynn	Lawrence	Howe	

<i>Spouse's Other Names Used</i> (current spouse only)						
First Name	Middle Name	Last Name	Suffix	<small>Check if Maiden Name</small>	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
					Est <input type="checkbox"/>	Est <input type="checkbox"/>
					Est <input type="checkbox"/>	Est <input type="checkbox"/>

<i>Children's Names (if over 18)</i>			
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>
Kathleen	Elizabeth	Howe	
Nora	Marian	Howe	
Carlin (Stepdaughter)	Allynn	Liborio	

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>
University of Notre Dame	University	08/75 <input type="checkbox"/> Est <input type="checkbox"/>	05/79 <input type="checkbox"/> Est <input type="checkbox"/> <input type="checkbox"/> Present	BA	05/79
Universite Catholique de l'Ouest	University	08/76 <input type="checkbox"/> Est <input type="checkbox"/>	05/77 <input type="checkbox"/> Est <input type="checkbox"/> <input type="checkbox"/> Present	N/A-study abroad thru Notre Dame	
The George Washington University	Law School	08/82 <input type="checkbox"/> Est <input type="checkbox"/>	05/85 <input type="checkbox"/> Est <input type="checkbox"/> <input type="checkbox"/> Present	Juris Doctor	05/85
		<input type="checkbox"/> Est <input type="checkbox"/>	<input type="checkbox"/> Est <input type="checkbox"/> <input type="checkbox"/> 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.

<u>Type of Employment</u> (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)	<u>Name of Your Employer/Assigned Duty Station</u>	<u>Most Recent Position Title/Rank</u>	<u>Location</u> (City and State only)	<u>Date Employment Began</u> (month/year) (check box if estimate)	<u>Date Employment Ended</u> (month/year) (check box if estimate) (check "present" box if still employed)
Federal Government	U.S. Office of Special Counsel	Associate Special Counsel	Washington DC	04/2015 Est <input type="checkbox"/>	Present Est <input type="checkbox"/>
Federal Government	U.S. Merit Systems Protection Board	Vice Chairman	Washington DC	11/2009 Est <input type="checkbox"/>	02/2015 Est <input type="checkbox"/>
Federal Government	Government Accountability Office, Personnel Appeals Board	General Counsel	Washington DC	04/2006 Est <input type="checkbox"/>	11/2009 Est <input type="checkbox"/>
Federal Government	Government Accountability Office, Personnel Appeals Board	Member	Washington DC	12/1999 Est <input type="checkbox"/>	06/2005 Est <input type="checkbox"/>
Non-Government Employer	American Federation of Government Employees, AFL-CIO	Assistant General Counsel	Washington DC	10/1986 Est <input type="checkbox"/>	04/2005 Est <input type="checkbox"/>
Federal Government	General Services Administration	Staff Counsel	Washington DC	06/1983	10/1986
Federal Government	U.S. Attorney's Office	Intern	Washington DC	01/1985	05/1985
Non-Government Employer	George Washington University	Administrative Assistant (Food Services)	Washington DC	09/82	06/1983
Non-Government Employer	Encyclopaedia Britannica	Editorial Assistant	Chicago, IL	02/1980	08/1982
Non-Government Employer	Merrill Lynch Pierce Fenner & Smith	Accounts Assistant	Chicago, IL	10/1979	02/1980

Non-Government Employer	La Hacienda	Waitress	Mishawaka, IN	06/1079	08/1979
Non-Government Employer	University of Notre Dame	Library Asst. (Work/Study)	South Bend, IN	08/1978	05/1979
Non-Government Employer	The Martinique Restaurant	Waitress	Chicago, IL	05/1978	08/1978
Non-Government Employer	Kelly Temporary Services	Temp Clerk	Chicago, IL	05/1977	08/1977
Non-Government Employer	Sears Roebuck Inc.	Shareholder Relations Clerk	Chicago, IL	05/1976	08/1976

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

None

<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)
		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.

In 2018-2019, I participated as part of a coalition of Homeowners' Associations in opposing a measure by Fairfax County to rezone an existing 10-acre parcel that included existing public housing to erect 3 high density structures including one intended for use as privately developed and managed student housing apartment building.

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.

In May 2008, I received the Volunteer of the Year award recognizing "outstanding contributions to the Catholic Schools of the Diocese of Arlington" signed by Dr. Timothy J. McNiff, then Superintendent of Schools for the Arlington Diocese and Wayne F. Cyron, President of the Catholic Business Network of Northern Virginia.

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).

<u>Name of Organization</u>	<u>Dates of Your Membership</u> (You may approximate.)	<u>Position(s) Held</u>
Royal Legacy Homeowners Assn	August 2013-Present	Vice-President (2019-2022)

7. Political Activity

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

No

<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>

(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

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>

(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

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>

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>
Mark Roth, Gony Frieder, and Anne Wagner, <i>Job Security and Bargaining Rights of Federal Government Employees</i>	8 UDC/DCSL L.Rev. 153	2004

(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

<u>Title/Topic</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>

(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>
Testimony related to amendment to the Fairfax County Comprehensive Plan and rezoning petition.	Fairfax County Board of Supervisors	2019

9. Criminal History

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

None

- 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.)
- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official?
- Have you been charged, convicted, or sentenced of a crime in any court?
- Have you been or are you currently on probation or parole?
- Are you currently on trial or awaiting a trial on criminal charges?
- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation?

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:

- 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 of 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.

Though not a party, I was involved in a civil court action. Please see response to Question 10(B).

<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>

(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.

I was the proposing official in the federal employment case described below.

<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>
08/10/2007	U.S. District Court for the District of Columbia	Diane Williams (P) David Walker (D) Gene Dodaro (D)	EEO complaint by employee of the GAO Personnel Appeals Board alleging age, race, and sex discrimination, retaliation, and a hostile work environment involving alleged non-promotions, reprimands,	The court dismissed a number of claims in subsequent motions for summary judgment. Case thereafter

		Civil Docket # 1:07-cv-01452-JDB	and removal for which I was the proposing official.	settled in January, 2012.

(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.

Please see response to Question 10(B).

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

<u>Name of Agency/Association/Committee/Group</u>	<u>Date Citation/Disciplinary Action/Complaint Issued/Initiated</u>	<u>Describe Citation/Disciplinary Action/Complaint</u>	<u>Results of Disciplinary Action/Complaint</u>

(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

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).

No

14. Outside Positions

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)

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.

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)

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.

Anne Wagner

This 23rd day of January, 2024



January 19, 2024

The Honorable Gary C. Peters
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Anne Wagner, who has been nominated by President Biden for the position of Member, Federal Labor Relations Authority.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

DAVID APOL

Digitally signed by DAVID
APOL
Date: 2024.01.19 15:15:32
-05'00'

David J. Apol
General Counsel

Enclosures

REDACTED



October 31, 2023

Thomas Tso, Esq.
Designated Agency Ethics Official
Federal Labor Relations Authority
1400 K Street, NW
Washington, D.C. 20424

Dear Mr. Tso:

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 Member of the Federal Labor Relations Authority. It is my responsibility to understand and comply with commitments outlined in this agreement.

SECTION 1 – GENERAL COMMITMENTS

As required by the criminal conflicts of interest law at 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the particular matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me:

- Any spouse or minor child of mine;
- Any general partner of a partnership in which I am a limited or general partner;
- Any organization in which I serve as an officer, director, trustee, general partner, or employee; and
- Any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

In the event that an actual or potential conflict of interest arises during my appointment, I will consult with an agency ethics official and take the measures necessary to resolve the conflict, such as recusal from the particular matter or divestiture of an asset.

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

I will receive a live ethics briefing from a member of the ethics office after my confirmation but not later than 15 days after my appointment pursuant to the ethics program regulation at 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will submit my

Certification of Ethics Agreement Compliance which documents my compliance with this ethics agreement.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order No. 13989) and that I will be bound by it. Among other obligations, I will be required to recuse from particular matters involving specific parties involving my former employer or former clients for a period of two years after I am appointed, with the exception of federal, state and local government.

I will not modify this ethics agreement without your approval and the approval of the U.S. Office of Government Ethics pursuant to the ethics agreement requirements contained in the financial disclosure regulation at 5 C.F.R. § 2634.803(a)(4).

SECTION 2 – SPOUSE EMPLOYMENT

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

SECTION 3 – PUBLIC POSTING

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

Sincerely,



Anne Wagner

**U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing Questionnaire
For the Nomination of Anne Wagner to be a Member,
Federal Labor Relations Authority**

I. Nomination Process and Conflicts of Interest

1. Did the President give you specific reasons why he nominated you to serve as a Member of the Federal Labor Relations Authority (FLRA), and if so, what were they?

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 a Member of the FLRA? If so, what are they, and to whom were the 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.

When my nomination was being vetted, I consulted with the Office of Government Ethics and the FLRA's designated agency ethics official to identify potential conflicts of interest. I will abide by the terms of the ethics agreement that I have signed and do not know of any other potential conflicts of interest at this time.

5. Please provide the name of any individual, law firm, consulting firm, lobbying firm, public relations firm, or other entity you have formally retained or contracted with regarding this nomination, including any amounts paid in fees or otherwise.

None

6. Have you or any organization of which you were an officer, director or owner, or have or had a significant financial interest in been the recipient of any Federal grants, loans, or other financial assistance (such as, but not limited to, Paycheck Protection Program Loans, Economic Injury Disaster Loans, Restaurant Revitalization Grants, etc.) within the past 10 years. If so, please list the program, amount, and date of receipt.

No

II. Background of the Nominee

7. Why do you want to serve as a Member of the FLRA?

I strongly believe in the mission of the FLRA to provide leadership in establishing policies and guidance to effectuate Congress' purpose underlying the Federal Service Labor-Management Relations Statute (Statute).

8. What specific background, experience, and attributes affirmatively qualify you to be a Member of the FLRA?

My entire legal career has been centered in labor and employment law from my beginning as a law clerk for the General Services Administration, then as staff counsel for the American Federation of Government Employees (AFGE), to becoming a Member, and thereafter, General Counsel for the Government Accountability Office's Personnel Appeals Board (PAB), then being appointed by President Obama to be Vice Chairman of the Merit Systems Protection Board (MSPB), and, finally, to my current position as Associate Special Counsel-General Law Division at the U.S. Office of Special Counsel (OSC). I believe that the breadth of my experience as both an employee advocate and management official and my knowledge of the Statute affirmatively qualify me to be a Member of the FLRA.

9. Please describe:

- a. Your leadership and management style.

My leadership and management style is grounded in respect and trust. I am very collaborative and seek consensus, but also demonstrate resolve when a decision, made after due deliberation, needs to be executed.

- b. Your experience managing personnel.

During the first half of my nearly 40-year career, my experience managing personnel was limited to directing the work of administrative support staff and mentoring new attorneys. The second half of my career has been almost wholly in management. As PAB General Counsel, my role encompassed the full range of executive functions, including program supervision, performance management, and resource allocation. As MSPB Vice Chair, while not directly responsible for the agency's operational functions, I played a significant role in managing and shaping the agency's legal and programmatic positions and policies. During my 5 ½ year term I engaged, on an ongoing basis, with the attorneys in the Office of Appeals Counsel (OAC) and General Counsel's office. Since 2015, as an OSC Associate Special Counsel, one of four leadership positions in its career Senior Executive Service, I manage the following seven diverse program units: Case Review (Intake, FOIA, Records

Management), Disclosure, Hatch Act, Uniformed Service Employment and Reemployment Rights Act, Alternative Dispute Resolution, Retaliation and Disclosure, and Diversity/Outreach/Training Units.

- c. What is the largest number of people that have worked under your supervision?

50

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

In October 2013, the federal government experienced a 16-day shutdown due to lapse in appropriations. While MSPB employees were furloughed, the three Board Members were not. Under the normal case review process, case files first go to the Board's OAC where the assigned staff attorneys thoroughly review the record and draft a recommended opinion for the Board Members' consideration. During the shutdown, the three Board Members decided to do that work ourselves to avoid an OAC case backlog and to prevent any undue delay in the resolution of appeals. Upon returning to work, staff were both surprised by and appreciative of our leadership initiative in mitigating the shutdown's adverse impact on them and the work of the agency.

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

When I started my term as MSPB Vice Chairman, the OAC had long employed a practice of recommending so-called "short form" decisions, whereby the Board would adopt the initial decision in the case as the final decision without explanation or response to arguments raised by the parties on appeal. In an informal meeting, a number of Federal Circuit Court of Appeals judges questioned this practice and criticized the Board for abdicating its duty under the Administrative Procedures Act to provide reasoned decisions. Upon reflection, I agreed and undertook a major effort to forego the "short form" practice by requiring that OAC attorneys provide the Board Members with draft opinions that provided a full explanation of the basis for the ruling on an initial decision. The revised protocol required OAC attorneys to address arguments that the parties raised in their pleadings on appeal. This change met significant resistance, particularly by OAC, on the grounds that it was an unnecessary exercise and a waste of time. While I made an effort to explain the rationale for the change, looking back, I can readily see how it appeared to be a "command" decision that was obtained without listening to staff. Of course, staff complied with the new protocol, but the resistance remained, which became clear when the Board returned to the "short form" practice after my departure.

I consider this a failure in leadership, not for lack of vision, but for not managing the change in a way that generated the staff's trust in the decision. This turned out to be a pivotal lesson in my growth as a leader and ultimately led me to see how essential credibility and trust (see question 15) are to effective leadership.

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

The instance that stands out most is when, as the PAB General Counsel, I represented twelve GAO employees in challenging the effort by then-Comptroller General, Dave Walker, to reorganize the analyst workforce. Although Mr. Walker was not technically my supervisor, he was the head of the agency of which the PAB and the PAB General Counsel's office were part. He was invested in his decision to reorganize the workforce and my decision to file a complaint on behalf of those challenging it was a roadblock. The case garnered a lot of attention at GAO, triggering hundreds more complaints. We ultimately favorably settled the case for the twelve individuals. The hundreds of other complaints were untimely, but by the time of the settlement, the matter had gotten sufficient Congressional attention as to raise the prospect of a legislative solution. In May 2007, Mr. Walker and I were called to testify before the House Subcommittee on the Federal Workforce, Postal Service, and the District of Columbia and the Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia. Mr. Walker's testimony focused on defending the reorganization, while mine was directed at imparting the legal bases for challenging it.

Although GAO ultimately undertook the reorganization, the PAB General Counsel's office did obtain relief for those employees who filed complaints and therefore, I count this as a success.

13. Do you seek out dissenting views and encourage constructive critical dialogue with subordinates? Please provide examples of times in your career when you have done so.

Yes. My undergraduate major at the University of Notre Dame was in a rigorous "Great Books" program where most of the classes were conducted in the seminar format. The experience forever instilled in me a deep appreciation for the dialectic, the critical exchange of ideas, as the best way to get to the correct conclusion. Throughout my career, I have steadfastly adhered to this approach, but it was most prominently a feature of my term as Vice Chairman of the MSPB, where I routinely engaged with the other Members' counsels, as well as staff counsel, to test the legal theory of a case to get to the best disposition.

14. Please list and describe examples of when you made politically difficult choices that you thought were in the best interest of the country or your organization.

My duties as OSC Associate Special Counsel include managing and overseeing the Unit that enforces the Hatch Act. I can testify without any reservation that the enforcement recommendations of the career staff are made without regard to partisan political considerations. However, and without discussing particular cases, OSC's enforcement of the Hatch Act can, at times, be at odds with an Administration's political agenda – whether Democratic or Republican. OSC is, by law, an independent agency. While I have no reason to believe that its independence was ever in jeopardy as a result of its enforcement action, I am nevertheless extremely proud that neither the staff nor I have ever wavered in our fealty to nonpartisan enforcement of the Hatch Act.

15. Please describe how you build credibility and trust among staff as a leader.

As a leader, I have always endeavored to build credibility and trust among staff by adhering to the maxim to “say what you mean and mean what you say.” In other words, I strive for directness and transparency in my communication, and to align my actions with my words. The other essential foundation for establishing credibility and trust is to listen to staff and truly consider their input. It has been my experience that if staff are confident that their views have been heard, they are more likely to accept decisions, even if they do not agree with them.

16. During your career, has your conduct as a government employee ever been subject to an investigation or audit by the Office of Special Counsel, Department of Justice, agency Equal Opportunity office or investigator, agency Inspector General, or any other similar federal, state, or local investigative entity? If so, please describe the nature of the allegations/conduct and the outcome(s) of the investigation(s) or audit(s).

When I was PAB General Counsel, an employee in that office filed an EEO complaint alleging age, race, and sex discrimination, retaliation, and a hostile work environment involving alleged non-promotions, reprimands, and removal for which I was the proposing official. The employee pursued her claims to U.S. District Court in *Williams v. Walker and Dodaro*, Civil Docket # 1:07-cv-01452-JDB where the case was largely dismissed on motions for summary judgment, after which the parties settled the remaining claims in 2011.

17. Have you ever represented a party in a matter before or involving the Federal Labor Relations Authority? If so, please describe the matter(s) and the nature of the representation.

During my years as AFGE staff counsel, our office filed hundreds of cases with the FLRA on behalf the Union, including negotiability appeals, unfair labor practice petitions, representation petitions and exceptions to arbitration awards. In addition, my duties as staff counsel included filing petitions for review of FLRA decisions, briefing those cases, and conducting oral arguments in the federal courts of appeal. I ceased working for AFGE in 2006.

III. Role of Member, FLRA

18. Please describe your view of the FLRA’s mission and a Member’s role in achieving that mission.

The FLRA’s statutory mission is to provide leadership in establishing policies and guidance so that federal agencies, labor organizations, and employees fully understand their rights

and responsibilities under the Statute. A Member's role in achieving that mission is to resolve disputes arising under the Statute by adjudicating cases coming before the Authority through the impartial, fair, and expeditious application of the law to the facts of any case coming before the Authority.

19. Please describe how you anticipate, if confirmed, working with other FLRA Members to promote the agency's core mission.

I anticipate working collaboratively and seeking to reach consensus when possible with the other FLRA Members.

- a. Please describe prior work experience that demonstrates your capacity to work with FLRA Members of a different party affiliation.

Like the FLRA, the MSPB is a bipartisan entity consisting of three members, two of whom are affiliated with one major political party and the third is affiliated with the other major political party. During my term as MSPB Vice Chairman, my working relationships with the Republican Members, Mary Rose at the outset, followed by Mark Robbins, were very collegial, both professionally and personally. During my term, the Board decided over 4,000 cases, many, if not most, of which were decided by uniform consensus. In cases where we did not agree, the discourse was invariably respectful, which is an important core value for me.

20. The federal labor-management and employment programs are administered by a number of different agencies and offices. Please describe what you believe the relative roles and relationships should be between the FLRA and (a) the Office of Personnel Management, (b) the Merit Systems Protection Board, (c) the Equal Employment Opportunity Commission, and (d) the Office of Special Counsel.

Each of these agencies plays an essential and vital, but distinct, role in the federal civil service system. With the possible exception of the Office of Personnel Management, these agencies have a primary statutory duty to prosecute and/or adjudicate cases arising under their respective statutes. As such, the agencies must function independently in order to ensure that their laws are enforced fairly and with integrity. All of the agencies share common challenges, for example, meeting IT mandates, that can benefit from an ongoing interagency dialogue to identify solutions that promote efficiencies in government operations.

IV. Policy Questions

21. What are the most significant challenges facing the FLRA as an institution? If confirmed, what steps will you take to address those challenges?

Having not worked at the FLRA, I am not in a position to identify internal challenges facing the agency as an institution and therefore do not have a basis to form an opinion as to what steps I would take, if confirmed, to address those challenges. Beyond that, my experience in the leadership at the MSPB and OSC suggests that ensuring timely and high-quality decisions, whether in the adjudicative or investigatory context, is invariably challenging. The rate at which an agency can issue decisions is often affected by factors, some unpredictable, that are outside the agency's control, e.g., budget, staffing, the pandemic. If confirmed, I would seek innovative ways to contribute to the FLRA's ability to meet these challenges as they arise.

22. What is your assessment of the current state of federal labor-management relations? If you believe that improvements can be made, in what areas should there be improvement and how can this be accomplished?

Having been on the sidelines of federal labor-management relations for some time, I hesitate to provide an assessment of its current state. However, I do note that the last 45 years since the enactment of the Statute have seen significant changes in the nature and manner of the work carried out by federal agencies. I believe that the government's capacity to effectively meet this ever-changing environment has been possible due, in no small part, to a labor-management relations program that has remained robust over the decades and only confirmed Congress' finding in enacting the Statute that collective bargaining is in the public interest and promotes effective and efficient government.

23. Do you believe that improvements should be made to the Federal Service Labor-Management Relations statute? If so, what improvements can and should be made?

At this time, I do not have any opinion as to how the Statute could be improved. If confirmed as a Member, I will be in a better position to identify what, if any, legislative improvements might enhance the statutory purpose.

24. Are there improvements to the FLRA's internal review process that you believe can be improved upon to ensure fewer cases ultimately are overturned by the courts, and that all evidence is properly considered in a given case?

Having not worked at the FLRA, I am not familiar with its internal review process and therefore do not have a basis to form an opinion as to how that process could be improved to ensure that fewer decisions are overturned by the courts. As a general matter, I believe that all relevant and material record evidence should be considered in order to best resolve the case.

25. You are the co-author of "Job Security and Bargaining Rights of Federal Government Employees," published in the University of the District of Columbia Law Review. In that article, you took issue with President Bush "slash[ing] the right to collective bargaining, eliminat[ing] civil service protections . . . and promis[ing] the wholesale reduction of thousands of government civilian positions through layoffs and contracting out." Is it your

view that reducing the federal government workforce is inherently a bad thing? Please explain why or why not.

I do not believe that reducing the federal government workforce is inherently a bad thing. The law recognizes circumstances that may warrant a reduction in force, and I agree that such actions may be necessary. *See* 5 C.F.R. pt. 351. But I disagree with the view that reducing the federal government workforce is inherently a good thing. The federal workforce, employees and managers alike, directly serve and are accountable to the American people for carrying out the laws established by Congress. Federal employees are obliged to elevate the public trust above private gain and do so in the vast majority of cases while demonstrating a commendable commitment to their agency's mission. They get the job done, efficiently and effectively, often at personal financial and other sacrifice, while garnering little or no recognition.

V. Accountability

Whistleblower Protections

26. Protecting whistleblowers and their confidentiality is of the utmost importance to this Committee.

- a. Please describe any previous experience with handling whistleblower complaints. What steps did you take to ensure those individuals did not face retaliation and that their claims were thoroughly investigated?

Two of OSC's primary statutory missions is to be a safe channel for federal employee whistleblowers and to ensure that the federal civil service operates free of prohibited personnel practices, including most importantly, retaliation against federal employees for making protected disclosures. My portfolio as OSC's Associate Special Counsel includes overseeing its Disclosure Unit and the Retaliation and Disclosure Unit. As such, I am very familiar with, and committed to, the statutory processes for ensuring that federal whistleblowers are heard and protected.

- b. If confirmed, what steps will you take to ensure that whistleblower complaints are handled appropriately at the FLRA?

I am not familiar with the FLRA's internal process for handling whistleblower complaints and therefore do not have a basis to form an opinion as to whether such complaints are being handled appropriately or what additional steps that I would take to ensure that they are. However, I am very familiar with, and committed to, the statutory processes for ensuring that federal whistleblowers are heard and protected and, if confirmed, will rely on my knowledge and experience to ensure that FLRA whistleblowers complaints are appropriately handled.

- c. If confirmed, what steps will you take to ensure that whistleblowers at the FLRA do not face retaliation, that whistleblower identifiers are protected, and that complaints of retaliation are handled appropriately?

I am not familiar with the FLRA's internal process for handling whistleblower complaints and therefore do not have a basis to form an opinion as to whether the FLRA has sufficient protections against whistleblower retaliation or what additional steps that I would take to ensure that retaliation complaints are handled appropriately. However, I am very familiar with, and committed to, the statutory processes for ensuring that federal whistleblowers are heard and protected and, if confirmed, will rely on my knowledge and experience to ensure that FLRA whistleblowers do not face retaliation, that their identities are protected and their complaints are appropriately handled.

Cooperation with Inspectors General

27. What is your view of the role of the FLRA Office of Inspector General (OIG)? Please describe what you think the relationship between a FLRA Member and the OIG should be. If confirmed, what steps would you take to establish a working relationship with the Inspector General?

The FLRA OIG was legislatively established in 1988 to provide oversight by conducting independent audits and investigation of FLRA programs and operations and investigating allegations of fraud and abuse. The relationship between an FLRA Member and the OIG should be primarily defined by a shared commitment to ensuring the integrity and effectiveness of FLRA operations and programs. If confirmed, I would endeavor to establish a cooperative relationship with the Inspector General.

28. If confirmed, do you commit to ensuring that all recommendations made by the FLRA Inspector General are reviewed, responded to, if necessary, and, unless the agency justifies its disagreements with the recommendations, implemented to the fullest extent possible within a reasonable time period?

Yes

29. If confirmed, do you commit without reservation to ensuring the FLRA OIG receives timely access to agency records and to interview agency employees?

Yes

30. If confirmed, what steps will you take to ensure all FLRA offices and employees cooperate fully and promptly with OIG requests?

I am not familiar with the FLRA's internal process for handling OIG requests and therefore do not have a basis to form an opinion as to whether such requests are being handled appropriately or what additional steps that I would take to ensure that FLRA offices and

employees cooperate fully and promptly with OIG requests. However, if confirmed, I commit to ensuring that all FLRA offices and employees cooperate fully and promptly with OIG requests.

Cooperation with GAO

31. If confirmed, do you commit without reservation to ensuring GAO receives timely, comprehensive responses to requests for information, including for records and meetings?

Yes

32. If confirmed, do you commit to fully cooperate in a timely manner with any audits, investigations, and other reviews and related requests for information from GAO?

Yes

33. If confirmed, what steps would you take to facilitate and encourage timely cooperation by federal agencies with GAO?

I am not familiar with what, if any, role the FLRA has in facilitating or encouraging cooperation by other federal agencies with GAO, and therefore, have no basis for forming an opinion as to what steps I would take in furtherance of that objective.

34. If confirmed, what steps will you take to ensure all FLRA functions and employees cooperate fully and promptly with GAO requests?

I am not familiar with the FLRA's internal process for handling GAO engagement requests and therefore do not have a basis to form an opinion as to whether such requests are being handled appropriately or what additional steps that I would take to ensure the FLRA's timely cooperation with GAO. That said, I have served as OSC's primary liaison with GAO in at least one GAO audit and believe that cooperation, as demonstrated by timely and full responsiveness, best serves the public interest.

35. If confirmed, will you agree to work with representatives from this Committee and the GAO to promptly implement recommendations for improving the FLRA's operations and effectiveness?

Yes

VI. Relations with Congress

36. 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

37. 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

38. Do you agree without reservation to comply fully, completely, and promptly with 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

39. If confirmed, how will you make certain that you will respond in a timely manner to Member requests for information?

I will prioritize these requests.

40. If confirmed, will you direct your staff to adopt a presumption of openness where practical, including identifying documents that can and should be proactively released to the public, without requiring a Freedom of Information Act request?

Yes

41. 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?

Yes

VII. Assistance

42. Are these answers completely your own? If not, who has provided you with assistance?

These answers are completely my own.

43. Have you consulted with the FLRA, or any other interested parties? If so, please indicate which entities.

I have consulted with FLRA staff in preparing for the confirmation process

I, Anne Marie Wagner, hereby state that I have read the foregoing Pre-Hearing Questionnaire and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

ANNE
WAGNER

Digitally signed by
ANNE WAGNER
Date: 2024.04.05
13:09:32 -04'00'

(Signature)

This 5th day of April, 2024.


AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

Eric Bunn Sr.
National Secretary-Treasurer

Dr. Everett B. Kelley
National President

Jeremy A. Lannan
NVP for Women & Fair Practices

April 16, 2024

The Honorable Gary C. Peters, Sr.
Chairman
Homeland Security and Governmental Affairs Committee
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Rand Paul, M.D.
Ranking Member
Homeland Security and Governmental Affairs Committee
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Peters and Ranking Member Paul:

On behalf of the American Federation of Government Employees, AFL-CIO (AFGE), which represents more than 750,000 federal and District of Columbia government employees in more than 70 agencies, I write today to urge the Committee to swiftly advance the nomination of Anne Wagner as a member of the Federal Labor Relations Authority (FLRA).

Ms. Wagner is extraordinarily qualified for this important position, having served as a presidential appointee and later as a career member of the Senior Executive Service in agencies focused on federal employee relations and appeals. This includes her current service as the associate special counsel for the U.S. Office of Special Counsel. Prior to her current appointment, Ms. Wagner served as the vice chairman of the U.S. Merit Systems Protection Board (a presidentially appointed, Senate-confirmed position). Earlier in her career she served as general counsel, member, and chair of the U.S. Government Accountability Office (GAO) Personnel Appeals Board (PAB) after working here at AFGE and at the GSA.

For too long, the FLRA has limped along without three confirmed members or a general counsel. This situation gridlocks the agency and is unfair to the interests of labor and management alike. In Anne Wagner, you have before you a nominee who has decades of experience in fairly and impartially adjudicating the claims of competing parties, without fear or favor. She is intimately familiar with the laws, regulations, and legal precedents governing federal agencies and workers.

In short, she is just what FLRA needs during a critical period in its history, as it is, we hope, returned to its proper statutory role as a fair and honest broker between labor and management. Her temperament and experience make her a most qualified candidate for the position, and we urge the Committee to move forward without delay.



Thank you for convening today's hearing and for your consideration of AFGE's views. Please do not hesitate to contact me at julie.tippens@afge.org if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Julie N. Tippens".

Julie N. Tippens
Director, Legislative Department

Opening Statement of David Huitema
Nominee for Director, U.S. Office of Government Ethics

Good morning Chairman Peters, Ranking Member Paul, and members of the committee. Thank you for the opportunity to appear before the committee today.

I am honored that President Biden has nominated me to serve as the Director of the Office of Government Ethics. I would like to recognize the support I have received from colleagues at the Office of Government Ethics, at the State Department, and throughout the Executive Branch ethics community with regard to my nomination, but also throughout my career as an ethics official and in public service.

I would also like to recognize my family: My wife Carolyn and my sons Owen and Miles, all of whom I love so very much. They motivate and inspire me, and fill me with pride every day. I would like to acknowledge the love and support I have always received from my parents, Jim and Mollie Huitema. They both had careers in public service—my mother as a teacher, and my father working for the federal government. Most importantly, they have always modeled a high degree of personal integrity and a commitment to helping others. I am fortunate to have a wonderful brother, John, and I want to remember my brother Philip, who is no longer with us, and recognize my extended family, including my mother in law and father in law—Pat and Sy Robbins.

OGE's mission has never been more critical, as its work forms one part of a broader struggle against the growing cynicism and distrust that can undermine our democratic self-government. The ethics laws promote integrity in government, requiring that officials' decisions and use of public resources must not be influenced by their personal financial interests, their personal connections and relationships, or by any desire to benefit themselves or others rather than the national interest. Beyond that, the ethics laws recognize the importance of public trust, and they are designed to bolster public confidence in the integrity of the federal workforce.

There is good news: Federal employees do have a strong sense of mission and a desire to do things the right way. There are outliers, of course, which is why OGE supports Inspector Generals, the Department of Justice, and others who investigate and pursue accountability for ethics breaches. But for the most part, ethics officials are in a position to support federal employees in achieving a goal they already share.

There is more good news: Agency ethics programs are full of ethics officials who are smart, earnest, and committed to this cause. I know because I have worked with them. I see OGE's role as providing overall direction, but also partnering with agency ethics

programs and supporting their good work. OGE itself is full of talented and committed officials. In my years leading the State Department's Ethics Office, I have worked with many colleagues at OGE on a wide range of topics. If I am fortunate enough to be confirmed, I would be proud to be part of the OGE team.

While people are the strength of the executive branch ethics program, I am open-eyed about the challenges. The breakdown in trust that I mentioned earlier increases scrutiny of federal employees and the executive branch ethics program. This means we must be ever more effective in supporting employees and deepening the culture of ethics compliance. We must be clear in explaining what the law requires—both to the federal workforce and the public. We must support each other in courageously providing sound ethics guidance, even when it is unwelcome, and in pursuing enforcement of the ethics laws where necessary. As the pace of change in our society and economy picks up, we must be nimble in updating outdated requirements and in providing guidance and an appropriate regulatory structure to address emerging issues. And of course, we must do all of this with limited resources. In his confirmation hearing, the previous Director of OGE noted that “OGE finds itself underfunded, under-staffed, [and] over-missioned”. That remains the case, both for OGE and for many agency ethics programs. And so, as we consider any changes in the executive branch ethics program, we must keep practicality in mind, and seek to leverage support and adopt efficient approaches to the greatest degree possible.

I am open-minded about how best to tackle these challenges. I do believe that my experience managing a complex ethics program at the State Department offers a valuable perspective. If confirmed, I also would rely on the strong foundation and expertise already in place at OGE. I would seek to cultivate an even deeper sense of partnership with the broader executive branch ethics community. And I would welcome input from outside government. I know that many in Congress also have an interest in ethics reform—I look forward to answering your questions today, and I pledge to work with the Congress on these issues if I am confirmed.

Thank you again for considering my nomination.

**HSGAC BIOGRAPHICAL QUESTIONS FOR
EXECUTIVE NOMINEES**

1. Basic Biographical Information

REDACTED

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
<u>Name of Position</u>	<u>Date of Nomination</u>
Director, Office of Government Ethics	September 5, 2023

<i>Current Legal Name</i>			
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>
David	Patrick	Huitema	

<i>Addresses</i>					
<u>Residential Address</u> (do not include street address)			<u>Office Address</u> (include street address)		
			Street: 2201 C St., NW Rm. 6332		
<u>City:</u> Chevy Chase	<u>State:</u> MD	<u>Zip:</u> 20815	<u>City:</u> Washington	<u>State:</u> DC	<u>Zip:</u> 20520

<i>Other Names Used</i>

First Name	Middle Name	Last Name	Suffix	Check if Married	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
					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
1971	Washington, DC

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

<i>Spouse's Name</i> (current spouse only)			
Spouse's First Name	Spouse's Middle Name	Spouse's Last Name	Spouse's Suffix
Carolyn	Marie	Huitema	

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

First Name	Middle Name	Last Name	Suffix	C h e c k i f M a r i d e u n a m e	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
Carolyn	Marie	Petrie			01/1971 Est <input type="checkbox"/>	07/1997 Est X <input type="checkbox"/>
Carolyn	Marie	Petrie Sharp			07/1997 Est <input type="checkbox"/>	02/2002 Est X <input type="checkbox"/>

<i>Children's Names (if over 18)</i>			
First Name	Middle Name	Last Name	Suffix

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 North Carolina at Chapel Hill	university	08/1989 Est <input type="checkbox"/>	05/1993 Est <input type="checkbox"/> Present <input type="checkbox"/>	BA	05/1993
University of Texas at Austin	university	08/1995 Est <input type="checkbox"/>	08/1996 Est <input type="checkbox"/> Present <input type="checkbox"/>	MA	12/1996
Stanford University	university	08/1996 Est <input type="checkbox"/>	05/1999 Est <input type="checkbox"/> Present <input type="checkbox"/>	JD	05/1999
		Est <input type="checkbox"/>	Est <input type="checkbox"/> Present <input type="checkbox"/>		

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)
federal employment	U.S. Department of State	Assistant Legal Adviser for Ethics & Financial Disclosure and ADAEO	Washington, DC	01/2016 Est <input type="checkbox"/>	Present Est <input type="checkbox"/>
federal employment	U.S. Department of State	Attorney-Adviser, L/EB	Washington, DC	11/2011 Est <input type="checkbox"/>	01/2016 Est <input type="checkbox"/>
federal employment	U.S. Department of State	Attorney-Adviser, L/WHA	Washington, DC	05/2008 Est <input type="checkbox"/>	11/2011 Est <input type="checkbox"/>
federal employment	U.S. Department of State	Attorney-Adviser, L/EMP	Washington, DC	05/2006 Est <input type="checkbox"/>	05/2008 Est <input type="checkbox"/>
Non-Government Employment	Goodwin Procter	Associate	Washington, DC	11/2004 Est <input type="checkbox"/>	05/2006 Est <input type="checkbox"/>
Non-Government Employment	Shea & Gardner	Associate	Washington, DC	11/2000	11/2004
federal employment	Judge Phyllis Kravitch, U.S. Court of Appeals for the Eleventh Circuit	Clerk	Atlanta, GA	08/1999	08/2000
Non-Government Employment	Shea & Gardner	Summer Associate	Washington, DC	05/1999	06/1999
Non-Government Employment	Crowell & Moring	Summer Associate	Washington, DC	07/1998	08/1998
Non-Government Employment	Dickstein, Shapiro, Morin & Oshinsky	Summer Associate	Washington, DC	05/1998	06/1998

Non-Government Employment	Prof. Linda Mabry, Stanford Law School	Research Assistant	Palo Alto, CA	02/1996	05/1998
Non-Government Employment	Center for International Environmental Law	Summer Intern	Washington, DC	07/1997	08/1997
Non-Government Employment	Southern Rural Development Initiative	Summer Intern	Raleigh, NC	05/1997	06/1997
Non-Government Employment	Prof. Peter Ward, University of Texas at Austin	Research Assistant	Austin, TX	05/1996	07/1996
State Government	Student Coalition for Action in Literacy Education / UNC-CH	Development Director	Chapel Hill, NC	08/1993	08/1995
Non-Government Employment	Kinko's	no job title	Chapel Hill, NC	05/1993	08/1993
Non-Government Employment	Wilmer Cutler & Pickering	summer operations assistant	Washington, DC	06/1989	08/1992

(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)
		Est <input type="checkbox"/>	Est <input type="checkbox"/> Present <input type="checkbox"/>
		Est <input type="checkbox"/>	Est <input type="checkbox"/> Present <input type="checkbox"/>
		Est <input type="checkbox"/>	Est <input type="checkbox"/> Present <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.

Civil Service Awards:

- Quality Step Increase 7/26/2015
- Non-Monetary Group Award 5/31/2015
- Cash Award 9/7/2014
- Non-Monetary Award 12/13/2013
- Cash Award 8/13/2012
- Quality Step Increase 9/11/2011
- Cash Award 11/16/2009
- Cash Award 7/22/2008
- Cash Award 11/6/2007
- Cash Award 5/15/2007

Educational Awards:

- Order of the Coif, Stanford Law School, 1999
- Foreign Language Area Studies Scholarship, UT Austin, 1995-1996
- BA with Highest Honors, UNC-Chapel Hill, 1993
- Federico G. Gil Award for the best Undergraduate Honors Thesis Written on a Latin American Topic

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).

Name of Organization	Dates of Your Membership (You may approximate.)	Position(s) Held
----------------------	--	------------------

Bar Association of the District of Columbia	2001 - current	member

7. Political Activity

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

No

<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>

(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

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>

(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

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>

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>
Miranda: Legitimate Response to Contingent Requirements of the Fifth Amendment	Yale Law & Policy Review	2000

(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

Title/Topic	Place/Audience	Date(s) of Speech

(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.

None

<u>Title</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>

9. Criminal History

Since (and including) your 18th 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:
- 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 of 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.

No

<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>

(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

<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>

(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.

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

<u>Name of Agency/Association/Committee/Group</u>	<u>Date Citation/Disciplinary Action/Complaint Issued/Initiated</u>	<u>Describe Citation/Disciplinary Action/Complaint</u>	<u>Results of Disciplinary Action/Complaint</u>

(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

partnership? If so, please give the particulars, including the date(s) and nature and amount of the lien. State the resolution of the matter.

No

(E) Have you filed federal, state, and local tax returns (if applicable) for each of the past 10 years?

Yes

Type of Tax and Tax Year/Period Unfiled	Explanation for Failure to File

(F) Have your taxes always been paid on time including taxes paid on behalf of any employees? If not, please explain.

Yes

(G) Were all of your taxes-Federal, State, and local current (filed and paid) as of the date of your nomination?

Yes

(H) Please provide for the Committee signed copies of your Federal and state income tax returns for the past 3 years. These documents will be made available only to Senators and staff persons designated by the Chairman and Ranking Minority Member. They will not be made available for public inspection.

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).

No

14. Outside Positions

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.

Name of Organization	Address of Organization	Type of Organization (corporation, firm, partnership, other business enterprise, other non-profit organization, educational institution)	Position Held	Position Held From (month/year)	Position Held To (month/year)

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)

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.

A handwritten signature in black ink, appearing to be "Diana", written over a horizontal line.

This 8th day of November, 2023



September 7, 2023

The Honorable Gary C. Peters
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by David Huitema, who has been nominated by President Biden for the position of Director, Office of Government Ethics.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,
SHELLEY
FINLAYSON

Digitally signed by SHELLEY
FINLAYSON
Date: 2023.09.07 14:59:29
-04'00'

Shelley Finlayson
Acting Director

Enclosures **REDACTED**



September 1, 2023

David J. Apol
Designated Agency Ethics Official
U.S. Office of Government Ethics
1201 New York Avenue, 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. It is my responsibility to understand and comply with commitments outlined in this agreement.

SECTION 1 – GENERAL COMMITMENTS

As required by the criminal conflicts of interest law at 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the particular matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me:

- Any spouse or minor child of mine;
- Any general partner of a partnership in which I am a limited or general partner;
- Any organization in which I serve as an officer, director, trustee, general partner, or employee; and
- Any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

In the event that an actual or potential conflict of interest arises during my appointment, I will consult with an agency ethics official and take the measures necessary to resolve the conflict, such as recusal from the particular matter or divestiture of an asset.

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

I will receive a live ethics briefing from a member of the ethics office after my confirmation but not later than 15 days after my appointment pursuant to the ethics program

regulation at 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will submit my Certification of Ethics Agreement Compliance which documents my compliance with this ethics agreement.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order No. 13989) and that I will be bound by it. Among other obligations, I will be required to recuse from particular matters involving specific parties involving my former employer or former clients for a period of two years after I am appointed, with the exception of federal, state and local government.

I will not modify this ethics agreement without your approval and the approval of the U.S. Office of Government Ethics pursuant to the ethics agreement requirements contained in the financial disclosure regulation at 5 C.F.R. § 2634.803(a)(4).

SECTION 2 – TRUSTEE POSITIONS

I will retain my position as a trustee of Family Trust #1, Family Trust #2 and Family Trust #3. I will not receive any fees for the services that I provide as a trustee during my appointment to the position of Director. 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 family trusts, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2).

SECTION 3 – SPOUSE EMPLOYMENT

My spouse is employed by Research Triangle Institute, in a position for which she receives a fixed annual salary and a bonus tied to her performance. Pursuant to the impartiality regulation at 5 C.F.R. § 2635.502, for as long as my spouse continues to work for Research Triangle Institute, I will not participate personally and substantially in any particular matter involving specific parties in which I know Research Triangle Institute is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

SECTION 4 – PUBLIC POSTING

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

Sincerely,



David Huitema

**U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing Questionnaire
or the Nomination of David Huitema
to be Director, Office of Government Ethics**

I. Nomination Process and Conflicts of Interest

1. Did the President or anyone else give you specific reasons why the President nominated you to be the next Director of the Office of Government Ethics (OGE)?

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 OGE Director? 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: No.

5. Have you or any organization of which you were an officer, director or owner, or have or had a significant financial interest in been the recipient of any Federal grants, loans, or other financial assistance (such as, but not limited to, Paycheck Protection Program Loans, Economic Injury Disaster Loans, Restaurant Revitalization Grants, etc.) within the past 10 years. If so, please list the program, amount, and date of receipt.

Answer: No.

6. Please provide the name of any individual, law firm, consulting firm, lobbying firm, public relations firm, or other entity you have formally retained, contracted, or consulted with regarding this nomination, including any amounts paid in fees or otherwise.

Answer: I have not retained, contracted, or consulted with any individual law firm, consulting firm, lobbying firm, public relations firm, or any other entity with regard to this nomination.

II. Background of the Nominee

7. Why do you want to serve as OGE Director?

Answer: I would be honored to serve as the OGE Director because I believe so strongly in OGE's mission. At its core, federal ethics law seeks to ensure that policy decisions are made based on an assessment of the national interest rather than for personal benefit. This in turn makes government more effective in delivering for the American people. A high standard of integrity in the federal workforce also fosters public confidence in our government, which is critical in this time of increasing cynicism.

Taking on the role of OGE Director also aligns with my own personal commitment to public service. I have been proud to serve the American people as a federal employee for 18 years, and when presented with an opportunity to serve in a new way, I was honored to accept. I also see the role of OGE Director as one of service to the federal workforce. We are fortunate to have civil servants with a high degree of commitment to their jobs, and who want to do the right thing. Ultimately, the role of the executive branch ethics program is to help those employees live up to their ethics obligations and commitments.

Coming from an agency ethics program, I also believe that I have a valuable perspective to inform OGE's continued development of ethics regulations and policy. I have seen how federal employees at every level of the organizational chart experience the ethics regulations and financial disclosure program. I have counseled cabinet officials and hundreds of employees. And I have seen how ethics considerations intersect with important agency programming. This provides an important lens when considering whether there are "gaps" in ethics regulation or policy, deciding how best to address new developments that impact the ethics program, and evaluating whether more precision would be helpful or more flexibility is needed to effectively uphold a high standard of integrity. I would also have a keen appreciation for operational challenges and the resources required to implement new program requirements. I believe that being attuned to these practical, "real life" aspects can help make new policies, interpretations, and program requirements as effective as possible in achieving the goal of avoiding conflicts and ensuring integrity in government decision-making.

Finally, I would relish the opportunity to keep working with colleagues at OGE and in the executive branch ethics community in a new way. I have had the opportunity to meet and work with many of OGE's current staff, and I hold them in the highest regard. Similarly, I have been fortunate to work with ethics officials at many agencies over the last eight years. I appreciate the support that officials in the ethics community provide to each other. That spirit of partnership is something I would aim to foster if I have the opportunity to serve as Director of OGE.

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

Answer: I believe my experience leading an ethics program at a large agency for the last eight years, along with my prior federal service have prepared me to serve as OGE's Director. I have, in a sense, been a "client" of OGE's, and I have worked closely with OGE colleagues on all

aspects of our ethics program. And as a federal employee outside of the Ethics Office, I also have been a “client” of the ethics program. Both of those perspectives have been valuable.

I would in particular highlight my experience as the Assistant Legal Adviser for Ethics and Financial Disclosure at the State Department. The State Department Ethics Office has an enormous and complex workload, and I have gained deep experience in all aspects of the ethics program. Almost a quarter of all PAS positions in the executive branch are at the State Department, and many of our nominees have extremely large and complicated financial disclosure reports. The range of work the State Department undertakes is also very broad, and shifts every day with the latest world developments. I personally have handled some of the most substantial nominee financial disclosure reports in the executive branch over the last eight years. I also have personally provided ethics guidance and counsel to hundreds of employees on just about every fact pattern under the sun. I have extensive experience working with cabinet officials and other senior leaders at the Department, while also engaging every day with new and more junior employees throughout the Department. Similarly, I have personally handled a broad range of ethics training, from briefing the agency head to speaking to cadres of Ambassadors, delivering annual training to domestic Senate-confirmed officials, and providing focused training to individual offices. In short, I have personal involvement in all aspects of the ethics program and in a wide variety of circumstances. I have seen first-hand the challenges facing employees and the executive branch ethics program, and I have seen what works.

My leadership of the State Department Ethics Office has also provided valuable management experience. I have supervised a diverse range of employees—wonderful colleagues from a wide variety of backgrounds serving in a wide variety of roles in the office. I have dealt with recruitment and retention strategies. I have sought to make the most of limited resources, prioritized our efforts, and doggedly worked with our team to improve our program’s performance. Management of the ethics program also requires effective collaboration with employees with many other functions in the agency. I have gained valuable perspective on that aspect of the job, which I believe would carry over to work at OGE.

Over the years, I have engaged directly with many of the key players relevant to federal ethics work, and I have developed a network of colleagues in the ethics community. I have been fortunate to work closely with colleagues at OGE, which has provided useful insight and allowed me to forge collegial relationships with many of the officials I hope to work with as Director. This collaboration has extended to many areas of OGE’s work. Most notable is the close communication that is required on nominee vetting—during my tenure in the State Department Ethics Office we have handled several hundred nominees, and we have worked through tricky issues together in dozens of cases. I have also engaged with OGE desk officers on a wide range of issues, and consulted directly with the General Counsel and the Chief of the Ethics Law and Policy Branch on numerous occasions. We have been honored to contribute to OGE’s consideration of many regulatory updates and policy changes. Finally, I have met personally with each of OGE’s last two Directors, and have had the good fortune to work closely with the current Acting Director.

Given the nature of our work, I have also personally engaged with White House Ethics Counsel and the Presidential Personnel Office on a range of nominees and legal issues over the years.

Finally, I have been lucky to get to know and work with a range of talented and committed DAEOS and ADAEOs at other agencies on issues of mutual interest over the years. The collaborative spirit within the ethics community is a real asset.

In terms of personal attributes, I would mention my curiosity and open-mindedness. I believe I have a lot to offer if I am confirmed as Director of OGE. But I also have a lot to learn. I respect the smarts, the experience, and the commitment of OGE's staff, and would rely heavily on them. Elsewhere in this questionnaire, I identify priorities for my time as Director, if I am confirmed. But I would not arrive with an agenda, and would take care to solicit—and carefully consider—input from OGE's staff, the DAEO community, and other stakeholders. Finally, I would acknowledge a little bit of a stubborn streak. Integrity and a firm backbone are important for upholding a high standard of ethics even in the face of opposition or controversy, and I am resolute in holding firm to what I believe to be the correct analysis of an ethics situation, and the best course of action to uphold the public trust.

9. Please describe:

a. Your leadership and management style.

Answer: As a manager, I aim to cultivate a strong sense of teamwork and a collaborative spirit. I am open to input and encourage others to share their ideas and perspectives. Better decisions tend to result when an issue is first considered from multiple perspectives. For these reasons, open and ample communication is important. I also aim to treat every employee with respect. I start with the premise that everyone has valuable contributions to make. I also aim to support the career development of my team and delegate when appropriate, to encourage team members to make the most of their talents, develop skills, and take ownership of decisions. As Director, I would stand by my colleagues in OGE--and those with agency ethics programs—when they make tough decisions that uphold a high standard of ethics. Finally, I recognize that, while work is important, it does not fully define anyone. Everyone has interests, challenges, and responsibilities outside of the office. I seek to foster a workplace environment that reflects that reality while ensuring that the important work of the office gets done in a timely, high-quality manner.

While teamwork and empowering staff reflect my management style, it is also important for a leader to offer clarity about priorities and the direction of a program. And finally, a leader must be able to make challenging choices and tough decisions—and then be accountable for them. After considering all input, I would set clear priorities and a sense of direction for OGE. And I am willing to take responsibility for the tough calls when challenging, even controversial, issues arise.

b. Your experience managing personnel.

I have led the State Department's Ethics Office for the last eight years. In that capacity, I have directly supervised a staff of up to ten attorneys, five ethics program specialists, administrative support staff, and contractors. The ethics program also relies on management officials around the world to contribute in important ways, and so I have been responsible for coordinating with,

advising, and in some cases directing those officials. I have also been responsible for hiring into the ethics program, strategic planning and overall management of all aspects of the ethics program—including ethics advice and counsel, ethics training, and financial disclosure.

c. What is the largest number of people who have worked under your supervision?

I have been the supervisor for a staff of up to eighteen.

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

Answer: I am most proud of two accomplishments as a leader of the State Department Ethics Program. The first is nurturing a talented, committed, and collaborative staff in the Ethics Office. During my tenure, we have successfully integrated new ethics program specialists, including several who were brand new to the field of ethics, and numerous attorneys. I have supported their growth, and sought to create opportunities for them to advance their own careers. And I have seen so many thrive and make valuable contributions to the ethics program.

The second success I would mention is the standard we have maintained for providing timely, responsive, sensitive, legally sound, and prudentially solid ethics guidance. Employees from around the world know they can reach out and the Ethics office will help them navigate any ethics challenge. I personally have provided guidance to senior officials and to others in the Department, and I have always sought to do so in a respectful and discrete manner that helps our officials live up to a high standard of ethics compliance. Our office has a reputation for helping Embassies and bureaus achieve important policy goals while avoiding ethics pitfalls, and we also do not shy away from identifying ethics concerns and advising against improper or imprudent actions.

While helping employees remain on solid ethical footing is ultimately the most important aspect of the ethics program. I also believe our program has had success in terms of making the most of limited resources and finding ways to slowly but steadily improve our procedures and protocols to make the office as efficient and effective as possible.

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

Answer: I would say the greatest challenge facing the State Department ethics program is the reliance on support and resources from outside the Ethics Office. We have had some success in enlisting leadership support and assistance from other bureaus for key initiatives, messaging, and so on. But the State Department is extremely decentralized, and the Ethics Office has a small staff with few resources of its own. Maintaining “buy in” to undertake onerous financial disclosure or other tasks related to the implementation of the ethics program from other offices is a constant challenge, and I wish I had achieved more in terms of institutionalizing the management connections with the ethics program and making them more effective.

I have learned that it takes a consistent investment in building and maintaining personal relationships to make headway in this regard. These challenges are not unique to my

experience—across the executive branch, ethics officials must collaborate with human resources and other parts of their agencies. And the executive branch ethics program as a whole is itself a collaboration between the agencies and OGE. I will prioritize relationship building and invest in collaboration both with DAEOs and ADAEOs, but also with others who play important roles in implementing ethics requirements and who hold functions “adjacent to” the ethics program.

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

Answer: Throughout my career, I have had frank, respectful, and open-minded discussions with my superiors about policy choices and the best approach to handling difficult circumstances. There certainly have been cases where my own views changed as a result of those conversations, as well as occasions where my superiors’ views changed. Sometimes, the final decision reflects an evolution in everyone’s thinking.

With regard to ethics guidance, I have not shied away from informing even senior officials that they would need to recuse from matters or divest certain assets, for example, or advising against a possible course of action based on the ethics standards of conduct or other legal considerations.

13. Do you seek out dissenting views and encourage constructive critical dialogue with subordinates? Please provide examples of times in your career when you have done so.

Answer: Yes. My standard approach is to seek out the views of subordinates and to elicit multiple perspectives on how to handle challenging issues. No one has a monopoly on good ideas. Open discussion is critical to ensuring that no “angle” of an issue is missed, and there have been numerous instances where attorneys and ethics program specialists identified important legal considerations or suggested an approach to handling a situation that was ultimately adopted. When it comes to establishing operating procedures and solving challenges related to program implementation, the employees who handle the work day-in and day-out have the deepest understanding. I have relied on their assessment of what sort of approach would be effective. Employees also feel more ownership of their work and more commitment to a program when they know that their own ideas are taken into account and contribute to the program’s success. This will continue to be my approach if I am confirmed as Director of OGE. I recognize that the OGE staff has an enormous amount of institutional knowledge, experience, and skill. I would rely on their help and support and aim to arrive at sound decisions as a team.

14. Please list and describe examples of when you made politically difficult choices that you thought were in the best interest of the country or your organization.

Answer: Political considerations have never entered into my thinking as a federal employee, and would not enter into my thinking if confirmed as Director of OGE. As noted in response to a prior question, I have not shied away from providing frank advice to senior officials, even when I thought the advice might not be welcome.

15. Please describe how you build credibility and trust among staff as a leader.

Answer: Credibility and trust must be earned. The first key to building credibility and trust is to always act with integrity. When your team sees that you consistently aim to do the right thing and have no personal agenda, it builds credibility. The second key is to consistently solicit input and encourage open, frank discussion so that everyone feels they have had a voice in decision making. And finally, transparency about decisions is important. I aim to be clear and open about the basis or rationale for any decision I take as a leader. While this response focuses on establishing credibility and trust with regard to my own leadership decisions, I would also note that as a leader I would seek to empower my staff and support them—both in terms of reaching decisions as a team where possible, and in terms of being committed to my employees' own success.

16. During your career, has your conduct as a government employee ever been subject to an investigation or audit by the Office of Special Counsel, Department of Justice, agency Equal Opportunity office or investigator, agency Inspector General, or any other similar federal, state, or local investigative entity? If so, please describe the nature of the allegations/conduct and the outcome(s) of the investigation(s) or audit(s).

Answer: No.

17. In your role as the Assistant Legal Adviser for Ethics & Financial Disclosures, are you aware of any employee, special government employee, or advisor who has received royalty payments, who then have advocated on behalf of entities who are paying for those royalty rights?

Answer: No.

III. Role of the OGE Director

18. Please describe your view of the core mission of the Office of Government Ethics and the Director's role in achieving that mission.

Answer: The core mission of the Office of Government Ethics is to help federal employees avoid conflicts of interest, comply with their obligations under federal ethics laws and regulations, and uphold high standards of ethical conduct. A related goal, implicit in the Ethics in Government Act and the standards of conduct, is to foster public confidence in the integrity of the federal workforce. OGE advances this mission in a number of ways. Its authority and functions are specified in the Ethics in Government Act, while current priorities and strategies are outlined in the agency's Strategic Plan.

One of the central functions of OGE is to develop regulations, policies, and guidance for the executive branch ethics program. These include regulations and guidance documents interpreting and applying the conflict of interest statutes, as well as the standard of conduct regulations, regulations pertaining to the financial disclosure program, OGE's own organization and functions, and requirements for agency ethics programs.

Another central function of OGE is oversight--monitoring the performance of agency ethics

programs. The executive branch ethics program is decentralized, with much of the responsibility borne by agency ethics programs. Agencies administer the financial disclosure program and provide ethics training and guidance for their employees. This decentralization is necessary, given the scale of the federal work force and the wide variation among agencies. But it also creates risks that serious problems in an agency ethics program could remain undetected—and thus never be addressed. OGE establishes requirements and standards for the agency ethics programs, and then must monitor their work. This oversight is aimed at ensuring compliance with program requirements and consistency in the interpretation and application of the ethics rules across the executive branch. It can be a valuable tool for helping agencies spot weaknesses in their ethics programs and for promoting improvement in performance. Understanding agency ethics programs, including the challenges they face and any shortcomings they may have, allows OGE to then provide tailored assistance and recommendations to improve performance. When significant shortcomings are identified, OGE can also direct corrective action if necessary.

OGE itself has an important implementing role as well, especially with regard to the ethics vetting of nominees and the review of financial disclosure reports for Presidential candidates and Senate-confirmed and other senior officials. Other functions, such as responsibility for issuing certificates of divestiture lie with OGE as well.

Finally, OGE has responsibilities to report, and ensure that agencies report, potential criminal violations for investigation. OGE is not itself an enforcement agency. Rather, its mandate is to help prevent conflicts of interest, and so its role is to counsel and assist employees, usually through agency ethics officials. But accountability for violations of ethics obligations remains important, and OGE must stand ready to assist those who do have a more direct role in investigating and pursuing penalties for violations of the ethics rules.

As stated in the Ethics in Government Act, the OGE Director provides “overall direction of executive branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency” The Director does this through the important work of OGE as a whole and in partnership with the agency ethics programs that are on the front lines of implementing the federal ethics program.

I would identify four functions as especially important for the Director. First, the Director sets the priorities to guide OGE’s work, and must be willing to make final, tough decisions both on overall policy and when addressing ethics concerns involving senior officials or program implementation concerns within OGE or with agency ethics programs. Second, the Director should focus on maintaining relationships with the DAEO community and with others who play important roles related to the executive branch ethics program, such as the IG community, the HR community, the White House, and DOJ. Third, I believe it can aid OGE’s effectiveness if the Director plays an active role in external outreach, public messaging, and liaising with Congress and constituencies with an interest in the ethics program. And finally, the Director must support the OGE team, taking care with internal management of the agency and empowering OGE’s staff. Success in the executive branch ethics program requires effective teamwork, and so it is important for the OGE Director to look out for the health of the team.

19. Please describe how you believe the OGE Director should interact with the Inspector General Community.

Answer: The OGE Director should strive to have an open and strong working relationship with the Inspector General Community. This is not just a personal opinion—by statute, the OGE Director is a member of the Council of the Inspectors General on Integrity and Efficiency. The IGs play an important role in ethics accountability, with their investigatory and enforcement powers. OGE and agency ethics officials must support that work, providing records and information pertinent to an investigation as well as guidance on the interpretation and application of ethics laws and rules when called upon to ensure sound outcomes. OGE can also learn from the IG community, which may be able to identify trends or recurring ethics shortcomings by employees or gaps and areas of ambiguity in ethics law and guidance that warrant additional attention by OGE. If confirmed, I would look forward to membership on the Council of the Inspectors General on Integrity and Efficiency, I would support OGE's existing training efforts for the IG community, and I would also look for opportunities to meet with IGs and identify additional opportunities to present information about the federal ethics program so that the IG community is well prepared to handle ethics-related investigations.

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

There are two aspects of OGE's relationship with DAEOs and agency ethics programs more generally. First and foremost, it is a partnership, and one in which OGE must support agency ethics officials. A close relationship and open communication between the OGE Director and DAEOs is critical. DAEOs and agency ethics staff are on the "front lines" implementing the federal ethics program. They are the ones providing ethics advice and counsel to employees, implementing ethics training programs, and reviewing thousands of financial disclosure reports. OGE must adopt regulations and provide legal guidance and interpretations so that agency ethics officials can provide sound guidance to their employees. OGE provides tools and training of its own to the agencies to assist them in implementing the financial disclosure and ethics training functions. And so OGE in turn must have a clear understanding of what agency ethics programs need to support their work. Over the last several years, OGE has provided more opportunities for agency input and feedback, and I would look to continue and expand those efforts if confirmed. I would listen carefully to input and suggestions from DAEOs regarding emerging challenges and areas where additional guidance or support would be helpful. OGE also plays an important role consulting with agency ethics programs and providing advice and assistance when novel or complex issues arise, and OGE should support DAEOs when they provide tough counsel or face challenging circumstances in their agency. I would have high expectations of DAEOs, both in terms of providing this sort of tough counsel when necessary, and in terms of program management. Open communication and a collaborative relationship with DAEOs are valuable for OGE to uphold its side of that bargain, so that the Director, and OGE as a whole, can effectively support agencies' efforts to effectively implement a strong ethics program.

At the same time, OGE has an important responsibility to monitor whether agencies are meeting the programmatic requirements established for ethics programs and to address deficiencies in a forthright manner. OGE does this through program reviews and other data calls such as the

annual questionnaire, and through proactive outreach when specific ethics concerns are brought to OGE's attention. This is important work, and will remain a priority. Evaluating program performance and tackling challenging issues as they arise can help agency ethics programs identify and remedy deficiencies with OGE's support. It also can help OGE better understand the realities of program implementation at the agency level and identify areas where policy changes or additional support are warranted.

IV. Policy Questions

Management

21. What do you believe are the highest priority challenges facing OGE?

Answer: I would identify limited resources as the greatest challenge for OGE. The agency does an incredible job providing effective direction and overall management of the executive branch ethics program, and its greatest strength is its talented and committed team of ethics professionals. However, its limited size and budget puts severe constraints on how much OGE can do to address emerging challenges. Even day-to-day operations grow each year in complexity and volume, and OGE is strained to its limits. This is a particularly important challenge as the agency gears up for another Presidential election, and the surge in nominee vetting that will follow.

A related challenge is what I would term OGE's relative isolation, OGE's status as a standalone agency is appropriate and vital. But it also introduces risks, and it can be difficult for a small staff on its own to be attuned to the needs and challenges facing millions of federal employees and ethics programs in agencies of varied sizes, locations, and missions.

Finally, I would highlight the increased public attention on federal ethics over the last several years. This increased attention is warranted and should be welcomed. But I worry that the pressure to "do more" with regard to ethics may result in additional procedural requirements for employees and the ethics program that further strain OGE's resources. Additional burdens on employees also can have an unintended consequence of disincentivizing federal service. Reform is necessary to keep pace with increased public scrutiny and changes in financial arrangements and other threats to integrity. If confirmed, I would look forward to working with the executive branch ethics community, the administration, Congress, and interested constituencies with the goal of helping to tailor solutions that are as effective as possible, that are cognizant of the resources required to implement them, and that avoid undesirable "side effects" to the extent possible.

a. What steps do you plan to take to address those challenges?

Answer: I know that preparation for the surge in nominee vetting work that will follow the Presidential election has already been a focus for OGE this year, and it would be my first priority as well. Both with regard to nominee vetting and more generally, I would also work with OGE staff to identify opportunities for greater efficiency and I would seek to prioritize high impact work while reducing or revamping any aspects of OGE's work that are high effort for low

reward. In addition, I would seek insights from the DAEO community and other ethics constituencies and look for opportunities to leverage agency ethics programs resources. To the extent that agency ethics programs share expertise and resources with each other, it could lead to program improvement without further taxing OGE's limited resources. OGE already facilitates this sort of collaboration in some ways. I do not know how much more potential could be found in this area, but this is one way a small agency like OGE might be able to do more with limited resources to strengthen the executive branch ethics program.

b. If confirmed, what longer-term goals would you like to achieve as Director?

Answer: Over the long term, I would look for opportunities to solidify and institutionalize deeper relationships between OGE and agency ethics programs, as I believe this could be mutually beneficial--leveraging additional resources for OGE and providing additional expertise for the agencies. Similarly, I would seek to expand OGE's outreach and communication with all the constituencies that have a stake in the executive branch ethics program—including the general public and Congress. Another priority would be to continue OGE's efforts to update conflict of interest regulations and other regulations and guidance in order to ensure the ethics rules are attuned to current circumstances and challenges.

I would also identify two other priority areas: The first is continuing to invest in IT. OGE's work over the last several years with Integrity.gov and its own website have demonstrated that information technology can help make financial disclosure and other aspects of ethics program work much more efficient and effective. Information technology can be a tool for transparency and it can make information about the ethics rules and the federal ethics program more accessible for a diverse range of constituencies. Because it can aid efficiency, IT is one way to compensate for limited resources. At the same time, IT platforms need constant investment. And while OGE's work in this area has already paid dividends, there is much more that could be done. The final priority would be to ensure that OGE is doing all that it can to recruit, retain, and support its staff. This is one of OGE's strengths, but it also a challenge for such a small agency. I would always be focused on supporting staff and ensuring that a career at OGE is as rewarding as possible.

22. What measurements would you use to determine whether your office is successful?

Answer: Some aspects of OGE's work lends itself to quantitative measurement, and I believe strongly in tracking performance when possible. For example, OGE tracks the time it takes to "pre-clear" nominees, as well as the complexity of their financial disclosure reports, and benchmarks in that area are a helpful tool for gauging whether OGE and its partner agency ethics programs successfully handle the surge in nominee vetting every four years. Tracking annual questionnaire responses and program reviews also provides an opportunity to gauge program implementation across the executive branch. Employee retention data and surveys shed light on OGE's support for its workforce and whether it is an attractive place to work.

I would also look for more qualitative inputs to evaluate OGE's success in advancing its mission. There is a risk of "missing the forest for the trees." The procedural requirements put in place as part of the ethics program are not ends in and of themselves, but tools to serve the more

fundamental goal of helping federal employees avoid conflicts of interest and meet their ethics obligations. Thus, I would seek to evaluate whether employees have an understanding of the ethics rules, whether they feel agency ethics officials are accessible to support them, and whether the requirements they adhere to are well aligned with the goal of avoiding missteps that would call their integrity into question. I would also seek input from the DAEO community as to whether OGE is responsive to their needs for support, and from other constituencies about OGE's success in evolving to address new challenges.

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

Answer: Limited resources are OGE's greatest challenge. Because OGE's small staff is stretched, it limits the time and energy that can be devoted to new initiatives. Similarly, OGE lacks the budgetary resources to invest as much as would be ideal in technology and new programs. As a result, OGE's ability to be nimble and address emerging challenges is constrained. Even day-to-day operations grow each year in complexity and volume, and so there is always a risk that OGE's workforce could be strained beyond its limits.

OGE's relative isolation is a related concern. It is difficult to stay attuned to the ethics concerns facing millions of federal employees and the unique challenges facing ethics programs in agencies of varied sizes, locations, and missions. It is tempting to stay out of the fray and avoid injecting OGE in controversial or politically risky issues. And OGE's small size and limited resources on its own constrain effective outreach and education about the federal ethics program. Finally, the increased focus on federal ethics over the last several years both highlights the importance of OGE and the executive branch ethics program, and it poses risks. If confirmed, I would look forward to championing the OGE workforce. I would advocate for additional resources, including in the IT realm, for the executive branch ethics program. And I would hope to encourage reforms and new initiatives that would bolster the efficacy of the ethics program and that are realistic and cognizant of the resources required to implement them.

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

Answer: No. I believe that OGE, and many agency ethics programs as well, are understaffed and under-resourced for their important missions. Based on my time observing and working with OGE, I am convinced that it does an incredible job using its resources efficiently and effectively. OGE achieves a lot with a little. My perspective is that OGE is successful at operating its core requirements, and while it is also creative and skilled at identifying new initiatives and programs to improve the executive branch ethics program, it lacks the staffing and resources to move quickly in some cases, or to invest in such initiatives in an impactful way.

Ethics has only grown in importance in the public eye over the last several years. There also has been a trend to increase programmatic requirements. I worry that this trend will continue: That legislation and other initiatives may increase the demands on OGE and the executive branch ethics program without any corresponding increase in resources. If confirmed, I would advocate to the White House and OMB to support increased budgetary requests and then encourage Congress to appropriate adequate funds so that OGE can operate and invest at the level required

to effectively meet its mandate. And I would also insist that resources be taken into account when evaluating new programmatic requirements: Would OGE and other implementing agencies have the resources to implement new requirements effectively, or would new programmatic requirements add to the workload while undermining the effectiveness of the ethics program?

Independence

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

Answer: OGE can only be effective in its work if it is able to function independently. This is especially important when it comes to identifying and preventing conflicts, proposing remedies, and standing up for the importance of high ethical standards. Perception is a critical component of the ethics rules. We seek not just to avoid a technical conflicts or rules violation, but to foster public confidence that the federal workforce is acting with integrity. Interference with OGE's core activities would undermine that public confidence.

My pledge, if confirmed, is to always act in an honest and impartial way based on my sense of what the ethics laws require and what would strengthen the executive branch ethics program. I would have the courage to offer firm advice and counsel, indicating both what the law requires and what course of action would effectively serve the values underlying the executive branch ethics program, even in challenging circumstances. I would be transparent about OGE policies and programs and clear in communications with officials about their ethics compliance and with agencies regarding their ethics programs. Finally, I would be vigilant with regard to any effort to undermine OGE and the executive branch ethics program more generally, or to dilute the expectation of integrity placed on appointees and all executive branch employees.

26. Will you commit to taking action when necessary to hold senior officials in this or any future administration accountable?

Answer: Yes, if confirmed as Director of OGE, I would take action to ensure that senior officials comply with the ethics laws and regulations and their personal obligations, and I would take appropriate steps consistent with OGE's role and authorities to pursue accountability when necessary. OGE reviews the financial disclosure reports and approves ethics agreements for senior officials to identify and prevent potential conflicts and impartiality concerns, and OGE has established a process to monitor compliance and take action if senior officials fail to comply with commitments in their ethics agreements. OGE also works with agency ethics officials and, when necessary, White House Counsel, to ensure that any ethics compliance concerns that come to light during a senior official's tenure are addressed as appropriate. OGE has limited authority to pursue corrective action itself in narrow circumstances, generally through an employee's agency, either to propose remedies for past non-criminal ethics violations or to end an ongoing violation. But OGE is not itself an investigatory or enforcement agency. Therefore, OGE can refer potential ethics breaches directly or through agency ethics officials to an Inspector General's office for investigation and to pursue appropriate accountability. Especially with regard to potential criminal violations, this step—or referral to the Department of Justice—is often the most appropriate course of action.

27. If confirmed, what steps would you take if the administration fails to take action against an 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?

Answer: If confirmed as Director of OGE, I would use every tool available to ensure that possible violations of the conflict of interest laws, the Ethics in Government Act, or the Standards of Conduct are investigated when necessary, that remedies or corrective action are put in place to prevent continued violations, and I would facilitate accountability measures for individuals who have violated the ethics laws or regulations. OGE is not itself an investigative or enforcement agency, but it can require that officials take certain steps to avoid future violations of the conflict of interest laws, and it does have a role to play in terms of encouraging those with supervisory responsibility to apply an appropriate form of accountability and informing the IG community and DOJ of possible ethics violations that may warrant investigation and penalties. The best course of action would need to be determined on a case-by-case basis.

OGE does have some authorities that can help bring a violation of the conflict of interest rules and standards of conduct to an end. This can include, for example, divestiture of conflicting financial interests or recusal from certain particular matters. OGE does not itself have the authority to make a finding that a criminal law has been violated, but if I had a concern that a criminal violation may have occurred and believed that the possible offender's agency or the White House had failed to pursue the matter, I would notify the Inspector General with jurisdiction or the Department of Justice. In other cases, the appropriate first step would be to recommend to an agency head that the agency investigate and pursue appropriate penalties for a possible violation of the ethics rules. Similarly, for concerns relating to White House officials or agency heads where appropriate action has not been taken, I would notify the President with a recommendation to pursue an appropriate remedy. Finally, while investigations and remedial action regarding ethics lapses are most often appropriately handled with discretion, to preserve confidentiality in an investigation or as personnel matters with an eye toward procedural fairness, there may be circumstances in which it is important for OGE to be transparent about how it has handled allegations of a potential ethics violation.

28. If confirmed, how would you handle disagreement between OGE and the Office of White House Counsel regarding the interpretation or application of ethics laws and rules?

Answer: If confirmed as Director of OGE, I would discuss any disagreement about the interpretation or application of the ethics laws and rules with White House counsel. Differences in interpretation, or differing views on how best to handle an ethics issue, do arise from time to time. It can be valuable to carefully consider all perspectives, and to take into account all relevant interests that could affect the best resolution. As always, the goal would be to reach a consensus that is practical, legally sound, and that upholds the interests of the ethics laws and regulations. But to be clear, I would insist that OGE has the final and determinative role in interpreting its own regulations and policies, and the prerogative to exercise its legal authorities. I would stand up for OGE's independence and authority, as this is the only way to maintain the integrity of the executive branch ethics program and uphold the public trust.

Executive Branch Ethics Compliance

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

Answer: This is the heart of OGE's mission—to help prevent conflicts of interest and other ethical misconduct by federal employees. I would focus on three ways in which OGE seeks to deter ethical misconduct. The first is through its role in issuing regulations, interpretive guidance, and policies. OGE deters ethical misconduct by establishing sensible requirements with clear explanations so that employees can understand their ethics obligations. The second is through OGE's role in providing direction and support to agency ethics programs. OGE establishes requirements to ensure that agencies are adequately informing and educating their employees about the ethics rules and that agencies make assistance available when employees have questions about the ethics rules or want to ensure that their own activities or those of their agency comport with the ethics rules. OGE also provides support to assist agencies in developing their training programs and to deepen the expertise of their ethics officials. The final way in which OGE seeks to deter ethical misconduct is by seeking to foster an ethical culture in senior leadership and the federal workforce as a whole. This is accomplished through OGE's own messaging and outreach as well as through agency ethics programs. It is also related to the first two points identified in my answer: Employees "buy in" to the federal ethics requirements more readily when they see that those requirements are well tailored to avoid self-serving actions or other lapses in integrity, and when support is readily available and constructive. On the other hand, when ethics requirements become outdated, unnecessarily onerous, or overly bureaucratic, it can foster a sense of cynicism.

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

Answer: I plan to meet with DAEOs to discuss, at an agency level, how OGE can encourage support for the ethics program and underscore the importance of compliance with ethics rules. And I would be personally engaged in a tailored approach that fits the needs of different agencies. The previous Director of OGE held meetings with agency heads and their DAEOs, and I would continue that practice where, in consultation with the DAEOs, it would be helpful. I would also be willing to meet with other senior agency leadership to cultivate support for agency ethics programs or underscore where a lack of coordination or resources is apparent. I would also prioritize OGE's own messaging and outreach. I know that OGE has expanded its public messaging over the last few years, and I would seek to continue that trend, lending my personal involvement where it is helpful. And finally, I would continue and seek to enhance OGE's engagement with the IG community and DOJ to encourage appropriate accountability measures and offer OGE's support and expertise where it is helpful.

More generally, under my leadership, OGE would continue its support for agency ethics officials through training and counseling programs, and would continue to identify areas where new or updated regulations and guidance are needed to keep pace with emerging compliance issues.

31. What in your view is the role of the OGE Director in gaining the President's support for the work of OGE, implementing OGE's recommendations, and ensuring compliance with executive branch ethics laws and rules?

Answer: In my view, the OGE Director should actively seek the support of the President for OGE's work and for encouraging ethics compliance throughout the executive branch. A strong example and emphasis on ethics from leadership is extremely valuable in fostering a culture of ethics. Furthermore, as a small agency, OGE relies on administration support for resource requests and to move forward with rulemaking. Therefore, it is helpful for OGE's effectiveness if the President also is a strong supporter of OGE's work and the overall executive branch ethics program.

If confirmed, I would immediately seek to meet with White House Counsel and would offer to meet with the President at any time. I would make these same points directly to the White House. I would also underscore the ethics program's role in helping officials stay a step ahead of ethics missteps—OGE's role is to help officials both through behind-the-scenes review of financial disclosure reports to spot potential conflicts, and by offering advice and counsel on ethics compliance whenever the White House needs it. An administration that is free of ethics scandals is an administration that is free to focus on its policy priorities.

32. 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?

Answer: The federal ethics regulations place responsibility on agency heads for their agency's ethics programs. Agency heads play two important roles in ensuring compliance with executive branch ethics laws and rules. First, it is vital that agency heads themselves set a good example through compliance with their own ethics obligations and by demonstrating an attentiveness to ethics considerations in their work. It can also be helpful for agency heads to and other senior leaders to highlight the importance of ethics compliance in messaging to their agencies and when identifying core values for their agency. OGE's regulations call for agency heads to "exercise personal leadership in . . . fostering an ethical culture in the agency." Second, it is important for agency heads, often through senior management officials, to ensure there is adequate support for the ethics program. Partly, this is a matter of providing the ethics program with sufficient resources, which is always a challenge. But just as important is helping to break down the walls between management functions and cultivating a "whole of agency" approach to ethics, where IT resources are leveraged, HR is invested, and other parts of the agency contribute where possible. A small and siloed ethics program cannot be as effective as a well-resourced and well-connected program. The last important aspect of an agency head's support for the ethics program is to be responsive and willing to engage when OGE makes specific recommendations requiring high level agency action, or when an acute ethics problem is identified.

33. As you are likely aware, HSGAC recently passed Ranking Member Paul's Royalty Transparency Act. If confirmed, how would you plan to enact that legislation if it becomes law?

Answer: If confirmed, and if the Royalty Transparency Act is enacted, I would have OGE issue advisories informing agency ethics programs of the new requirements contained in the Act, and offering interpretive guidance as needed. Since the Act addresses royalties for inventions developed in the course of federal employment and interacts with other laws, I imagine it may be necessary for OGE to consult with DOJ and agencies with relevant practical experience to ensure that any guidance is legally sound and adequately addresses the type of implementation questions that may arise. OGE would also need update a number of regulations, the instructions and guidance it makes available for employees completing financial disclosure reports, and Privacy Act documentation. Finally, I would ask that OGE monitor agencies' implementation of the law through the questionnaires and data calls it regularly issues.

34. Do you believe royalty payments that go untracked create a risk of bias in federal employee and special government employees' decision making?

Answer: As a general matter, employees (including special government employees) are prohibited from participating personally and substantially in particular matters in which they have a financial interest. The rationale for this conflict of interest rule is that a financial interest could influence an employee's decision making. There are regulations further defining the scope of the conflict of interest rules and granting limited exemptions where appropriate. I know that multiple statutes specifically address royalty payments for inventions made in the course of federal employment, and both OGE and OLC have issued guidance on the application of the conflict of interest rules in this context. Based on that guidance, my understanding is that employees who receive royalties from an outside source would need to recuse from working on matters such as policy decisions or further research involving or affecting their invention, in the absence of an individual waiver.

35. What role do you believe OGE should play in monitoring confidential ethics reports, which are largely managed by each agencies' ethics officials?

Answer: OGE currently plays several roles with regard to confidential financial disclosure reports, all of which I believe are appropriate. First, OGE issues guidance on criteria that trigger the requirement for an employee to file confidential financial disclosure reports. Second, OGE identifies the types of information that need to be disclosed on a confidential financial disclosure report and maintains a standard form that agencies can use. Third, OGE provides flexibility for agencies to develop alternative or supplemental forms to meet their specific needs with appropriate OGE review and approval. And finally, OGE tracks data on the scale of the confidential financial disclosure program and agencies' performance, including by auditing a sample of such reports through regular program reviews.

Transparency & Outreach

36. Please describe your view on the importance of transparency to the executive branch ethics program.

Answer: I believe that transparency with regard to the ethics program serves three important purposes. First, transparency with regard to ethics programs and policy helps to inform the public about the federal ethics program and allows for scrutiny of those programs and policies. OGE has been a leader in proactively making information about its operations and the performance of agency ethics programs publicly available, and I support that approach. There are also instances when it is important for OGE to communicate its stand, and any actions it has taken, when significant executive branch ethics issues arise that catch the public's attention, although there are privacy and procedural constraints that often apply with regard to matters involving individual employees. Second, the fact that OGE 278 Public Financial Disclosure reports are available upon request, and that information about the ethics commitments and the resolution of ethics concerns for Senate-confirmed officials is also available, increases public confidence. This commitment to transparency is important to demonstrate that the executive branch is not "hiding the ball" with regard to information relevant to the integrity of government actions. And the third and related point is that public scrutiny of this sort of information can, in some instances, provide an extra level of review—helping to unearth potential conflicts of interest or other ethics concerns. And that is the ultimate point—transparency is about shedding light on the integrity of government action. Federal employees also have privacy interests. Legal privacy protections must of course be honored, and even looking beyond those legal constraints it is important to recognize that releasing personal information can come with costs that need to be taken into account. But there is an appropriate role for transparency measures that allow for scrutiny of whether impermissible factors are influencing government actions.

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

Answer: If confirmed, I would ask the staff to continually evaluate whether there are additional categories of documents or information that could—and should—be made available through OGE's website. To its credit, OGE already has undertaken a number of initiatives to make information about its activities, agency ethics programs, and ethics documentation for Senate-confirmed officials in OGE's custody easily accessible, I would similarly solicit the views of the DAEO community to ensure that all interests are taken into account while encouraging agencies to consider whether additional information about their ethics program and their senior leadership could be made publicly available. Finally, I would ensure that information about OGE's own operations, policies, views, and key decisions are made public. I do not view this as a departure—I know that OGE already seeks to make a great deal of information publicly available, and I would continue that approach.

38. If confirmed, how will you maintain or improve OGE's public engagement efforts?

Answer: If I am confirmed, expanding OGE's public engagement efforts would be a high priority. One of the objectives in OGE's current strategic plan is to "reach a broader array of stakeholders to raise awareness of the systems and processes in place to detect and resolve conflicts of interest." I agree such efforts are important, as I believe it is important for the public to have an accurate picture of what the federal ethics rules do—and do not—cover, as well as the role of federal ethics officials. I know that OGE already thinks creatively about opportunities for effective outreach, and puts out a great deal of information through its website and social media.

I do believe more could be done to meet different stakeholders where they are, and to proactively seek out opportunities to meet with and speak to different audiences, and perhaps to write or make information available, not just through OGE's own channels, but through other fora as well. Effective outreach is a challenge for a small agency with limited resources. The one thing I can pledge to add is my own personal involvement if I am confirmed.

V. Accountability

39. Protecting whistleblowers and their confidentiality is of the utmost importance to this Committee.

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

Answer: If confirmed to serve as Director of OGE, I would immediately communicate to the agency the value I place on teamwork, collaboration, and the careful consideration of multiple perspectives before arriving at a decision. I would encourage employees to share their ideas and suggestions and emphasize my openness to this sort of input. And I would clearly communicate that there will be no tolerance for reprisal, or any sort of negative consequence for those who seek to contribute to OGE's decision-making in a constructive way. I would be clear that these are my own values, and also my expectation for the entire agency.

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

Answer: Yes.

- c. If confirmed, what steps will you take to ensure that whistleblowers at OGE do not face retaliation, that whistleblower identifiers are protected, and that complaints of retaliation are handled appropriately?

Answer: If confirmed, I would immediately communicate to the OGE community my own commitment to the protection of whistleblowers and the importance of avoiding any retaliation, protecting whistleblowers' identities, and handling any complaints in an appropriate manner. I would also meet with OGE's management team to ensure that adequate procedures are in place. And finally, I would ensure that the entire OGE workforce is aware of avenues for making complaints and the whistleblower protections to which they are entitled.

40. Inspectors General (IGs) face unique obstacles as they do their work, including budget challenges and disputes with agency heads over access to information. How do you view OGE's relationship with various Offices of Inspectors General (OIGs)?

Answer: The OGE Director should have an open and strong working relationship with the Inspector General Community, and OGE should always stand ready to support the important work of OIGs in investigating and pursuing remedies for ethics violations. The IGs play an important role in ethics accountability, with their investigatory and enforcement powers. OGE

and agency ethics officials must support that work, providing records and information pertinent to an investigation as well as guidance on the interpretation and application of ethics laws and rules when called upon to ensure sound outcomes. If I am confirmed, OGE also would continue to support OIGs by offering to coordinate with them in advance of any ethics related review, audit, or evaluation. This can help to educate OIGs about applicable ethics rules and program requirements, and also promote efficiency by informing the OIGs about similar work that OGE undertakes through its data calls and program reviews. OGE can also learn from OIGs, which may be able to identify trends or recurring ethics shortcomings by employees or gaps and areas of ambiguity in ethics law and guidance that warrant additional attention by OGE.

41. Under what circumstances, if any, do you believe OGE would not be required to provide any OIG with timely access to agency records?

Answer: While I have not been involved in OGE's information sharing with the OIG community, I cannot think of a circumstance where OGE would not be required to provide an OIG with timely access to agency records in its custody for use in a lawful audit or investigation following appropriate procedures. My understanding, is that OGE is not the custodian for most types of agency ethics records, although there are instances where OGE has come into possession of agency information. I am fully committed to supporting the important work of OIGs.

42. If confirmed, do you commit to fully cooperate in a timely manner with any audits, investigations, and other reviews and related requests for information from IGs?

Answer: Yes.

43. If confirmed, do you commit without reservation to ensuring GAO receives timely, comprehensive responses to requests for information, including for records, meetings, and information?

Answer: Yes.

44. If confirmed, do you commit to fully cooperate in a timely manner with any audits, investigations, and other reviews and related requests for information from GAO?

Answer: Yes.

45. If confirmed, what steps will you take to ensure OGE and its employees cooperate fully and promptly with GAO requests?

Answer: If confirmed, I would communicate to the OGE community the importance of cooperating in a robust and timely manner with GAO requests, and I would work with OGE's management team to ensure that there is a tracking procedure in place to monitor the status of OGE's response to any GAO request. An open line of communication with GAO would also be important to help GAO identify the types of information that are relevant for its inquiries and

settle on a practical and efficient approach to providing the information and assistance GAO needs.

VI. Relations with Congress

46. 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, I agree to appear before any duly constituted committee if I am confirmed, consistent with the Constitution and laws of the United States.

47. 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. If I am confirmed I agree to make officials from OGE available to appear and testify or provide information to any duly constituted committee, consistent with the Constitution and laws of the United States.

48. 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. If I am confirmed I agree to respond promptly and fully to any request for agency material or information from any duly constituted committee of the Congress, consistent with the Constitution and laws of the United States. My goal would be to foster a spirit of cooperation and to set an example of responsiveness so that Congress has the information it needs to conduct oversight and as it considers legislation relevant to the executive branch ethics program. More generally, I would welcome any congressional interest in strengthening and updating the executive branch ethics program and commit to continuing OGE's practice of providing technical consultations in response to congressional requests.

49. If confirmed, how will you make certain that you will respond in a timely manner to Member requests for information?

Answer: First, I would communicate to the entire staff of OGE the importance of timely responses to Congressional inquiries. I would also ensure that OGE has a process in place to track Congressional inquiries and monitor the timeliness of any response.

50. If confirmed, will you direct your staff to adopt a presumption of openness where practical, including identifying documents that can and should be proactively released to the public, without requiring a Freedom of Information Act request?

Answer: Yes. I believe that OGE is more effective in achieving its goals of informing the public about federal ethics laws if it is transparent about its own policies and provides information relevant to understanding the executive branch ethics program, updates to laws and policies, and

important developments or incidents that arise. Similarly, transparency regarding senior officials' ethics and financial disclosure documentation and agency ethics program performance can provide important public benefits. OGE already makes a great deal of this sort of information available to the public, and I would continue the practice of considering the proactive release of additional types of information. Federal employees' privacy interests must also be taken into account, and public disclosure of personal information should not be handled in a manner that puts individuals at risk or that provides a disincentive to career public service. But where information germane to the integrity of government activities or to the operations and policies of the executive branch ethics program could be released consistent with FOIA, the Ethics in Government Act, and the Privacy Act, then OGE should consider how best to make that information easily accessible, rather than hard to reach.

51. 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? Further, what would you consider a "material impact" requiring this notification?

Answer: Yes. If I am confirmed and I learn of new facts indicating that prior information provided to this Committee was inaccurate or misleading, I would ensure that OGE notifies the Committee.

VII. Assistance

52. Are these answers completely your own? If not, who has provided you with assistance?

Answer: Yes.

53. Have you consulted with the Office Government Ethics or any other interested parties? If so, please indicate which entities.

Answer: Yes. I have consulted with the Office of Government Ethics. I have not consulted with any other interested parties. The answers are my own.

I, David Huitema, hereby state that I have read the foregoing Pre-Hearing Questionnaire and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.


(Signature)

This 10th day of April, 2024

**Post-Hearing Question for the Record
Submitted to David Huitema
From Senator Gary C. Peters**

**Committee on Homeland Security and Governmental Affairs
April 17, 2024**

Question 1:

If confirmed, will you commit to reviewing transition expenses of OGE related to transition, and getting back to the Committee on the resources needed to process appointees in any given year, but especially in a transition to a new administration or a transition to a second term administration?

Will you also inform the Committee of any other flexibilities that might be helpful to OGE – for example, could OGE use greater flexibilities in bringing back retired annuitants to help out with a surge in responsibilities during a transition to a new or second term administration?

Answer:

Yes. I commit that, if I am confirmed as Director of the Office of Government Ethics, I will review OGE expenses related to the transition, as well as OGE's planning for the transition more generally. I commit to report back to the committee with regard to the resources needed to conduct the ethics review for nominees, especially in the transition to a new administration or second term for an incumbent. I would also inform the committee and share my perspective on whether additional resources, legal authorities/flexibilities, or other initiatives could assist OGE and others with a role in nominee ethics vetting handle the surge in work following an election in an efficient and effective manner.