

EXECUTIVE BRANCH COMPREHENSIVE ETHICS  
ENFORCEMENT ACT OF 2019

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FEBRUARY 21, 2020.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

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Mrs. CAROLYN B. MALONEY of New York, from the Committee on  
Oversight and Reform, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 745]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Reform, to whom was referred the bill (H.R. 745) to amend the Ethics in Government Act of 1978 to provide for reform in the operations of the Office of Government Ethics, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
Summary and Purpose of Legislation .....	5
Background and Need for Legislation .....	5
Section-by-Section Analysis .....	7
Legislative History .....	9
Committee Consideration .....	10
Roll Call Votes .....	10
Explanation of Amendments .....	16
List of Related Committee Hearings .....	16
Statement of Oversight Findings and Recommendations of the Committee .....	16
Statement of General Performance Goals and Objectives .....	16
Application of Law to the Legislative Branch .....	16
Duplication of Federal Programs .....	16
Disclosure of Directed Rule Makings .....	17
Federal Advisory Committee Act Statement .....	17
Unfunded Mandates Reform Act Statement .....	17

Earmark Identification .....	17
Committee Cost Estimate .....	17
New Budget Authority and Congressional Budget Office Cost Estimate .....	17
Changes in Existing Law Made by the Bill, as Reported .....	20
Minority Views .....	29

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Executive Branch Comprehensive Ethics Enforcement Act of 2019”.

**SEC. 2. REAUTHORIZATION OF THE OFFICE OF GOVERNMENT ETHICS.**

Section 405 of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by striking “fiscal year 2007” and inserting “fiscal years 2019 through 2023.”.

**SEC. 3. TENURE OF THE DIRECTOR OF THE OFFICE OF GOVERNMENT ETHICS.**

Section 401(b) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by striking the period at the end and inserting “, subject to removal only for inefficiency, neglect of duty, or malfeasance in office. The Director may continue to serve beyond the expiration of the term until a successor is appointed and has qualified, except that the Director may not continue to serve for more than one year after the date on which the term would otherwise expire under this subsection.”.

**SEC. 4. DUTIES OF DIRECTOR OF THE OFFICE OF GOVERNMENT ETHICS.**

(a) **IN GENERAL.**—Section 402(a) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by striking “, in consultation with the Office of Personnel Management,”.

(b) **RESPONSIBILITIES OF THE DIRECTOR.**—Section 402(b) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1)—

(A) by striking “developing, in consultation with the Attorney General and the Office of Personnel Management, rules and regulations to be promulgated by the President or the Director” and inserting “developing and promulgating rules and regulations”; and

(B) by striking “title II” and inserting “title I”;

(2) by striking paragraph (2) and inserting the following:

“(2) providing mandatory education and training programs for designated agency ethics officials, which may be delegated to each agency or the White House Counsel as deemed appropriate by the Director;”;

(3) in paragraph (3), by striking “title II” and inserting “title I”;

(4) in paragraph (4), by striking “problems” and inserting “issues”;

(5) in paragraph (6)—

(A) by striking “issued by the President or the Director”; and

(B) by striking “problems” and inserting “issues”;

(6) in paragraph (7)—

(A) by striking “, when requested,”; and

(B) by striking “conflict of interest problems” and inserting “conflicts of interest, as well as other ethics issues”;

(7) in paragraph (9)—

(A) by striking “ordering” and inserting “receiving allegations of violations of this Act or regulations of the Office of Government Ethics and, when necessary, investigating an allegation to determine whether a violation occurred, and ordering”; and

(B) by inserting before the semi-colon the following: “, and recommending appropriate disciplinary action”;

(8) in paragraph (12)—

(A) by striking “evaluating, with the assistance of” and inserting “promulgating, with input from”;

(B) by striking “the need for”;

(C) by striking “conflict of interest and ethical problems” and inserting “conflict of interest and ethics issues”;

(9) in paragraph (13)—

(A) by striking “with the Attorney General” and inserting “with the Inspectors General and the Attorney General”;

(B) by striking “violations of the conflict of interest laws” and inserting “conflict of interest issues and allegations of violations of ethics laws and regulations and this Act”; and

- (C) by striking “, as required by section 535 of title 28, United States Code”;
- (10) in paragraph (14), by striking “and” at the end;
- (11) in paragraph (15)—
  - (A) by striking “, in consultation with the Office of Personnel Management”;
  - (B) by striking “title II” and inserting “title I”; and
  - (C) by striking the period at the end and inserting a semicolon; and
- (12) by adding at the end the following:
  - “(16) directing and providing final approval, when determined appropriate by the Director, for designated agency ethics officials regarding the resolution of conflicts of interest as well as any other ethics issues under the purview of this Act in individual cases; and
  - “(17) reviewing and approving, when determined appropriate by the Director, any recusals, exemptions, or waivers from the conflicts of interest and ethics laws, rules, and regulations and making approved recusals, exemptions, and waivers made publicly available by the relevant agency available in a central location on the official website of the Office of Government Ethics.”.
- (c) WRITTEN PROCEDURES.—Paragraph (1) of section 402(d) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended—
  - (1) by striking “, by the exercise of any authority otherwise available to the Director under this title”;
  - (2) by striking “the agency is”; and
  - (3) by inserting after “filed by” the following: “, or written documentation of recusals, waivers, or ethics authorizations relating to.”.
- (d) CORRECTIVE ACTIONS.—Section 402(f) of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended—
  - (1) in paragraph (1)—
    - (A) in clause (i) of subparagraph (A), by striking “of such agency”; and
    - (B) in subparagraph (B), by inserting before the period at the end “and determine that a violation of this Act has occurred and issue appropriate administrative or legal remedies as prescribed in paragraph (2)”;
  - (2) in paragraph (2)—
    - (A) in subparagraph (A)—
      - (i) in clause (ii)—
        - (I) in subclause (I)—
          - (aa) by inserting “to the President or the President’s designee if the matter involves employees of the Executive Office of the President or” after “may recommend”;
          - (bb) by striking “and” at the end; and
        - (II) in subclause (II)—
          - (aa) by inserting “President or” after “determines that the”; and
          - (bb) by adding “and” at the end;
      - (ii) in subclause (II) of clause (iii)—
        - (I) by striking “notify, in writing,” and inserting “advise the President or order”;
        - (II) by inserting “to take appropriate disciplinary action including reprimand, suspension, demotion, or dismissal against the officer or employee (provided, however, that any order issued by the Director shall not affect an employee’s right to appeal a disciplinary action under applicable law, regulation, collective bargaining agreement, or contractual provision).” after “employee’s agency”; and
        - (III) by striking “of the officer’s or employee’s noncompliance, except that, if the officer or employee involved is the agency head, the notification shall instead be submitted to the President; and”; and
      - (iii) by striking clause (iv);
    - (B) in subparagraph (B)(i)—
      - (i) by striking “subparagraph (A)(iii) or (iv)” and inserting “subparagraph (A)”;
      - (ii) by inserting “(I)” before “In order to”; and
      - (iii) by adding at the end the following:
        - “(II)(aa) The Director may secure directly from any agency information necessary to enable the Director to carry out this Act. Upon request of the Director, the head of such agency shall furnish that information to the Director.
        - “(bb) The Director may require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data

in any medium and documentary evidence necessary in the performance of the functions assigned by this Act, which subpoena, in the case of refusal to obey, shall be enforceable by order of any appropriate United States district court.”;

(C) in subparagraph (B)(ii)(I)—

(i) by striking “Subject to clause (iv) of this subparagraph, before” and inserting “Before”; and

(ii) by striking “subparagraphs (A) (iii) or (iv)” and inserting “subparagraph (A)(iii)”;

(D) in subparagraph (B)(iii), by striking “Subject to clause (iv) of this subparagraph, before” and inserting “Before”; and

(E) in subparagraph (B)(iv)—

(i) by striking “title 2” and inserting “title I”; and

(ii) by striking “section 206” and inserting “section 106”; and

(3) in paragraph (4), by striking “(iv).”.

(e) DEFINITIONS.—Section 402 of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended by adding at the end the following:

“(g) For purposes of this title—

“(1) the term ‘agency’ shall include the Executive Office of the President; and

“(2) the term ‘officer or employee’ shall include any individual occupying a position, providing any official services, or acting in an advisory capacity, in the White House or the Executive Office of the President.

“(h) In this title, a reference to the head of an agency shall include the President or the President’s designee.

“(i) The Director shall not be required to obtain the prior approval, comment, or review of any officer or agency of the United States, including the Office of Management and Budget, before submitting to Congress, or any committee or subcommittee thereof, any information, reports, recommendations, testimony, or comments, if such submissions include a statement indicating that the views expressed therein are those of the Director and do not necessarily represent the views of the President.”.

#### SEC. 5. AGENCY ETHICS OFFICIALS TRAINING AND DUTIES.

(a) IN GENERAL.—Section 403 of the Ethics in Government Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (a), by adding a period at the end of the matter following paragraph (2); and

(2) by adding at the end the following:

“(c)(1) All designated agency ethics officials and alternate designated agency ethics officials shall register with the Director as well as with the appointing authority of the official.

“(2) The Director shall provide ethics education and training to all designated and alternate designated agency ethics officials in a time and manner deemed appropriate by the Director.

“(3) Each designated agency ethics official and each alternate designated agency ethics official shall biannually attend ethics education and training, as provided by the Director under paragraph (2).

“(d) Each Designated Agency Ethics Official, including the Designated Agency Ethics Official for the Executive Office of the President—

“(1) shall provide to the Director, in writing, in a searchable, sortable, and downloadable format, all approvals, authorizations, certifications, compliance reviews, determinations, directed divestitures, public financial disclosure reports, notices of deficiency in compliance, records related to the approval or acceptance of gifts, recusals, regulatory or statutory advisory opinions, waivers, including waivers under section 207 or 208 of title 18, United States Code, and any other records designated by the Director, unless disclosure is prohibited by law;

“(2) shall, for all information described in paragraph (1) that is permitted to be disclosed to the public under law, make the information available to the public by publishing the information on the website of the Office of Government Ethics, providing a link to download an electronic copy of the information, or providing printed paper copies of such information to the public; and

“(3) may charge a reasonable fee for the cost of providing paper copies of the information pursuant to paragraph (2).

“(e)(1) For all information that is provided by an agency to the Director under paragraph (1) of subsection (d), the Director shall make the information available to the public in a searchable, sortable, downloadable format by publishing the information on the website of the Office of Government Ethics or providing a link to download an electronic copy of the information.

“(2) The Director may, upon request, provide printed paper copies of the information published under paragraph (1) and charge a reasonable fee for the cost of printing such copies.”

(b) REPEAL.—Section 408 of the Ethics in Government Act of 1978 (5 U.S.C. App.) is hereby repealed.

#### SUMMARY AND PURPOSE OF LEGISLATION

The Executive Branch Comprehensive Ethics Enforcement Act of 2019 would reauthorize the Office of Government Ethics (OGE) and improve its ability to monitor and enforce federal ethics laws, issue ethics rules and regulations, and investigate ethics violations in the Executive Branch.

#### BACKGROUND AND NEED FOR LEGISLATION

OGE is the independent agency responsible for establishing ethics policy for the Executive Branch and monitoring compliance. Although OGE is charged with identifying and resolving violations of ethics laws and regulations, the system currently relies largely on historical norms and self-reporting, and OGE lacks sufficient authority to investigate and compel compliance. As Rudy A. Mehrbani, former Director of the Presidential Personnel Office and Spitzer Fellow and Senior Counsel at the Brennan Center for Justice, described in written testimony to the Committee, the current Administration has exposed these weaknesses in its lax adherence to the Ethics in Government Act of 1978:

In short, we can no longer assume that presidents will follow the norms and practices of their predecessors. Presidents may simply not show the same commitment to ethics rules as we have come to expect. And as we have seen, past erosion will lead to future abuse. We need a broader set of reforms to ensure our leaders remain committed to using their powers to advance the people’s interests. That begins with enshrining transparency requirements in law so the public can identify improper influences, providing a mechanism for ensuring accountability when abuse occurs, and eliminating avenues for personnel to handle matters involving their personal or financial interests.<sup>1</sup>

H.R. 745 would address existing weaknesses in federal ethics laws and empower OGE to enforce federal ethics laws and regulations within a strong system of checks and balances.

Former OGE Director Walter Shaub testified at a hearing regarding the Executive Branch Comprehensive Ethics Enforcement Act that, under existing law, “OGE can ask agencies to conduct investigations and can request copies of records, but it has no power to do anything if they ignore these requests.”<sup>2</sup>

H.R. 745 would authorize the Director of OGE to issue subpoenas for documents and enforce subpoenas in federal court. This authority is analogous to the authority granted to inspectors general and

<sup>1</sup> Committee on Oversight and Reform, Written Testimony of Rudy A. Mehrbani, Spitzer Fellow and Senior Counsel, Brennan Center for Justice at New York University School of Law, *Hearing on H.R. 1: Strengthening Ethics Rules for the Executive Branch* (Feb. 6, 2019) (online at <https://docs.house.gov/meetings/GO/GO00/20190206/108837/HHRG-116-GO00-Wstate-MehrbaniR-20190206.pdf>).

<sup>2</sup> Committee on Oversight and Reform, *Hearing on H.R. 1: Strengthening Ethics Rules for the Executive Branch* (Feb. 6, 2019) (online at <https://oversight.house.gov/legislation/hearings/hr-1-strengthening-ethics-rules-for-the-executive-branch>).

the Office of Special Counsel.<sup>3</sup> By providing OGE subpoena power, H.R. 745 would give OGE the power to compel compliance with its requests for documents and information. Without such power, OGE will likely face significant challenges in conducting ethics investigations, given this Administration’s defiance of its authority.

Mr. Mehrbani testified that the current Administration has “made unprecedented claims about the applicability of OGE’s rules and regulations.”<sup>4</sup> On February 28, 2017, then-White House Counsel Stefan Passantino wrote to then-OGE Director Walter Shaub that “many regulations promulgated by the Office of Government Ethics (“OGE”) do not apply to employees of the Executive Office of the President.”<sup>5</sup>

In addition, on April 28, 2017, OGE issued a directive that required all agencies, including the White House, to provide information and documents related to certain ethics waivers and authorizations issued to Executive Branch appointees from May 1, 2016, through April 30, 2017. The OGE directive sought information related to the White House process for issuing waivers of the ethics pledge required by Executive Order 13770.<sup>6</sup> OGE reviewed this information to evaluate procedures for issuing waivers and authorizations and reported that the White House “never provided OGE or made available to the public signed or dated copies of 10 waivers it issued under Executive Order 13770” and “did not fully respond to OGE’s follow-up questions.”<sup>7</sup>

In response to the current Administration’s novel interpretation of existing law and regulation, and in order to clarify the scope of OGE’s jurisdiction, H.R. 745 would amend the Ethics in Government Act of 1978 to state that all officers or employees serving in the Executive Branch—including White House personnel and employees of the Executive Office of the President—are subject to the Ethics in Government Act of 1978 (5 U.S.C. App.).

H.R. 745 also would allow the Director to issue administrative penalties for violations of the Ethics in Government Act. These new authorities—subpoena power and administrative penalties—would provide OGE the tools necessary to investigate and expose ethics violations.

H.R. 745 also would require all designated and alternate agency ethics officials to: (i) register with OGE and with the official’s appointing authority; (ii) attend OGE trainings biannually and as determined appropriate by the Director; and (iii) provide ethics-related documents—as required by statute or regulation or otherwise designated by the Director—to OGE and make them publicly available, unless disclosure is prohibited by law.

<sup>3</sup> 5 U.S.C. § 431.

<sup>4</sup> Committee on Oversight and Reform, Written Testimony of Rudy A. Mehrbani, Spitzer Fellow and Senior Counsel, Brennan Center for Justice at New York University School of Law, *Hearing on H.R. 1: Strengthening Ethics Rules for the Executive Branch* (Feb. 6, 2019).

<sup>5</sup> Letter from Stefan C. Passantino, Deputy Counsel to the President, Compliance and Ethics, to Walter M. Shaub, Jr., Director, Office of Government Ethics (Feb. 28, 2017) (online at <https://apps.npr.org/documents/document.html?id=3477259-WH-to-OGE-28Feb17>).

<sup>6</sup> Office of Government Ethics, *PA-17-02, Data Call for Certain Waivers and Authorizations* (Apr. 28, 2017) (online at [www.oge.gov/web/OGEnsf/Program%20Management%20Advisories/5B5DECAECCE6CB8185258110007ADC76/\\$FILE/PA-17-02.pdf?open](http://www.oge.gov/web/OGEnsf/Program%20Management%20Advisories/5B5DECAECCE6CB8185258110007ADC76/$FILE/PA-17-02.pdf?open)). See also Executive Order Number 13770, *Ethics Commitments by Executive Branch Appointees*, 82 Fed. Reg. 9333 (Jan. 28, 2017) (online at [www.govinfo.gov/content/pkg/FR-2017-02-03/pdf/2017-02450.pdf](http://www.govinfo.gov/content/pkg/FR-2017-02-03/pdf/2017-02450.pdf)).

<sup>7</sup> Office of Government Ethics, *Special Review of Executive Branch Agency Waivers & Authorizations* (Sept. 2017) (online at [https://oge.gov/web/OGEnsf/0/F916A3C42996EF618525819A006D12EB/\\$FILE/Final%20Report%20Package%20.pdf](https://oge.gov/web/OGEnsf/0/F916A3C42996EF618525819A006D12EB/$FILE/Final%20Report%20Package%20.pdf)).

These new proactive disclosure requirements would increase the transparency of compliance with ethics laws and regulations. The increased transparency would also lead to greater accountability by allowing Congress and the public to see how Executive Branch agencies and officials manage conflicts and resolve ethical issues. Such increased transparency would help foster increased public trust in government.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

The short title is the “Executive Branch Comprehensive Ethics Enforcement Act of 2019”.

##### *Section 2. Reauthorization of the Office of Government Ethics*

Section 2 reauthorizes the Office of Government Ethics through fiscal year 2023.

##### *Section 3. Tenure of the Director of the Office of Government Ethics*

Section 3 prohibits the removal of the Director for anything other than inefficiency, neglect of duty, or malfeasance in office. It also permits the Director to serve for up to one year beyond the expiration of a term if a successor has not been appointed.

##### *Sec. 4. Duties of the Director of the Office of Government Ethics*

###### *Subsection (a)—In General*

Subsection (a) amends section 402(a) of the Ethics in Government Act of 1978 (5 U.S.C. App.) to clarify that the Director of OGE has authority to provide overall direction of Executive Branch policies related to conflicts of interest and does not have to consult with the Office of Personnel Management (OPM) in providing such direction.

###### *Subsection (b)—Responsibilities of the Director*

Paragraph (1) of subsection (b) amends section 402(b) of the Ethics in Government Act of 1978 (5 U.S.C. App.) to clarify that OGE has primary authority to issue rules and regulations pertaining to conflicts of interest and ethics in the Executive Branch and does not have to consult with the OPM in developing or promulgating such regulations.

Paragraph (2) of subsection (b) further amends section 402(b) to require the Director to provide mandatory education and training programs for designated agency ethics officials.

Paragraphs (3), (4), (5), (10), and (11) of subsection (b) make various technical and clerical changes to section 402(b).

Paragraph (6) of subsection (b) further amends section 402(b) to clarify that the Director may consult with agency ethics counselors regarding the resolution of conflicts of interest and other ethics issues in individual cases.

Paragraph (7) of subsection (b) further amends section 402(b) to provide the Director clear authority to investigate allegations of violations of ethics laws and order corrective action.

Paragraph (8) of subsection (b) further amends section 402(b) to clarify that the Director has primary authority to promulgate changes in rules and regulations issued by the Director and agen-

cies regarding conflict of interest and ethics issues, with input from the Attorney General and the Director of OPM.

Paragraph (9) of subsection (b) further amends section 402(b) to require the Director to work with Inspectors General and the Attorney General to develop an effective system for reporting allegations of conflict of interest issues and allegations of violations of ethics laws and regulations to the Attorney General.

Paragraph (12) of subsection (b) further amends section 402(b) to: (i) establish the authority of the Director of OGE to direct designated agency ethics officials and approve resolutions of conflicts of interest and other ethics issues in individual cases; and (ii) review and approve recusals, exemptions, and waivers from the conflicts of interest and ethics laws, rules, and regulations and to make such approved recusals, exemptions, and waivers publicly available on the OGE website.

*Subsection (c)—Written Procedures*

Subsection (c) amends section 402(d) of the Ethics in Government Act of 1978 (5 U.S.C. App.) to clarify the Director's authority to ensure that each agency has appropriate written procedures related to financial disclosure statements, recusals, waivers, and ethics authorizations.

*Subsection (d)—Corrective Actions*

Paragraph (1) of subsection (d) amends section 402(f) of the Ethics in Government Act of 1978 (5 U.S.C. App.) to give the Director the authority to determine that a violation of the Ethics in Government Act of 1978 has occurred and issue appropriate administrative or legal remedies.

Paragraph (2) of subsection (d) further amends section 402(f)(i) to clarify that the Director of OGE may advise the President or order the head of an agency to take disciplinary action in the event of a violation of a rule, regulation, or Executive Order relating to conflicts of interest or standards of conduct, and (ii) to grant the Director of OGE the authority to secure information necessary to enable the Director to carry out the Ethics in Government Act of 1978 and to grant the Director the authority to issue and seek enforcement of subpoenas for such information.

Clauses (C) and (D) of paragraph (2), and paragraph (3) of subsection (d) make technical changes to section 402(f).

*Subsection (e)—Definitions*

Subsection (e) amends section 402 of the Ethics in Government Act of 1978 (5 U.S.C. App.) by adding new sections g, h, and i, which clarify: (i) that a reference to an officer or employee of an agency in the Act encompasses personnel at the White House and the Executive Office of the President; (ii) that a reference to the head of an agency in the Act includes the President or the President's designee; and (iii) that the Director shall have independent authority to submit information to Congress if such submissions include a statement indicating that the views expressed in the submission are those of the Director and do not necessarily represent the views of the President.

*Sec. 5. Agency ethics officials training and duties*

*Subsection (a)—In General*

Subsection (a) amends section 403 of the Ethics in Government Act of 1978 (5 U.S.C. App.) to add new subsections to require: (i) designated and alternate agency ethics officials to register with the Office of Government Ethics; (ii) the Director to provide training to all designated and alternate agency ethics officials; (iii) all designated and alternate agency ethics officials attend ethics education and training biannually and as required by the Director; and (iv) agencies to provide certain information related to resolutions of conflict of interest, waivers, and recusals to the Director of OGE and to the public in a searchable, sortable, and downloadable form.

*Subsection (b)—Repeal*

Subsection (b) repeals section 408 of the Ethics in Government Act of 1978 (5 U.S.C. App.), which requires the Director to provide certain reports to Congress.

LEGISLATIVE HISTORY

On May 21, 2018, during the 115th Congress, Representative Jamie Raskin (D–MD) introduced H.R. 5902, the Executive Branch Comprehensive Ethics Enforcement Act of 2018. The bill was referred to the Committee on Oversight and Government Reform.

During the 116th Congress, on January 24, 2019, Representative Jamie Raskin (D–MD), along with Representative Elijah E. Cummings (D–MD), Chairman of the Committee, and Representative Jerrold Nadler (D–NY), Chairman of the Committee on the Judiciary, introduced H.R. 745, the Executive Branch Comprehensive Ethics Enforcement Act of 2019.

On January 3, 2019, Representative John Sarbanes (D–MD) introduced H.R. 1, the For the People Act, and the bill was referred to various committees for consideration, including the Committee on Oversight and Reform. The Executive Branch Comprehensive Ethics Enforcement Act of 2019 comprised Subtitle D of Title VIII of H.R. 1.

On February 6, 2019, the Committee held a hearing to examine the proposals in H.R. 1 in the Committee’s jurisdiction, including the Executive Branch Comprehensive Ethics Enforcement Act of 2019. The Committee heard testimony from Scott Amey, General Counsel of the Project on Government Oversight; Karen Hobert Flynn, President of Common Cause; Rudy Mehrbani, Spitzer Fellow and Senior Counsel out the Brennan Center for Justice; Walter Shaub, Jr., Senior Advisor at Citizens for Responsibility and Ethics in Washington; and Bradley A. Smith, Chairman of the Institute for Free Speech.<sup>8</sup>

On March 26, 2019, the Committee considered H.R. 745 at a business meeting with a quorum present. The Committee ordered the bill reported favorably, as amended, by a recorded vote of 18–15.

<sup>8</sup> Committee on Oversight and Reform, *Hearing on H.R. 1: Strengthening Ethics Rules for the Executive Branch* (Feb. 6, 2019) (online at <https://oversight.house.gov/legislation/hearings/hr-1-strengthening-ethics-rules-for-the-executive-branch>).

## COMMITTEE CONSIDERATION

On March 26, 2019, the Committee considered H.R. 745 at a business meeting with a quorum present. Chairman Cummings offered an amendment in the nature of a substitute (ANS).

Representative W. Greg Steube (R-FL) offered an amendment to the ANS that would authorize \$17,019,000 for OGE. The amendment failed by voice vote.

Representative Mark Green (R-TN) offered an amendment to the ANS that would refer Michael Cohen to the Department of Justice for criminal investigation. The amendment was ruled non-germane by Chairman Cummings. Representative Green appealed the ruling of the Chairman. Representative Raskin moved to table the appeal of the ruling of the Chairman. Representative Raskin's motion to table the appeal of the ruling of the Chairman passed by a recorded vote of 18-6.

Representative Mark Meadows (R-NC) offered an amendment to the ANS to add "unprofessional political communication" to a list of reasons for cause of removal of the Director of OGE. The amendment failed by a recorded vote of 14-17.

Representative Meadows (R-NC) offered an amendment to the ANS that would strike certain provisions of the bill related to the authorities of the Director. The amendment failed by voice vote.

Representative Jody Hice (R-GA) offered an amendment to the ANS that would strike the language in the bill granting the Director authority to issue a subpoena. The amendment failed by a recorded vote of 14-17.

Representative Hice (R-GA) offered an amendment to the ANS that would strike the language in the bill granting the Director authority to investigate ethical misconduct. The amendment failed by a recorded vote of 15-18.

The ANS was adopted by a voice vote, and the Committee ordered the bill reported favorably, as amended, by a recorded vote of 18-15.

## ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H.R. 745:

COMMITTEE ON OVERSIGHT AND REFORM  
 116TH CONGRESS  
 RATIO 24-18  
 ROLL CALL

Date: 3-26-19

VOTE #: 2

Vote on: H.R. 745 – Raskin Motion to Table the Appeal of the Ruling of the Chair that the Green amendment (#3) is non-germane.

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. CUMMINGS (MD)	X			MR. JORDAN (OH)		X	
MS. MALONEY (NY)	X			MR. AMASH (MI)	X		
MS. NORTON (DC)	X			MR. GOSAR (AZ)			
MR. CLAY (MO)	X			MS. FOXX (NC)			
MR. LYNCH (MA)	X			MR. MASSIE (KY)			
MR. COOPER (TN)				MR. MEADOWS (NC)		X	
MR. CONNOLLY (VA)	X			MR. HICE (GA)		X	
MR. KRISHNAMOORTHY (IL)	X			MR. GROTHMAN (WI)			
MR. RASKIN (MD)	X			MR. COMER (KY)		X	
MR. ROUDA (CA)	X			MR. CLOUD (TX)			
MS. HILL (CA)	X			MR. GIBBS (OH)			
MS. WASSERMAN SCHULTZ (FL)	X			MR. HIGGINS (LA)		X	
MR. SARBANES (MD)				MR. NORMAN (SC)			
MR. WELCH (VT)	X			MR. ROY (TX)			
MS. SPEIER (CA)				MS. MILLER (WV)			
MS. KELLY (IL)	X			MR. GREEN (TN)		X	
MR. DeSAULNIER (CA)				MR. ARMSTRONG (ND)			
MS. LAWRENCE (MI)				MR. STEUBE (FL)			
MS. PLASKETT (VI)							
MR. KHANNA (CA)	X						
MR. GOMEZ (CA)	X						
MS. OCASIO-CORTEZ (NY)	X						
MS. PRESSLEY (MA)	X						
MS. TLAIB (MI)							

Roll Call Totals: Ayes: 18 Nays: 6 Present:

Passed:  X  Failed: \_\_\_\_\_

**COMMITTEE ON OVERSIGHT AND REFORM**  
 116TH CONGRESS  
 RATIO 24-18  
 ROLL CALL

Date: 3-26-19

VOTE #: 4

Vote on: H.R. 745 – Meadows amendment (#4) to the Cummings ANS.

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. CUMMINGS (MD)		X		MR. JORDAN (OH)	X		
MS. MALONEY (NY)		X		MR. AMASH (MI)	X		
MS. NORTON (DC)				MR. GOSAR (AZ)	X		
MR. CLAY (MO)		X		MS. FOXX (NC)	X		
MR. LYNCH (MA)				MR. MASSIE (KY)	X		
MR. COOPER (TN)		X		MR. MEADOWS (NC)	X		
MR. CONNOLLY (VA)				MR. HICE (GA)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. GROTHMAN (WI)	X		
MR. RASKIN (MD)		X		MR. COMER (KY)			
MR. ROUDA (CA)		X		MR. CLOUD (TX)			
MS. HILL (CA)		X		MR. GIBBS (OH)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MR. HIGGINS (LA)	X		
MR. SARBANES (MD)		X		MR. NORMAN (SC)			
MR. WELCH (VT)		X		MR. ROY (TX)	X		
MS. SPEIER (CA)				MS. MILLER (WV)	X		
MS. KELLY (IL)		X		MR. GREEN (TN)			
MR. DeSAULNIER (CA)		X		MR. ARMSTRONG (ND)	X		
MS. LAWRENCE (MI)				MR. STEUBE (FL)	X		
MS. PLASKETT (VI)							
MR. KHANNA (CA)							
MR. GOMEZ (CA)		X					
MS. OCASIO-CORTEZ (NY)		X					
MS. PRESSLEY (MA)		X					
MS. TLAIB (MI)		X					

Roll Call Totals: Ayes: 14 Nays: 17 Present:

Passed: \_\_\_\_ Failed: X

**COMMITTEE ON OVERSIGHT AND REFORM**  
116TH CONGRESS  
RATIO 24-18  
ROLL CALL

Date: 3-26-19

VOTE #: 5

Vote on: H.R. 745 – Hice amendment (#6) to the Cummings ANS.

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. CUMMINGS (MD)		X		MR. JORDAN (OH)	X		
MS. MALONEY (NY)		X		MR. AMASH (MI)	X		
MS. NORTON (DC)				MR. GOSAR (AZ)	X		
MR. CLAY (MO)		X		MS. FOXX (NC)	X		
MR. LYNCH (MA)				MR. MASSIE (KY)	X		
MR. COOPER (TN)		X		MR. MEADOWS (NC)			
MR. CONNOLLY (VA)				MR. HICE (GA)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. GROTHMAN (WI)	X		
MR. RASKIN (MD)		X		MR. COMER (KY)			
MR. ROUDA (CA)		X		MR. CLOUD (TX)			
MS. HILL (CA)		X		MR. GIBBS (OH)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MR. HIGGINS (LA)	X		
MR. SARBANES (MD)		X		MR. NORMAN (SC)			
MR. WELCH (VT)		X		MR. ROY (TX)	X		
MS. SPEIER (CA)				MS. MILLER (WV)	X		
MS. KELLY (IL)		X		MR. GREEN (TN)	X		
MR. DeSAULNIER (CA)		X		MR. ARMSTRONG (ND)	X		
MS. LAWRENCE (MI)				MR. STEUBE (FL)	X		
MS. PLASKETT (VI)							
MR. KHANNA (CA)							
MR. GOMEZ (CA)		X					
MS. OCASIO-CORTEZ (NY)		X					
MS. PRESSLEY (MA)		X					
MS. TLAIB (MI)		X					

Roll Call Totals: Ayes: 14 Nays: 17 Present:

Passed: \_\_\_\_ Failed:   X

**COMMITTEE ON OVERSIGHT AND REFORM**  
 116TH CONGRESS  
 RATIO 24-18  
 ROLL CALL

Date: 3-26-19

VOTE #: 6

Vote on: H.R. 745 – Hice amendment (#7) to the Cummings ANS.

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. CUMMINGS (MD)		X		MR. JORDAN (OH)	X		
MS. MALONEY (NY)		X		MR. AMASH (MI)	X		
MS. NORTON (DC)				MR. GOSAR (AZ)	X		
MR. CLAY (MO)		X		MS. FOXX (NC)	X		
MR. LYNCH (MA)				MR. MASSIE (KY)	X		
MR. COOPER (TN)		X		MR. MEADOWS (NC)	X		
MR. CONNOLLY (VA)				MR. HICE (GA)	X		
MR. KRISHNAMOORTHY (IL)		X		MR. GROTHMAN (WI)	X		
MR. RASKIN (MD)		X		MR. COMER (KY)			
MR. ROUDA (CA)		X		MR. CLOUD (TX)			
MS. HILL (CA)		X		MR. GIBBS (OH)	X		
MS. WASSERMAN SCHULTZ (FL)		X		MR. HIGGINS (LA)	X		
MR. SARBANES (MD)		X		MR. NORMAN (SC)			
MR. WELCH (VT)		X		MR. ROY (TX)	X		
MS. SPEIER (CA)				MS. MILLER (WV)	X		
MS. KELLY (IL)		X		MR. GREEN (TN)	X		
MR. DeSAULNIER (CA)		X		MR. ARMSTRONG (ND)	X		
MS. LAWRENCE (MI)				MR. STEUBE (FL)	X		
MS. PLASKETT (VI)							
MR. KHANNA (CA)		X					
MR. GOMEZ (CA)		X					
MS. OCASIO-CORTEZ (NY)		X					
MS. PRESSLEY (MA)		X					
MS. TLAIB (MI)		X					

Roll Call Totals: Ayes: 15 Nays: 18 Present:

Passed: \_\_\_\_\_ Failed:  X

**COMMITTEE ON OVERSIGHT AND REFORM**  
 116TH CONGRESS  
 RATIO 24-18  
 ROLL CALL

Date: 3-26-19

VOTE #: 7

Vote on: H.R. 745 – Favorably Report to House, as Amended.

Republicans	Aye	No	Present	Democrats	Aye	No	Present
MR. CUMMINGS (MD)	X			MR. JORDAN (OH)		X	
MS. MALONEY (NY)	X			MR. AMASH (MI)		X	
MS. NORTON (DC)				MR. GOSAR (AZ)			
MR. CLAY (MO)	X			MS. FOXX (NC)		X	
MR. LYNCH (MA)				MR. MASSIE (KY)		X	
MR. COOPER (TN)	X			MR. MEADOWS (NC)		X	
MR. CONNOLLY (VA)				MR. HICE (GA)		X	
MR. KRISHNAMOORTHY (IL)	X			MR. GROTHMAN (WI)		X	
MR. RASKIN (MD)	X			MR. COMER (KY)		X	
MR. ROUDA (CA)	X			MR. CLOUD (TX)			
MS. HILL (CA)	X			MR. GIBBS (OH)		X	
MS. WASSERMAN SCHULTZ (FL)	X			MR. HIGGINS (LA)		X	
MR. SARBANES (MD)	X			MR. NORMAN (SC)			
MR. WELCH (VT)	X			MR. ROY (TX)		X	
MS. SPEIER (CA)				MS. MILLER (WV)		X	
MS. KELLY (IL)	X			MR. GREEN (TN)		X	
MR. DeSAULNIER (CA)	X			MR. ARMSTRONG (ND)		X	
MS. LAWRENCE (MI)				MR. STEUBE (FL)		X	
MS. PLASKETT (VI)							
MR. KHANNA (CA)	X						
MR. GOMEZ (CA)	X						
MS. OCASIO-CORTEZ (NY)	X						
MS. PRESSLEY (MA)	X						
MS. TLAIB (MI)	X						

Roll Call Totals: Ayes: 18 Nays: 15 Present:

Passed:  X  Failed: \_\_\_\_\_

## EXPLANATION OF AMENDMENTS

During Committee consideration of the bill, Representative Elijah Cummings (D–MD), Chairman of the Committee, offered an ANS that modified the bill’s language to clarify OGE’s independent authority to issue ethics regulations, require trainings and publication of disclosures, and provide overall direction of executive branch ethics policies. The Committee adopted the ANS by a voice vote.

## LIST OF RELATED COMMITTEE HEARINGS

In accordance with section 103(i) of H. Res. 6, the Committee held a hearing to consider the proposals set forth in the Executive Branch Comprehensive Ethics Enforcement Act on February 6, 2019, as part of a hearing to examine the proposals in H.R. 1 that were in the Committee’s jurisdiction.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF  
THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee finds that the current Administration’s behavior and attitude regarding laws and regulations related to ethics and conflicts of interest have exposed weaknesses in the Ethics in Government Act of 1978, such that the Committee recommends the adoption of this bill (H.R. 745) to bolster existing ethics laws and regulations and expand the authority of OGE in an effort to ensure that executive branch officials comply with ethics laws and rules.

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee’s performance goal or objective of this bill is to amend the Ethics in Government Act of 1978 to provide for reform in the operations of OGE, and for other purposes.

## APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch when the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill amends the Ethics in Government Act of 1978 to provide for reform in the operations of OGE, which is the independent agency responsible for establishing ethics policy for the Executive Branch and monitoring compliance. As such, this bill does not relate to employment or access to public services and accommodations in the legislative branch.

## DUPLICATION OF FEDERAL PROGRAMS

In accordance with clause 3(c)(5) of rule XIII, no provision of this bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public

Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULE MAKINGS

This bill does not direct the completion of any specific rule makings within the meaning of section 551 of title 5, United States Code.

FEDERAL ADVISORY COMMITTEE ACT STATEMENT

The legislation does not establish or authorize the establishment of an advisory committee within the definition of Section 5(b) of the appendix to title 5, United States Code.

UNFUNDED MANDATES REFORM ACT STATEMENT

Pursuant to section 423 of the Congressional Budget Act of 1974, the Committee has included a letter received from the Congressional Budget Office (CBO) below.

EARMARK IDENTIFICATION

This bill does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the House of Representatives.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(2)(B) of rule XIII of the Rules of the House of Representatives, the Committee includes below a cost estimate of the bill prepared by the Director of CBO under section 402 of the Congressional Budget Act of 1974.

NEW BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE  
COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the House of Representatives, the cost estimate prepared by CBO and submitted pursuant to section 402 of the Congressional Budget Act of 1974 is as follows:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, May 13, 2019.*

Hon. ELIJAH E. CUMMINGS,  
*Chairman, Committee on Oversight and Reform,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 745, the Executive Branch Comprehensive Ethics Enforcement Act of 2019.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.

<b>At a Glance</b>			
<b>H.R. 745, Executive Branch Comprehensive Ethics Enforcement Act of 2019</b>			
As ordered reported by the House Committee on Oversight and Reform on March 26, 2019			
By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
<b>Direct Spending (Outlays)</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Revenues</b>	<b>0</b>	<b>*</b>	<b>*</b>
<b>Deficit Effect</b>	<b>0</b>	<b>*</b>	<b>*</b>
<b>Spending Subject to Appropriation (Outlays)</b>	<b>0</b>	<b>140</b>	<b>n.e.</b>
Pay-as-you-go procedures apply?	<b>Yes</b>	<b>Mandate Effects</b>	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	<b>No</b>	Contains intergovernmental mandate?	<b>No</b>
		Contains private-sector mandate?	<b>No</b>
n.e. = not estimated; * = between -\$500,000 and \$500,000.			
<b>The bill would</b>			
<ul style="list-style-type: none"> <li>• Reauthorize the U.S. Office of Government Ethics (OGE) for 2019 through 2023</li> <li>• Reform and expand OGE's operations</li> </ul>			
<b>Estimated budgetary effects would primarily stem from</b>			
<ul style="list-style-type: none"> <li>• Spending of the authorized appropriations for OGE over the 2019-2023 period</li> <li>• The cost of the expanding OGE's role and responsibilities</li> </ul>			
<b>Detailed estimate begins on the next page.</b>			

Bill summary: H.R. 745 would reauthorize the operations of the U.S. Office of Government Ethics, strengthen OGE's roles, and authorize the agency to investigate and adjudicate ethics violations in the executive branch.

Estimated Federal cost: The estimated budgetary effect of H.R. 745 is shown in Table 1. The costs of the legislation fall within budget function 800 (general government).

TABLE 1.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 745

	By fiscal year, millions of dollars—						
	2019	2020	2021	2022	2023	2024	2019–2024
Reauthorize the Office of Government Ethics:							
Estimated Authorization <sup>a</sup> .....	0	18	18	19	20	0	75
Estimated Outlays .....	0	17	18	18	20	2	75
Other Provisions:							
Estimated Authorization .....	0	5	10	15	15	20	65
Estimated Outlays .....	0	5	10	15	15	20	65
Total Changes:							
Estimated Authorization .....	0	23	28	34	35	20	140
Estimated Outlays .....	0	22	28	33	35	22	140

<sup>a</sup> The Office of Government Ethics received an appropriation of \$17 million for 2019.

Basis of estimate: For this estimate, CBO assumes that H.R. 745 will be enacted near the end of fiscal year 2019 and that the nec-

essary amounts will be appropriated each year beginning in 2020. Estimated outlays are based on historical spending patterns.

OGE oversees ethics programs in the executive branch and works with around 5,000 ethics personnel in about 130 agencies. The office issues rules and advises more than 2.7 million federal employees on ethical conduct. It also oversees a financial disclosure system covering more than 26,000 public and nearly 400,000 confidential disclosure reports from federal employees.

Spending subject to appropriation: In total, CBO estimates that implementing the bill would cost \$140 million over the 2019–2024 period.

Reauthorize the Office of Government Ethics. Section 2 of the bill would authorize the appropriation of whatever amounts are necessary to operate OGE over the 2019–2023 period. In 2019, OGE received an appropriation of \$17 million. CBO estimates that the cost of continuing OGE’s current activities, including adjustments for anticipated inflation, would total \$75 million over the 2020–2024 period.

Other Provisions. Section 4 of the bill would expand OGE’s responsibilities to include investigating possible ethics violations, reviewing violations and determining appropriate disciplinary actions, and making information about agency activities available to the public online. Under H.R.745 federal agencies would need to provide additional information to OGE on their compliance with ethic laws and would need to expand ethics training for all employees.

CBO expects that OGE’s expanded role under the bill would be similar to other agencies such as the Office of Special Counsel (OSC) and the Federal Labor Relations Authority (FLRA). OSC investigates allegations of prohibited personnel practices, prosecutes violators of civil service rules and regulations, and enforces the Hatch Act. The FLRA administers labor-management relations for 2.1 million non-postal federal employees. (For 2019, OSC received an appropriation of \$27 million and the FLRA received \$26 million.) Based on the costs of those activities at OSC, the FLRA, and other similar agencies, CBO estimates that OGE’s costs would increase gradually as it developed its investigative and disciplinary capabilities. In addition, the agencies that work with OGE would face increased administrative costs because of more and different interactions with OGE. In total, CBO estimates that implementing section 4 would cost \$5 million in 2020 and \$65 million over the 2020–2024 period.

Revenues: Enacting H.R. 745 could affect federal revenues if OGE’s expanded role led to the detection of more violations of ethics laws. The collection of civil penalties are recorded in the budget as revenues. However, CBO does not estimate that there would be any significant increase in ethics violations and associated penalties under H.R. 745.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending and revenues. CBO estimates that enacting H.R. 745 would increase revenues by an insignificant amount over the 2019–2029 period.

Increase in long-term deficits: None

Mandates: None

Prepared by: Federal costs: Matthew Pickford; Mandates: Andrew Laughlin.

Estimate reviewed by: Kim P. Cawley, Chief, Natural Resources and Cost Estimates Unit; H. Samuel Papenfuss; Deputy Assistant Director for Budget Analysis.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

### ETHICS IN GOVERNMENT ACT OF 1978

\* \* \* \* \*

#### TITLE IV—OFFICE OF GOVERNMENT ETHICS

##### ESTABLISHMENT; APPOINTMENT OF DIRECTOR

SEC. 401. (a) There is established an executive agency to be known as the Office of Government Ethics.

(b) There shall be at the head of the Office of Government Ethics a Director (hereinafter referred to as the "Director"), who shall be appointed by the President, by and with the advice and consent of the Senate. Effective with respect to any individual appointed or reappointed by the President as Director on or after October 1, 1983, the term of service of the Director shall be five years~~],~~ *subject to removal only for inefficiency, neglect of duty, or malfeasance in office. The Director may continue to serve beyond the expiration of the term until a successor is appointed and has qualified, except that the Director may not continue to serve for more than one year after the date on which the term would otherwise expire under this subsection.*

(c) The Director may—

(1) appoint officers and employees, including attorneys, in accordance with chapter 51 and subchapter III of chapter 53 of title 5, United States Code; and

(2) contract for financial and administrative services (including those related to budget and accounting, financial reporting, personnel, and procurement) with the General Services Administration, or such other Federal agency as the Director determines appropriate, for which payment shall be made in advance, or by reimbursement, from funds of the Office of Government Ethics in such amounts as may be agreed upon by the Director and the head of the agency providing such services.

Contract authority under paragraph (2) shall be effective for any fiscal year only to the extent that appropriations are available for that purpose.

##### AUTHORITY AND FUNCTIONS

SEC. 402. (a) The Director shall provide~~],~~ in consultation with the Office of Personnel Management,~~]~~ overall direction of executive

branch policies related to preventing conflicts of interest on the part of officers and employees of any executive agency, as defined in section 105 of title 5, United States Code.

(b) The responsibilities of the Director shall include—

(1) **[developing, in consultation with the Attorney General and the Office of Personnel Management, rules and regulations to be promulgated by the President or the Director]** *developing and promulgating rules and regulations* pertaining to conflicts of interest and ethics in the executive branch, including rules and regulations establishing procedures for the filing, review, and public availability of financial statements filed by officers and employees in the executive branch as required by **[title II]** *title I* of this Act;

**[(2) developing, in consultation with the Attorney General and the Office of Personnel Management, rules and regulations to be promulgated by the President or the Director pertaining to the identification and resolution of conflicts of interest;]**

*(2) providing mandatory education and training programs for designated agency ethics officials, which may be delegated to each agency or the White House Counsel as deemed appropriate by the Director;*

(3) monitoring and investigating compliance with the public financial disclosure requirements of **[title II]** *title I* of this Act by officers and employees of the executive branch and executive agency officials responsible for receiving, reviewing, and making available financial statements filed pursuant to such title;

(4) conducting a review of financial statements to determine whether such statements reveal possible violations of applicable conflict of interest laws or regulations and recommending appropriate action to correct any conflict of interest or ethical **[problems]** *issues* revealed by such review;

(5) monitoring and investigating individual and agency compliance with any additional financial reporting and internal review requirements established by law for the executive branch;

(6) interpreting rules and regulations **[issued by the President or the Director]** governing conflict of interest and ethical **[problems]** *issues* and the filing of financial statements;

(7) consulting**[, when requested,]** with agency ethics counselors and other responsible officials regarding the resolution of **[conflict of interest problems]** *conflicts of interest, as well as other ethics issues* in individual cases;

(8) establishing a formal advisory opinion service whereby advisory opinions are rendered on matters of general applicability or on important matters of first impression after, to the extent practicable, providing interested parties with an opportunity to transmit written comments with respect to the request for such advisory opinion, and whereby such advisory opinions are compiled, published, and made available to agency ethics counselors and the public;

(9) **[ordering]** *receiving allegations of violations of this Act or regulations of the Office of Government Ethics and, when necessary, investigating an allegation to determine whether a violation occurred, and ordering* corrective action on the part of

agencies and employees which the Director deems necessary, *and recommending appropriate disciplinary action*;

(10) requiring such reports from executive agencies as the Director deems necessary;

(11) assisting the Attorney General in evaluating the effectiveness of the conflict of interest laws and in recommending appropriate amendments;

(12) ~~evaluating, with the assistance of~~ *promulgating, with input from* the Attorney General and the Office of Personal Management, ~~the need for~~ changes in rules and regulations issued by the Director and the agencies regarding ~~conflict of interest and ethical problems~~ *conflict of interest and ethics issues*, with a view toward making such rules and regulations consistent with and an effective supplement to the conflict of interest laws;

(13) cooperating ~~with the Attorney General~~ *with the Inspectors General and the Attorney General* in developing an effective system for reporting allegations of ~~violations of the conflict of interest laws~~ *conflict of interest issues and allegations of violations of ethics laws and regulations and this Act* to the Attorney General~~,~~ as required by section 535 of title 28, United States Code~~;~~;

(14) providing information on and promoting understanding of ethical standards in executive agencies; ~~and~~

(15) developing~~,~~ in consultation with the Office of Personnel Management, ~~and~~ promulgating such rules and regulations as the Director determines necessary or desirable with respect to the evaluation of any item required to be reported by ~~title II~~ *title I* of this Act~~.~~;

(16) *directing and providing final approval, when determined appropriate by the Director, for designated agency ethics officials regarding the resolution of conflicts of interest as well as any other ethics issues under the purview of this Act in individual cases; and*

(17) *reviewing and approving, when determined appropriate by the Director, any recusals, exemptions, or waivers from the conflicts of interest and ethics laws, rules, and regulations and making approved recusals, exemptions, and waivers made publicly available by the relevant agency available in a central location on the official website of the Office of Government Ethics.*

(c) In the development of policies, rules, regulations, procedures, and forms to be recommended, authorized, or prescribed by him, the Director shall consult when appropriate with the executive agencies affected and with the Attorney General.

(d)(1) The Director shall~~,~~ by the exercise of any authority otherwise available to the Director under this title, ~~ensure that each executive agency has established written procedures relating to how~~ ~~the agency is~~ to collect, review, evaluate, and, if applicable, make publicly available, financial disclosure statements filed by, *or written documentation of recusals, waivers, or ethics authorizations relating to,* any of its officers or employees.

(2) In carrying out paragraph (1), the Director shall ensure that each agency's procedures are in conformance with all applicable requirements, whether established by law, rule, regulation, or Executive order.

(e) In carrying out subsection (b)(10), the Director shall prescribe regulations under which—

(1) each executive agency shall be required to submit to the Office an annual report containing—

(A) a description and evaluation of the agency's ethics program, including any educational, counseling in effect during the period covered by the report; and

(B) the position title and duties of—

(i) each official who was designated by the agency head to have primary responsibility for the administration, coordination, and management of the agency's ethics program during any portion of the period covered by the report; and

(ii) each officer or employee who was designated to serve as an alternate to the official having primary responsibility during any portion on such period; and

(C) any other information that the Director may require in order to carry out the responsibilities of the Director under this title; and

(2) each executive agency shall be required to inform the Director upon referral of any alleged violation of Federal conflict of interest law to the Attorney General pursuant to section 535 of title 28, United States Code, except that nothing under this paragraph shall require any notification or disclosure which would otherwise be prohibited by law.

(f)(1) In carrying out subsection (b)(9) with respect to executive agencies, the Director—

(A) may—

(i) order specific corrective action on the part of an agency based on the failure **【of such agency】** to establish a system for the collection, filing, review, and, when applicable, public inspection of financial disclosure statements, in accordance with applicable requirements, or to modify an existing system in order to meet applicable requirements; or

(ii) order specific corrective action involving the establishment or modification of an agency ethics program (other than with respect to any matter under clause (i)) in accordance with applicable requirements; and

(B) shall, if an agency has not complied with an order under subparagraph (A) within a reasonable period of time, notify the President and the Congress of the agency's noncompliance in writing (including, with the notification, any written comments which the agency may provide). *and determine that a violation of this Act has occurred and issue appropriate administrative or legal remedies as prescribed in paragraph (2)*

(2)(A) In carrying out subsection (b)(9) with respect to individual officers and employees—

(i) the Director may make such recommendations and provide such advice to such officers and employees as the Director considers necessary to ensure compliance with rules, regulations, and Executive orders relating to conflicts of interest or standards of conduct;

(ii) if the Director has reason to believe that an officer or employee is violating, or has violated, any rule, regulation, or Ex-

ecutive order relating to conflicts of interest or standards of conduct, the Director—

(I) may recommend to the President or the President's designee if the matter involves employees of the Executive Office of the President or to the head of the officer's or employee's agency that such agency head investigate the possible violation and, if the agency head finds such a violation, that such agency head take any appropriate disciplinary action (such as reprimand, suspension, demotion, or dismissal) against the officer or employee, except that, if the officer or employee involved is the agency head, any such recommendation shall instead be submitted to the President; **[and]**

(II) shall notify the President in writing if the Director determines that the President or head of an agency has not conducted an investigation pursuant to subclause (I) within a reasonable time after the Director recommends such action; *and*

(iii) if the Director finds that an officer or employee is violating any rule, regulation, or Executive order relating to conflicts of interest or standards of conduct, the Director—

(I) may order the officer or employee to take specific action (such as divestiture, recusal, or the establishment of a blind trust) to end such violation; *and*

(II) shall, if the officer or employee has not complied with the order under subclause (I) within a reasonable period of time, **[notify, in writing,]** *advise the President or order the head of the officer's or employee's agency to take appropriate disciplinary action including reprimand, suspension, demotion, or dismissal against the officer or employee (provided, however, that any order issued by the Director shall not affect an employee's right to appeal a disciplinary action under applicable law, regulation, collective bargaining agreement, or contractual provision). **[Of the officer's or employee's noncompliance, except that, if the officer or employee involved is the agency head, the notification shall instead be submitted to the President; and]***

**[(iv) if the Director finds that an officer or employee is violating, or has violated, any rule, regulation, or Executive order relating to conflicts of interest or standards of conduct, the Director—**

**[(I) may recommend to the head of the officer's or employee's agency that appropriate disciplinary action (such as reprimand, suspension, demotion, or dismissal) be brought against the officer or employee, except that if the officer or employee involved is the agency head, any such recommendations shall instead be submitted to the President; and**

**[(II) may notify the President in writing if the Director determines that the head of an agency has not taken appropriate disciplinary action within a reasonable period of time after the Director recommends such action.]**

(B)(i)(I) In order to carry out the Director's duties and responsibilities under subparagraph (A) (iii) or (iv) with respect to individual officers and employees, the Director may conduct investiga-

tions and make findings concerning possible violations of any rule, regulation, or Executive order relating to conflicts of interest or standards of conduct applicable to officers and employees of the executive branch.

*(II)(aa) The Director may secure directly from any agency information necessary to enable the Director to carry out this Act. Upon request of the Director, the head of such agency shall furnish that information to the Director.*

*(bb) The Director may require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data in any medium and documentary evidence necessary in the performance of the functions assigned by this Act, which subpoena, in the case of refusal to obey, shall be enforceable by order of any appropriate United States district court.*

(ii)(I) **Subject to clause (iv) of this subparagraph, before** *Before* any finding is made under **subparagraphs (A) (iii) or (iv)** *subparagraph (A)(iii)*, the officer or employee involved shall be afforded notification of the alleged violation, and an opportunity to comment, either orally or in writing, on the alleged violation.

(II) The Director shall, in accordance with section 553 of title 5, United States Code, establish procedures for such notification and comment.

(iii) **Subject to clause (iv) of this subparagraph, before** *Before* any action is ordered under subparagraph (A)(iii), the officer or employee involved shall be afforded an opportunity for a hearing, if requested by such officer or employee, except that any such hearing shall be conducted on the record.

(iv) The procedures described in clauses (ii) and (iii) of this subparagraph do not apply to findings or orders for action made to obtain compliance with the financial disclosure requirements in **title 2** *title I* of this Act. For those findings and orders, the procedures in **section 206** *section 106* of this Act shall apply.

(3) The Director shall send a copy of any order under paragraph (2)(A)(iii) to—

(A) the officer or employee who is the subject of such order; and

(B) the head of officer's or employee's agency or, if such officer or employee is the agency head, to the President.

(4) For purposes of paragraphs (2)(A) (ii), (iii), **(iv),** and (3)(B), in the case of an officer or employee within an agency which is headed by a board, committee, or other group of individuals (rather than by a single individual), any notification, recommendation, or other matter which would otherwise be sent to an agency head shall instead be sent to the officer's or employee's appointing authority.

(5) Nothing in this title shall be considered to allow the Director (or any designee) to make any finding that a provision of title 18, United States Code, or any criminal law of the United States outside of such title, has been or is being violated.

(6) Notwithstanding any other provision of law, no record developed pursuant to the authority of this section concerning an investigation of an individual for a violation of any rule, regulation, or Executive order relating to a conflict of interest shall be made available pursuant to section 552(a)(3) of title 5, United States

Code, unless the request for such information identifies the individual to whom such records relate and the subject matter of any alleged violation to which such records relate, except that nothing in this subsection shall affect the application of the provisions of section 552(b) of title 5, United States Code, to any record so identified.

(g) *For purposes of this title—*

(1) *the term “agency” shall include the Executive Office of the President; and*

(2) *the term “officer or employee” shall include any individual occupying a position, providing any official services, or acting in an advisory capacity, in the White House or the Executive Office of the President.*

(h) *In this title, a reference to the head of an agency shall include the President or the President’s designee.*

(i) *The Director shall not be required to obtain the prior approval, comment, or review of any officer or agency of the United States, including the Office of Management and Budget, before submitting to Congress, or any committee or subcommittee thereof, any information, reports, recommendations, testimony, or comments, if such submissions include a statement indicating that the views expressed therein are those of the Director and do not necessarily represent the views of the President.*

#### ADMINISTRATIVE PROVISIONS

SEC. 403. (a) Upon the request of the Director, each executive agency is directed to—

(1) make its services, personnel, and facilities available to the Director to the greatest practicable extent for the performance of functions under this Act; and

(2) except when prohibited by law, furnish to the Director all information and records in its possession which the Director may determine to be necessary for the performance of his duties.

The authority of the Director under this section includes the authority to request assistance from the inspector general of an agency in conducting investigations pursuant to the Office of Government Ethics responsibilities under this Act. The head of any agency may detail such personnel and furnish such services, with or without reimbursement, as the Director may request to carry out the provisions of this Act.

(b)(1) The Director is authorized to accept and utilize on behalf of the United States, any gift, donation, bequest, or devise of money, use of facilities, personal property, or services for the purpose of aiding or facilitating the work of the Office of Government Ethics.

(2) No gift may be accepted—

(A) that attaches conditions inconsistent with applicable laws or regulations; or

(B) that is conditioned upon or will require the expenditure of appropriated funds that are not available to the Office of Government Ethics.

(3) The Director shall establish written rules setting forth the criteria to be used in determining whether the acceptance of contributions of money, services, use of facilities, or personal property

under this subsection would reflect unfavorably upon the ability of the Office of Government Ethics, or any employee of such Office, to carry out its responsibilities or official duties in a fair and objective manner, or would compromise the integrity or the appearance of the integrity of its programs or any official involved in those programs.

*(c)(1) All designated agency ethics officials and alternate designated agency ethics officials shall register with the Director as well as with the appointing authority of the official.*

*(2) The Director shall provide ethics education and training to all designated and alternate designated agency ethics officials in a time and manner deemed appropriate by the Director.*

*(3) Each designated agency ethics official and each alternate designated agency ethics official shall biannually attend ethics education and training, as provided by the Director under paragraph (2).*

*(d) Each Designated Agency Ethics Official, including the Designated Agency Ethics Official for the Executive Office of the President—*

*(1) shall provide to the Director, in writing, in a searchable, sortable, and downloadable format, all approvals, authorizations, certifications, compliance reviews, determinations, directed divestitures, public financial disclosure reports, notices of deficiency in compliance, records related to the approval or acceptance of gifts, recusals, regulatory or statutory advisory opinions, waivers, including waivers under section 207 or 208 of title 18, United States Code, and any other records designated by the Director, unless disclosure is prohibited by law;*

*(2) shall, for all information described in paragraph (1) that is permitted to be disclosed to the public under law, make the information available to the public by publishing the information on the website of the Office of Government Ethics, providing a link to download an electronic copy of the information, or providing printed paper copies of such information to the public; and*

*(3) may charge a reasonable fee for the cost of providing paper copies of the information pursuant to paragraph (2).*

*(e)(1) For all information that is provided by an agency to the Director under paragraph (1) of subsection (d), the Director shall make the information available to the public in a searchable, sortable, downloadable format by publishing the information on the website of the Office of Government Ethics or providing a link to download an electronic copy of the information.*

*(2) The Director may, upon request, provide printed paper copies of the information published under paragraph (1) and charge a reasonable fee for the cost of printing such copies.*

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AUTHORIZATION OF APPROPRIATIONS

SEC. 405. There are authorized to be appropriated to carry out this title such sums as may be necessary for **【fiscal year 2007】** fiscal years 2019 through 2023.

\* \* \* \* \*

【REPORTS TO CONGRESS

【SEC. 408. The Director shall, no later than April 30 of each year in which the second session of a Congress begins, submit to the Congress a report containing—

【(1) a summary of the actions taken by the Director during a 2-year period ending on December 31 of the preceding year in order to carry out the Director's functions and responsibilities under this title; and

【(2) such other information as the Director may consider appropriate.】

\* \* \* \* \*

## MINORITY VIEWS

Committee Republicans oppose H.R. 745. The bill is simply a partisan attack on the Trump Administration. During the Committee's business meeting on March 26, 2019, Representative Jamie Raskin (D-MD) admitted the bill was directed at the Trump Administration. Representative Raskin stated, "[w]e know that there has been a profound ethics crisis in the executive branch of government," and proceeded to list allegations concerning the Trump Administration.<sup>1</sup>

Representative Raskin failed to mention any of the scandals from the previous administration. In 2013, the Acting Commissioner of the Internal Revenue Service (IRS) Steven Miller was fired following a Treasury Inspector General for Tax Administration report that found that the IRS targeted conservative political advocacy groups seeking tax-exempt status during the 2012 elections cycle.<sup>2</sup> A 2012 General Services Administration (GSA) Inspector General report resulted in the resignation of Administrator Martha Johnson after the Inspector General found that GSA abused taxpayer dollars on a regional conference that included after-hours parties, a \$7,000 sushi reception, \$44-per-head-breakfasts, a \$3,200 mind reader, and \$130,000 in expenses on pre-conference scouting trips.<sup>3</sup> In addition, the Office of Special Counsel sent warning letters to and investigated several senior Obama Administration officials for Hatch Act violations, including Press Secretary Josh Earnest, Secretary of Housing and Urban Development Julian Castro, Secretary of Health and Human Services Kathleen Sebelius, and Secretary of Labor Hilda Solis.<sup>4</sup>

This partisan bill adds extensive new authorities for the Director of Office of Government Ethics (OGE) that are incompatible with OGE's current statutory authority and mission. These new authorities include investigative authority, enhanced enforcement authority, and subpoena authority.

H.R. 745 grants OGE unprecedented and inappropriate investigative powers. According to former OGE Director, Walter Shaub, OGE is not the appropriate entity to wield investigative authority.

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<sup>1</sup> *Business Meeting of the H. Comm. on Oversight & Reform*, 116th Cong. 90 (2019) (statement of Rep. Jamie Raskin, Member, H. Comm. on Oversight & Reform).

<sup>2</sup> *Justice Department Settles with Conservative Groups Over IRS Scrutiny*, REUTERS (Oct. 26, 2017), <https://www.reuters.com/article/us-usa-tax-conservative/justice-department-settles-with-conservative-groups-over-irs-scrutiny-idUSKBN1CV1TY>.

<sup>3</sup> Vicki Needham, *GSA Chief Resigns, Employees Fired For Costly Conference*, THE HILL (Apr. 2, 2012), <https://thehill.com/blogs/blog-briefing-room/news/219605-gsa-chief-resigns-employees-fired-for-costly-conference>.

<sup>4</sup> See generally, Letter from Ana Galindo-Marrone, Chief, U.S. Office of Special Counsel Hatch Act Unit, to Hon. Joshua Earnest, Assistant to the President and White House Press Secretary, White House (May 4, 2016); Letter from Carolyn Lerner, Special Counsel, U.S. Office of Special Counsel, to Barack Obama, President of the United States (Jul. 18, 2016); Letter from Carolyn Lerner, Special Counsel, U.S. Office of Special Counsel, to Barack Obama, President of the United States (Sept. 12, 2012); Paul Pringle and Abbey Sewell, *Complaint over Obama fundraiser triggered Solis Probe*, L.A. TIMES (May 9, 2014), <https://www.latimes.com/local/la-me-solis-investigation-20140510-story.html>.

In a letter to the Committee in 2017, he wrote that “[g]iving OGE investigative authority would jeopardize the executive branch ethics program’s critical function as a prevention mechanism.”<sup>5</sup> Shaub warned, “Congress should resist the temptation to transform OGE into one more Office of Inspector General among many.”<sup>6</sup> Yet, this is exactly what this bill does.

The new role of investigator is incompatible with OGE’s current role. The bill would have a chilling effect on candid executive branch ethics advice and corrupt OGE’s core mission. If OGE becomes another investigative agency, executive branch employees will be less likely to proactively seek advice from OGE.

The executive branch does not need additional ethics investigators. Agencies are already responsible for ensuring their employees are compliant with federal ethics laws. In addition, Inspectors General stand ready to hold agencies accountable and to investigate alleged ethics violations. When there are failures of ethics compliance, OGE can notify the agency and refer the matter to the applicable Inspector General.

Expanding OGE’s authority is wasteful, duplicative, and creates an unnecessary opportunity to politicize ethics for overly zealous officials. Former OGE Director Shaub is a good example of why we need to be careful about creating an unaccountable and unrestrained OGE. In 2016, in a series of tweets from the official OGE twitter account, Shaub took it upon himself to publicly mock the President-elect for making decisions with which Shaub disagreed.<sup>7</sup>

While H.R. 745 grants new authorities to OGE, it also authorizes OGE for an unconstrained amount of funds. H.R. 745 reauthorizes OGE through 2023 for “such sums as may be necessary.”<sup>8</sup> Essentially, the bill will provide a limitless authorization for OGE. Currently, OGE does not have the staff to advise, investigate, and discipline the entire federal workforce. At this point, it is unclear how much the new burdensome requirements will cost and this bill offers no limit.

Federal ethics laws are important across all administrations and legislative reform has generally been bipartisan. It is extremely unfortunate that during this Congress, the Committee Democrats have chosen to weaponize ethics.

JIM JORDAN,  
*Ranking Member.*



<sup>5</sup> Letter from Walter Shaub Jr., Senior Dir. of Ethics, Campaign Legal Center, to Rep. Trey Gowdy, Chairman, H. Comm. on Oversight & Gov’t Reform (Nov. 9, 2017), [https://campaignlegal.org/sites/default/files/W%20Shaub%20Legislative%20Proposal%20-%209%20November%202017\\_0.pdf](https://campaignlegal.org/sites/default/files/W%20Shaub%20Legislative%20Proposal%20-%209%20November%202017_0.pdf).

<sup>6</sup> *Id.*

<sup>7</sup> Alina Selyukh, *U.S. Ethics Chief Was Behind Those Tweets About Trump, Records Show*, NPR (Dec. 30, 2016), <https://www.npr.org/sections/thetwo-way/2016/12/30/507559887/u-s-ethics-chief-was-behind-those-tweets-about-trump-records-show>.

<sup>8</sup> Ethics in Government Act of 1978, 5 U.S.C. app. § 405 (2018).