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# United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR  
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August 18, 2017

The Honorable Gene L. Dodaro  
Comptroller General of the United States  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, DC 20548

Dear Mr. Dodaro:

The Environmental Protection Agency (EPA) and Council on Environmental Quality (CEQ) use various authorities to hire political appointees. It has come to our attention that the ethics requirements for political appointees vary by the authority under which the appointment was made. Some of the appointees are in high-level positions, managing staff and making consequential decisions, yet they were hired in a manner that exempts them from compliance with Executive Order 13,770: Ethics Commitments by Executive Branch Appointees (otherwise known as the Trump Ethics Pledge). We are additionally concerned that the authorities are being abused and that non-confirmed political appointees may not be complying with the ethics requirements that do apply to them in a timely or complete manner.

For example, EPA is authorized under the Safe Drinking Water Act (SDWA, at 42 U.S.C. § 300j-10) to appoint “not more than thirty scientific, engineering, professional, legal, and administrative positions within the Environmental Protection Agency without regard to the civil service laws.” The Office of Government Ethics (OGE) has advised that individuals employed pursuant to this authority are exempted from certain other Executive Branch requirements, including the Trump Ethics Pledge, although they remain subject to other ethics requirements such as 5 CFR Part 2635, Subpart E entitled “Impartiality in Performing Official Duties.” In contrast, other political appointees are often hired as Schedule C or non-career Senior Executive Service employees, both of which are subject to Executive Order 13,770 and other ethics requirements such as 5 CFR Part 2635, Subpart E.

EPA has utilized its SDWA authority to hire a number of non-Senate-confirmed political appointees, some of whom are serving in supervisory positions and in roles that raise ethical questions. Various entities, including OGE, Office of Personnel Management, and the Designated Agency Ethics Officials, play differing roles in implementing and overseeing compliance with ethics requirements depending on the authority. When we have made inquiries directed to these entities regarding these matters, we have often been told the specific entity does not handle the particular aspect we asked about and get unclear answers about which entity does.

Our written requests to EPA for specific information regarding political appointees have thus far gone almost entirely unanswered. We write to request that GAO examine the authorities, policies, practices, entities involved, and compliance with applicable ethics requirements that EPA and CEQ have followed in hiring non-confirmed political appointees. Specifically, we request that GAO undertake a review that addresses the following:

- All authorities that can be used to hire political appointees at EPA and CEQ, including the policies and procedures, any background and position requirements and limitations, ethics requirements (including but not limited to compliance with the Trump Ethics Pledge), the agency charged with implementation and oversight of each requirement, and which, if any, civil services laws are permitted to be disregarded.
- Historical and current use of the authorities to employ non-Senate-confirmed political employees, including the types of roles such employees have been hired to perform, the length of service, whether the roles and responsibilities are consistent with the authority and its use during the Obama Administration, and any abuse of the hiring authorities. This should include a review of the initial authority used to hire an appointee.
- For non-Senate-confirmed appointees who are required to comply with the Trump Ethics Pledge, please note at what point following their date of hire or date on which they subsequently became subject to the Pledge because their employment status changed; At what point did they agree to comply, receive a written ethics determination regarding any recusals or other measures they needed to take in order to assure compliance; and, if applicable, at what point a waiver was granted.
- Whether non-Senate-confirmed political appointees who were not subject to Executive Order 13,770 on the date of hire underwent a process to assure their compliance with other applicable ethics regulations. Please detail at what point such a process was completed; at what point they received a written ethical determination regarding any recusals or other measures they needed to take in order to assure compliance; and, if applicable, at what point was a public interest or other determination made regarding their continued work on particular subject matter or participation in certain meetings.
- For any lag time between the date of hire or transition into a position with different ethics requirements and the date that written ethics analysis or recusal agreements are signed, the extent to which retrospective reviews were conducted to ensure appointees did not violate ethics Executive Order 13,770 or other requirements. Further, determine whether non-confirmed political appointees have been found to have worked on subject matter, communicated with outside groups, or participated in certain meetings that were later determined by the Designated Agency Ethics Official or any other entity to require recusals or other measures.

Thank you very much for your consideration of this important matter. If you or members of your staff have any questions or concerns with the contents of this letter, please ask them to contact Michal Freedhoff on the Environment and Public Works Committee staff at 202-224-8832 and Emily Enderle on Senator Whitehouse's staff at 202-224-2921.

Sincerely,

  
Tom Carper  
U.S. Senator

  
Sheldon Whitehouse  
U.S. Senator