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Ethics Newsgram

Director's Column

20th Anniversary of the Ethics in Government Act

This year marks a milestone in the history of the executive branch ethics program as we observe the 20th anniversary of the enactment of the Ethics in Government Act of 1978 (the Act). We are all familiar with the major provisions of this landmark legislation: a new system of public financial disclosure, an augmentation of existing post-employment restrictions, and the establishment of a new office to provide overall direction of executive branch policies related to preventing conflicts of interest.

One of the first challenges for the new Office of Government Ethics (OGE) was to deal with a widespread fear at the time that the increased post-employment restrictions would precipitate a "brain drain" in the executive branch. This fear subsided following some legislative changes and an effort to promote a better understanding of the law through advisory opinions and implementing regulations. At about the same time, the public financial disclosure requirements of the new law were also creating some anxieties. Privacy issues



led to a legal challenge on constitutional grounds, but a Federal appellate court held that the public financial disclosure law did not violate the privacy rights of filers, their spouses or dependent children. For some time, public filers continued to remain concerned about misuse of financial information. However, this anxiety eased as OGE and ethics officials helped public filers become accustomed to the law and as fears of financial exploitation did not come to pass.

One especially noteworthy development in the early years was the establishment of an enhanced role for OGE and the executive branch agencies in the confirmation of Presidential appointees requiring Senate confirmation. As a result of strong OGE leadership, Congress was persuaded to accept the idea that review and certification of a nominee's financial disclosure report should be an integral part of the confirmation process.

Almost immediately after passage of the Act, OGE and agency ethics officials set about the task of building a modern, effective ethics program for the executive

branch. In April 1980, OGE held the first conference for agency ethics officials to discuss OGE's duties and functions and the responsibilities of Designated Agency Ethics Officials. In the early 1980's, there was an emphasis on providing strong advisory services in the agencies and at OGE and in developing a body of published OGE opinions. There was also an early focus on criminal enforcement and putting in place a regulatory framework. Moreover, as early as January 1983, OGE started training for regional ethics officials with a full-day training course in New York City.

OGE's program review function continued to evolve in importance and was given an expanded role and greater support by the Congress at the end of the 1980's. OGE, which originally had been an office within the Office of Personnel Management, became a separate agency in 1989 and thereafter experienced a rapid growth in its staff, in part to fulfill its new program review mandate. At this same time, OGE's desk officer system was initiated, and regular communications between OGE and the agencies were fostered.

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Video Garners Third Award

The Battle for Avery Mann has been awarded a silver certificate in the Region 5 Southeastern United States CINDY Competition. CINDY, an acronym for Cinema in Industry, began in 1959 as an industrial film competition. It has developed into the premier international audio visual competition for both linear media and interactive multimedia.

Director's Column

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1998 Annual Ethics Conference

The 1998 Annual Government Ethics Conference is scheduled for September 14-17, 1998, at the Williamsburg Marriott Hotel in Williamsburg, Virginia. The two and a half-day conference will begin with check-in on Monday evening, September 14. The formal program will begin on Tuesday morning, September 15, and continue through noon on Thursday, September 17.

An official conference announcement was sent to all Designated Agency Ethics Officials (DAEO) on March 31, 1998 (DO-98-010) which provided relevant details and conference registration forms. As in the past, all registrations must come through the DAEO. If you are interested in being nominated to attend this year's conference, please contact your DAEO.

Additional conference information can be obtained from the OGE Web site at <http://www.usoge.gov>, or you can contact Sheila Powers, OGE Conference Coordinator, at 202-208-8000, ext. 1104.

Correction

The Food and Drug Administration was inadvertently omitted from the article "Ethics Programs Recognized," in the Fall 1997 issue. The omission was corrected immediately on the electronic version of the **Government Ethics Newsgram** on the OGE Web site. We regret the error.

A 1989 report of a Presidential commission on ethics law reform stimulated further legislative and executive action. The report was quickly followed by a new executive order on employee conduct and later that year by the Ethics Reform Act of 1989. As a result of these new executive and legislative mandates, the early 1990's witnessed a complete overhaul of the ethics structure including: the establishment of a more comprehensive system of confidential financial disclosure, a program for granting certificates that made divestiture a fairer remedy for conflicts, a new uniform set of standards of ethical conduct, and a major regulation interpreting section 208 of title 18 of the United States Code. Agencies took up the tasks of fulfilling their new training responsibilities and supplementing the executive branchwide conduct standards with agency-specific rules.

Later in the 1990's, we have seen a growing sophistication of our ethics program. Agencies have made significant contributions through the formation of an interagency ethics council, through their input in brown-bag luncheons, and through their participation in the workshops at our annual conferences.

Here at OGE, we have seen an expansion of our education and training program. OGE has produced new pamphlets, booklets, videos, and games for agency use and has utilized satellite broadcasts to do annual ethics training nationwide. We have sought to provide greater support to agencies and to foster an exchange of "best practices" expertise. We have seen growth in our legislative activity as we have played an increasingly active role in commenting on pending legislation that raises ethics concerns. In addition, OGE gave significant support for the legislation which amended the conflicts law to remove certain unreasonable burdens on the ability of employee organizations to communicate with the Government. Furthermore, we are making greater use of information technology and the Internet. OGE also has provided technical assistance regarding Federal ethics policy to U.S. foreign policy agencies in support of their anticorruption efforts throughout the world.

Twenty years after the enactment of the Ethics in Government Act, we in the ethics community should always keep in mind

that there is a continuing need for close cooperation between the executive branch agencies and OGE. Together we are engaged in fulfilling the purpose of the Act "to preserve and promote the integrity of public officials and institutions." This is true for virtually every aspect of the program whether it be developing agency training plans, training trainers, developing ethics resources and materials, granting certificates of divestiture, consulting on waivers, reviewing supplemental regulations, clearing Presidential nominees, conducting program reviews, making referrals, or providing ethics advice. As we take a moment to look back at the accomplishments of the past 20 years, all of us in the ethics community should be proud of the contribution we have made to maintaining Government integrity.

Government Ethics Newsgram

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We welcome any news and information related to Government ethics that you wish to bring to the attention of OGE and the executive agencies as well as your candid critiques and suggestions. Quoting or reprinting materials contained in this publication is strongly encouraged and may be done without seeking OGE permission.

The Director of the Office of Government Ethics has determined that the publication of this periodical is necessary to the transaction of the public business of OGE, as required by law.

Helpful Hints for SF 278 Filers and Reviewers

In preparation for the upcoming annual filing cycle of Public Financial Disclosure Reports (SF 278), we once again offer some helpful hints intended to reduce follow-up work for agency ethics officials and filers.

Annual reports are due to be filed at the agency by May 15, 1998. Reports filed by Presidential appointees confirmed by the Senate, and Designated Agency Ethics Officials should be reviewed by the agency and submitted to OGE immediately after agency approval, but no later than September 15, 1998.

Cover Page

- Include the filer's date of appointment.
- For annual reports, ensure that the filer's signature date is no earlier than January 1, 1998. For termination reports, be sure to include the filer's termination date, and ensure that the filer's signature date is no earlier than the filer's last day of service in the position.
- Indicate in the "Comments of Reviewing Officials" box if the filer received an initial 45-day extension.

Schedule A: Assets and Income

- For assets valued at over \$1 million on Schedule A, where the assets are not held solely by a spouse or dependent child, indicate whether the value is between \$1,000,001 and \$5,000,000, between \$5,000,001 and \$25,000,000,

between \$25,000,001 and \$50,000,000, or over \$50,000,000. For income valued at over \$1 million, indicate whether the earnings are between \$1,000,001 and \$5,000,000, or over \$5,000,000.

Schedule B, Part I: Transactions

- If a "sale" transaction appears on Schedule B for an asset listed on Schedule A with a value exceeding \$1,000, indicate whether a partial sale occurred. If the asset was sold entirely, the asset value shown on Schedule A should be changed to "none or less than \$1,001."

Schedule B, Part II: Gifts, Reimbursements, and Travel Expenses

- If a gift of travel is reported, specify the basis for the acceptance, e.g., "a personal friend" or "agency approval under 5 U.S.C. § 4111." Under 5 C.F.R. § 2635.204(d), agencies are required to give *written approval* to any employee accepting a meritorious service award with a value greater than \$200. Agencies should forward a copy of the approval letter to OGE with the employee's SF 278 for retention in OGE's files.

Schedule C, Part I: Liabilities

- For liabilities valued at over \$1 million, which are not held solely by a spouse or dependent child, indicate whether the value of the liability is between \$1,000,001 and \$5,000,000, between \$5,000,001 and \$25,000,000, between \$25,000,001 and \$50,000,000, or over \$50,000,000.

Schedule D, Part I: Positions Held Outside U.S. Government

- Remember that the reporting period for this section includes the previous calendar year as well as the current year up to the filing date. All positions held at any time during the reporting period should be listed, including those from which the filer may have resigned before the end of the reporting period. Any new position should have an adequate organizational description so that the reviewer can determine whether a potential conflict of interest exists.

Miscellaneous

- Ensure that all sections of the report are complete and that the "None" box is checked as applicable.

Schedule C Filers

Are you aware that all Schedule C employees are required to file Public Financial Disclosure Reports (SF 278), regardless of their position or grade? Did you know that OGE can grant exclusions from filing SF 278s for positions that meet certain criteria? Contact OGE's Financial Disclosure Division for more information.

Best Practices

Agency Benefits from Amended Training Regulation

This new feature will appear regularly to share innovative ethics-related ideas with the ethics community. Look on OGE's Web site at <http://www.usoge.gov> for more "Best Practices."

The training regulation amendments at subpart G of 5 C.F.R. part 2638, effective June 10, 1997, were designed to enable agencies to allocate their resources in a more flexible and efficient manner. One example of an agency using this flexibility to its advantage is the Department of Energy (DOE).

In response to the training regulation amendments, DOE intends to provide verbal ethics training every other year to nonpublic financial disclosure filers who

require annual ethics training. During the alternate years, DOE employees will receive annual ethics training via written means.

DOE will offer confidential financial disclosure filers the option of filing the OGE Optional Form 450-A, if appropriate, during the years that verbal training is provided. Not only will this method balance the workload of ethics officials who provide training and administer the confidential financial disclosure system, but it will also ease the process of tracking the type of training provided.

All employees who receive ethics training by written means are required to complete a certification form. Attendance will be tracked at verbal training sessions using sign-in sheets.

Introductory Training Workshops Offered

OGE will offer selected introductory ethics training workshops in the following cities during the remainder of 1998:

- *St. Louis*
- *Norfolk*
- *New York*
- *Chicago*
- *Washington, DC*

The introductory courses include: "Gifts from Outside Sources," "Gifts between Employees," "Misuse of Position," "Post Employment," "Public Financial Disclosure," and "Confidential Financial Disclosure." The specific courses offered in each city will vary.

Workshops recently offered in Seattle, San Diego, and New Orleans have received very successful reviews. If

you are interested in registering for a workshop, contact Sheila Powers, Training Coordinator, at 202-208-8000, ext. 1104, for further information.

For your convenience, OGE provides a 24-hour recording of current training courses, dates, and locations.

You may access this information by calling 202-208-8000, ext. 8201

Old Honoraria Rules Removed

Last fall, OGE published minor amendments to the Standards of Ethical Conduct regulation (see 62 Federal Register 48746-48748, September 17, 1997) which removed references to the former honoraria ban (5 U.S.C. app., § 501(b)). In 1996, the Department of Justice had determined that the ban was inoperative (see OGE's DAEOgram DO-96-012 of February 28, 1996). The amendments also made several technical cleanup changes, including updated citations to the statute on procurement integrity and new cross-references to the regulation implementing 18 U.S.C. § 208 at 5 C.F.R. part 2640.

OGE will soon publish a follow-up rulemaking that will complete the process of eliminating obsolete rules concerning the former honoraria ban, by amending references and text throughout 5 C.F.R. part 2636 and by entirely removing subpart B of part 2636. Subpart B had contained substantive provisions interpreting the honoraria ban for the executive branch. It had also implemented for the executive branch the supplemental disclosure requirements of the financial disclosure statute for certain payments to charitable organizations in lieu of honoraria (5 U.S.C. app., 102(a)(1)(A)), though the effective date for that provision had been deferred indefinitely.

The supplemental disclosure portion will be preserved in capsule form as part of the overall financial disclosure rules at 5 C.F.R. part 2634, but it will remain dormant, pending further review.



OGE Distributes Surveys

In an effort to identify ways of better serving the ethics community within the executive branch, OGE has designed surveys to allow ethics officials to evaluate the services OGE provides and to suggest ways that those services can be improved. The following is a brief description of current surveys. Results for the surveys will be reported at the end of 1998.

Agency Program Review Evaluation

This customer satisfaction survey was implemented beginning with OGE program review reports issued in January 1998. The survey seeks to gauge the usefulness of our reviews and reports and to identify areas for improvement. A survey is sent to each agency after a program review report is issued.

Training Amendments Survey

Since December 1997, ethics officials have been asked to complete this survey,

which was implemented as an additional step in the guidelines used by OGE's Program Review Division in conducting ethics program reviews. The purpose is to obtain ethics officials' views on how the 1997 interim rule amendments to OGE's ethics training regulation have affected their ethics programs.

Field Office Ethics Program Survey

This survey, which is still under development, will gather information from agency ethics officials in the field about their ethics program structure, staffing, and operating experiences and identify areas where OGE might provide assistance and/or make recommendations to improve program operations. This survey is a follow-on to the field office ethics program location survey conducted during 1997.

Ethics News Briefs

Supplemental Agency Ethics Regulations Update

With OGE's concurrence and cosignature, the Department of the Interior (DOI) issued, for codification in title 5 of the Code of Federal Regulations, interim final supplemental standards of ethical conduct for Interior employees (in addition to the executive branchwide Standards at 5 C.F.R. part 2635). See 62 Federal Register 53713-53726 (October 16, 1997). In that rulemaking, DOI also revised its residual old departmental employee responsibilities and conduct regulation, including adding a cross-reference provision and removing certain superseded and redundant provisions.

OGE's Latest Semiannual Regulatory Agenda Published

The latest OGE semiannual regulatory agenda was published as part of the Fall 1997 executive branch Unified Agenda of Federal Regulatory and Deregulatory Actions. See 62 Federal Register 58258-58264 (pt. XXXIV)(October 29, 1997).

Notice of TEBBS Termination Published

Following up on a determination announced in an article in the Fall 1997 issue of the **Government Ethics Newsgram**, OGE published a notice late last year of its planned termination of "The Ethics Bulletin Board System" (TEBBS), effective January 1, 1998, and invited comments by agencies and the public. See 62 Federal Register 60093-60094 (November 6, 1997).

TEBBS, an electronic bulletin board service inaugurated in 1992, has been superseded by the more flexible electronic information dissemination capabilities of OGE's Internet World Wide Web site (<http://www.usoge.gov>), which was instituted in the summer of 1996. In response to the Federal Register notice, just one comment was received, and answered, concerning the Web site availability of certain materials.



Ethics in Action

Q. Jane is working on a matter involving Bio Company, which is being investigated by her agency for polluting. She is thinking about leaving the Government and sends a letter to Bio Company requesting a job application.

Has Jane begun seeking employment such that she cannot continue to participate in the investigation?

A. No. 5 C.F.R. § 2635.603(b)(1)(ii)(A) states that a communication for the sole purpose of requesting a job application is not considered to be seeking employment.

Follow up:

Q. The Bio Company investigation has been completed and Jane has now been assigned to draft pollution guidelines for the entire biochemical industry. Jane receives the application from Bio Company and proceeds to apply for a position within the firm. Within a week, she receives a response from Bio Company acknowledging receipt of her application. Three months later, Bio Company contacts Jane to express an interest in her resume.

At what point must Jane disqualify herself from working on the pollution guidelines?

A. Jane must disqualify herself once she has received a response from Bio Company indicating an interest in her resume. Under § 2635.603(b)(1)(ii)(B), she had not begun seeking employment upon submitting the application or resume, because the matter on which she was working (the pollution guidelines) would only affect Bio Company as part of an industry or class. She was also not seeking employment upon receiving a response from the company that merely acknowledged the receipt of her application/resume.

It is not significant that more than two months have passed since Jane sent her resume to Bio Company since Jane was not seeking employment until she received the communication from Bio Company indicating an interest in employment discussions. Section 2635.603(b)(1)(ii)(B). Once Jane received a response, she began seeking employment. She should disqualify herself from further participation in the pollution guidelines, unless or until she rejects the offer or the agency designee authorizes her participation under § 2635.605(b).

Q & A

Outside Income Limit Adjusted

The maximum amount that executive branch employees subject to the limitation on outside earned income will be able to receive for calendar year 1998 is \$20,505. Under the law, subject employees may not receive outside earned income in excess of 15% of the annual rate of basic pay for level II of the Executive Schedule. The base rate used for this calculation is that which is in effect as of January 1.

A recent Executive order increased the rate of basic pay for a number of pay

systems. Section 3(a) of Executive Order 13071 of December 29, 1997 (Presidential Documents, 62 Federal Register No. 250, December 31, 1997) increased the basic pay for level II of the Executive Schedule to \$136,700. That increase became effective on the first day of the first applicable pay period beginning on or after January 1, 1998.

Under OGE's implementing regulations at 5 C.F.R. § 2636.304(a), the effective date of a change in the level II pay rate is the date on which a new rate of basic pay for level II first becomes applicable to any

level II position. OGE has consulted with the Office of Personnel Management and has been advised that this requirement has been met. Agencies therefore need not be concerned with the date on which a level II pay increase became effective in their agency.

Web Site Is a "Hit"

OGE's Web site, <http://www.usoge.gov>, debuted over 18 months ago at the 1996 Annual Ethics Conference, and its use has surpassed our expectations. A Web site's success is often measured by the number of "hits" (visits) to its pages. Even though the subject matter may be considered somewhat specialized, the site has had many visitors from both within and outside the Government and within and outside the United States. Over the last six months, OGE's Web site has averaged about 50,000 hits a month. These numbers, along with the

many written and verbal accolades received from the ethics community seem to indicate OGE has a "hit" on its hands.



CD-ROM Issue Dates Change

The Ethics CD-ROM, a convenient, searchable, and economical tool for locating ethics reference and training materials, will now be issued in January and July. Subscribers will receive the January 1998 edition, incorporating all materials published through the end of December 1997, in place of the October 1997 edition. Each subsequent issue of The Ethics CD-ROM incorporates all information from previous issues as well as new material available since the last publication date. The price of the CD-ROM is \$49.00 for two issues and may be ordered through the Government Printing Office (GPO), Superintendent of Documents' order line at 202-512-1800. Orders may be faxed to 202-512-2250 but ONLY if you pay by Visa, MasterCard, or Purchase Order. You may also order the CD-ROM by accessing the GPO Web site at www.access.gpo.gov/su_docs/sale/sale330.html.

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