

**ETHICS PROGRAM REVIEW  
GUIDELINES**

OCTOBER 2004

**U.S. OFFICE OF GOVERNMENT ETHICS  
OFFICE OF AGENCY PROGRAMS  
PROGRAM REVIEW DIVISION**

**TABLE OF CONTENTS**

INTRODUCTION..... 1

PURPOSE OF A REVIEW..... 1

REVIEW AUTHORITY..... 1

CORRECTIVE ACTION AUTHORITY..... 2

PRE-REVIEW..... 3

    Employee Ethics Survey..... 3

    Scoping..... 3

    Determining Time Period/Document Sample Size..... 6

MATERIALITY OF REVIEW FINDINGS..... 7

REVIEW STEPS..... 8

    Enforcement..... 8

    Ethics Agreements..... 11

    Written Advice/Counseling..... 17

    Education And Training..... 20

    Public Financial Disclosure..... 25

    Confidential Financial Disclosure..... 30

    Agency-Specific Ethics Prohibitions,  
        Restrictions, And Requirements..... 35

    Travel Payments Under 31 U.S.C. § 1353..... 37

    Special Government Employees..... 40

    Independent Boards And Commissions..... 46

ATTACHMENT..... 47

## **INTRODUCTION**

Executive branch departments and agencies<sup>1</sup> are required by Federal statute and regulation to have an ethics program. One goal of an ethics program is to serve as a formalized and systematic means by which an agency can prevent and detect ethics violations on the part of its employees. However, the ultimate goal of an ethics program is to inspire employees to exceed the minimal ethics requirements found in the various statutes, regulations, and policies as a means by which to fulfill the highest ideals of public service. Only then can the general public have faith and confidence that an agency's mission, programs, and functions are being carried out fairly and impartially. Consequently, a review of an agency's ethics program by the U.S. Office of Government Ethics (OGE) is a vital means by which OGE can assess the ability of an ethics program, ultimately, to engender that faith and confidence in the work of an agency. These guidelines are intended to serve as a basic road map for conducting a review.

## **PURPOSE OF A REVIEW**

The purpose of an ethics program review is twofold. First, a review measures agency compliance with the minimal ethics requirements found in the various statutes, regulations, and policies. However, agencies down through the years have come into compliance with the minimal requirements while there continue to be ethics violations on the part of employees. Accordingly, a review also measures the effectiveness of the program in terms of the systems, processes, procedures, etc., that an agency has established, beyond the minimal requirements, to prevent ethics violations from occurring. Accordingly, "Best Practices" are included with the compliance review steps described below. Although the absence of best practices would not result in an ethics program review report recommendation, depending on the circumstances certain best practices might be suggested in the narrative of a report.

## **REVIEW AUTHORITY**

The authority for conducting ethics program reviews is found in title IV of the Ethics in Government Act of 1978, as amended (Ethics Act) and the implementing regulations at 5 C.F.R. part 2638. Under title IV (5 U.S.C. app.), the OGE Director is to monitor and investigate individual and agency compliance with the

---

<sup>1</sup>Hereinafter, "agency" will be used interchangeably to denote a department as well.

public and confidential financial disclosure requirements (§ 402(b)(3) and (5)). Under part 2638, OGE is to:

- monitor compliance with the public and confidential financial disclosure requirements (§ 2638.102(a)(4)), and
- evaluate the effectiveness of programs designed to prevent conflicts of interest (§ 2638.102(a)(6)).

#### **CORRECTIVE ACTION AUTHORITY**

Ordinarily when an agency's ethics program is in less than full compliance with applicable statutes and regulations, OGE recommends that the agency take action to bring the program into compliance. However, when ordinary measures do not succeed in doing so, the Ethics Act and the implementing regulations at 5 C.F.R. part 2638 also provide the authority for the OGE Director to order corrective action. The Ethics Act provides:

- for the OGE Director to order corrective action on the part of agencies and employees which the Director deems necessary (§ 402(b)(9));
- that the Director may order specific corrective action:
  - on the part of an agency based on the failure of such agency to establish a system of financial disclosure in accordance with applicable requirements (§ 402(f)(1)(A)(i)), or
  - involving the establishment or modification of an agency ethics program (other than under clause (i)) in accordance with applicable requirements (§ 402(f)(1)(A)(ii)); and
- that the Director shall, if an agency has not complied with an Order within a reasonable period of time, notify in writing the President and Congress of the agency's non-compliance (including any written comments which the agency may provide) (§ 402(f)(1)(B)).

Subpart D of 5 C.F.R. part 2638 provides for the Director to issue:

- a Notice of Deficiency to the Designated Agency Ethics Official (DAEO), setting forth a deadline for the agency to report back to OGE that the deficiency has been or is being corrected and providing for the agency to include a plan for correcting any deficiency within a reasonable

period of time and, possibly, sending status reports to OGE (§ 2638.402(b));

- an Order to the agency head with a copy to the DAEO, where OGE determines that an agency has failed to comply with a Notice of Deficiency (§ 2638.402(c) and (d)); and
- a Report of Noncompliance to the President and Congress, where OGE determines that an agency has failed to comply with an Order (§§ 2638.403 and 2638.404).

#### **PRE-REVIEW**

The pre-review consists of an ethics survey of employees at an agency, scoping, and, for certain ethics program elements, determining the time period and document sample size covered by the review.

#### **EMPLOYEE ETHICS SURVEY**

For some agencies to be reviewed, OGE conducts its Employee Ethics Survey as part of the pre-review. The Survey is designed to assess the effectiveness of each agency's ethics program and agency ethical culture from an employee's perspective. Survey results are provided to the Team Leader and may be used to adjust the scope of the review.

#### **SCOPING**

The Team Leader conducts the scoping, consisting of:

##### **INTERNAL:**

- reviewing the employee ethics survey results;
- reviewing the most recent annual Agency Ethics Program Questionnaire (Questionnaire) results;
- notifying OGE personnel of the planned review and requesting any information or relevant comments they may have;
- discussing the ethics program with the General Counsel and/or Deputy General Counsel, as necessary;
- discussing the ethics program with the Program Services Division (PSD) Desk Officer to whom the agency is

assigned, to determine whether the agency has filed all required reports with OGE and whether there are recurring ethics issues, known program weaknesses, and any other relevant data the Desk Officer may have;

- discussing the ethics program with the PSD Desk Officer who tracks compliance with ethics agreements to determine whether there are any unsatisfied agreements.
- reviewing the agency's mission, organizational structure, any alternative financial disclosure procedures, any supplemental standards of conduct regulations (supplemental standards), and any organic authority relating to ethics (e.g., prohibited holdings, gift acceptance, etc.);
- reviewing the PRD agency file (e.g., prior reports, 60-day responses, 6-month follow-ups, approval of alternative procedures, etc.), noting any outstanding issues that need to be addressed;
- reviewing the OGE agency file (e.g., relevant correspondence addressing current ethics issues, approval of supplemental standards, etc.);
- reviewing the "Referrals to the Department of Justice" list maintained by PRD; and
- reviewing the PRD working papers from the previous review, if necessary.

AGENCY ETHICS OFFICE:

- determining whether there is written advice/counseling;
- determining whether public and confidential filers carry out ethics agreements for which there is written evidence of actions taken (i.e., disqualifications, divestitures, resignations from non-Federal positions, and blind trusts);
- determining whether there is an annual ethics training plan for the current calendar year;
- determining whether there are SGEs, especially any SGEs (as well as non-SGEs) that serve on committees, councils, boards, commissions, etc., that advise or run the agency;
- determining whether the agency provides ethics services to any boards or commissions not organizationally a part

of the agency; and

- obtaining actual or estimated numbers of:
  - disciplinary actions taken during the previous calendar year;
  - 18 U.S.C. § 208(b)(1) waivers;
  - written advice/counseling during the previous calendar year;
  - public financial disclosure filers and other covered employees who received annual ethics training during the previous calendar year;
  - public financial disclosure reports filed by Presidentially-appointed, Senate-confirmed (PAS) employees, other non-career employees, and career employees during the previous calendar year;
  - all SGEs, the committees, councils, boards, commissions, etc., to which SGEs (as well as non-SGEs) may be assigned, and the SGEs (as well as non-SGEs) assigned;
  - outside employment/activities written prior approvals (if required in the supplemental standards);
  - confidential financial disclosure reports filed by regular employees and SGEs;
  - 18 U.S.C. § 208(b)(3) waivers; and
  - any independent boards or commissions to which the agency may be providing ethics services and all employees assigned to those boards or commissions.

AGENCY OFFICE OF INSPECTOR GENERAL (OIG):<sup>2</sup>

- determining whether there have been any ethics-related reviews, audits, or investigations and, if so, obtaining copies of any reports; and

---

<sup>2</sup>In the absence of an OIG, identify a similar office to contact here as well as to carry out certain review steps described below in the "Review Steps" section.

- obtaining an actual or estimated number of conflict-of-interest referrals to DOJ during the previous calendar year.

#### **DETERMINING TIME PERIOD/DOCUMENT SAMPLE SIZE**

Following the scoping phase of the pre-review, the team leader will communicate the results of the pre-review to the Deputy Director for Agency Programs and the Associate Director for Program Reviews and will make the following determinations (as necessary, in consultation with the Deputy Director and/or the Associate Director):

- the time period covered for review of agency notification to OGE of all referrals to DOJ of alleged violations of 18 U.S.C. §§ 203, 205, 207, 208, and 209 (conflict-of-interest statutes) and notification of related matters (e.g., disciplinary actions) (**step I.A.** below in the “Review Steps” section);
- all or a judgmental sample size of disciplinary actions (other than those related to conflict-of-interest referrals to DOJ) covering the same time period used for review of notifications to OGE (**step I.F.**);
- the time period covered for review of interaction between ethics and OIG officials (**step I.H.**);
- a judgmental sample size of 18 U.S.C. § 208(b)(1) waivers associated with non-PAS filers (**step II.G.**);
- time period covered for review of written advice/counseling and, for non-PAS employees, all or a judgmental sample size of advice/counseling (**step III.A.**);
- time period covered for review of initial ethics orientation for non-PAS employees (**step IV.A.**);
- time period covered for review of annual ethics training for non-PAS public filers (**step IV.D.**);
- time period covered for review of annual ethics training for other covered employees (**step IV.E.**);



- time period covered for review of public reports and, for non-PAS public filers, all or a judgmental sample size of filers (**steps V.C. and I.**);
- time period covered for review of confidential reports and all or a judgmental sample size of filers (**steps VI. C. and H.**);
- time period covered for review of outside employment/activities written prior approvals and all or a judgmental sample of approvals (**steps VII.C.**);
- time period covered for review of payments of travel and related expenses under 31 U.S.C. § 1353 and all or a judgmental sample size of payments (**steps VIII.A. and G.**);
- all or a judgmental sample size of individuals/committees, etc. for review of SGEs (**step IX.E.**);
- all or a judgmental sample size of any 18 U.S.C. § 208(b)(3) waivers (**step IX.L.1.**); and
- ethics services provided to employees assigned to any independent boards or commissions (**steps under X.**).

The team leader will contact the agency to discuss scheduling a review four weeks before the intended starting date of the review and will follow up with a letter of confirmation to the agency.

#### **MATERIALITY OF REVIEW FINDINGS**

In conducting an ethics program review, findings of lack of compliance with ethics requirements are only reportable if they are material. In general, a finding is material if there is:

- routine lack of compliance with a statutory/regulatory provision or related provisions; or
- a single instance of lack of compliance with a statutory/regulatory provision or related provisions, although of such magnitude as to bring into question compliance of an element or sub-element, in general, with the provision(s).

## REVIEW STEPS

### I. ENFORCEMENT

- OBJECTIVES:
- To determine whether the agency's system of enforcement results in consequences for employees who engage in unethical conduct.
  - To determine whether ethics officials, OIG officials, and, as appropriate, others clearly understand their roles within the system of enforcement.
  - To determine whether OGE is being notified by the agency about all referrals to DOJ of alleged violations of the conflict-of-interest statutes, declinations to prosecute, and disciplinary actions taken following declinations, providing a means by which OGE can effectively monitor the agency's system of enforcement on a continuing basis.

REPORT FOCUS: The strengths and weaknesses of the system of enforcement to result in consequences for employees who engage in ethics violations and of the agency's ability to provide OGE with the information needed for effective monitoring of the system.

#### *Notification of OGE of Referrals to DOJ*

- A. Obtain from OIG, the personnel office, and/or, as appropriate, any other office, documents related to (time period determined during **pre-review**):
1. all referrals of alleged violations of the conflict of interest statutes to DOJ, as required by 28 U.S.C. § 535, about which the agency is required to notify OGE (5 C.F.R. § 2638.603); and
  2. all declinations to prosecute and any disciplinary or corrective action initiated, taken, or to be taken by the agency following a declination.<sup>3</sup>

---

<sup>3</sup>OGE can only recommend that an agency take disciplinary action but can order an agency to take corrective action. Disciplinary actions include adverse actions (more than a 14-day suspension), which are the most serious form of

- B. Through a comparison of the documents obtained from the agency with the "Referrals to the Department of Justice" list maintained by PRD, ensure that the agency is notifying OGE of referrals to and declinations by DOJ and any disciplinary actions taken by the agency. Obtain related documents for any referrals, declinations, and disciplinary actions not identified above in **step I.A.**
- C. Through discussions with ethics, OIG, and, as appropriate, other officials determine whether the agency has assigned responsibility for certain functions related to notifying OGE. In performing this step, complete **Table 1** in the **Appendix**.
- D. Determine whether the agency uses the "Notification of Conflict of Interest Referral" (OGE Form 202) in notifying OGE of referrals and any other matters about which the agency is required to notify OGE.

*Prompt and Effective Administrative Action*

- E. Through discussions with ethics officials, determine whether the agency is ensuring, by means of a formal tracking system or otherwise, that prompt and effective administrative action<sup>4</sup> is taken (or, where action is not taken, that action is at least affirmatively considered) to remedy:
  - 1. violations or appearances thereof, of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) (5 C.F.R. part 2635), any supplemental standards, and 18 U.S.C. § 207, as implemented by 5 C.F.R. §§ 2637 and 2641;
  - 2. the failure to file a financial disclosure report or portions thereof;
  - 3. actual conflicts of interest, or appearances thereof, disclosed on a financial disclosure report; and

---

disciplinary actions. Corrective actions, including waivers, disqualifications, and divestitures, are addressed more fully below under **II. Ethics Agreements**.

<sup>4</sup>Administrative actions include disciplinary actions.

4. actual violations of other laws governing the conduct or financial holdings of officers or employees of your agency, with follow-up to ensure that any actions ordered have been taken

(§ 2638.203(b)(9)).

- F. In addition to the disciplinary actions identified above in **steps I.A. and B.** and using the same time period, obtain from the personnel office and/or, as appropriate, any other office, documents related to other actions taken or, if not taken, any documentation that at least actions were affirmatively considered (all or a sample size determined during **pre-review**).
- G. Through a review of the documents obtained above in **steps I.A., B., and F.**, determine whether prompt and effective action was taken to remedy ethics violations or, where action was not taken, action was at least affirmatively considered.

*Interaction between Ethics and OIG Officials*

- H. Ensure compliance with 5 C.F.R. § 2638.203(b)(11) and (12) by discussing with ethics and OIG officials examples of (time period determined during **pre-review**):
  1. information developed by OIG that has been reviewed by ethics officials to determine whether such information discloses a need for taking prompt corrective action to remedy actual or potential conflict-of-interest situations (§ 2638.203(b)(11)); and
  2. services of OIG that were utilized by ethics officials, including referring matters to and accepting matters from OIG (§ 2638.203(b)(12)).
- I. In furtherance of the interaction required between ethics and OIG officials (5 C.F.R. § 2638.203(b)(11) and (12)), through discussions with ethics, OIG, and, as appropriate, other officials determine whether the agency has assigned responsibility for certain enforcement-related functions. In performing this step, complete **Table 2** in the **Appendix**.

## II. ETHICS AGREEMENTS

- OBJECTIVES:      --    To determine whether the agency has an effective system for ensuring that PAS and other employees, who have entered into ethics agreements, have complied with the timeliness in those agreements.
- To determine whether waivers have been properly granted.
- To determine whether disqualifications have been properly structured and whether there is continuing compliance in terms of an effective screening process.
- To                    determine                    whether divestitures/resignations have been properly carried out.

REPORT FOCUS:    The strengths and weaknesses of the ethics agreement system and the impact on the ethics program and employees' perceptions of the program.

### *Ethics Agreements*

- A.    Obtain from PSD's Government Ethics Assistant the current master list of PAS employees required to file public reports.
- B.    Obtain the agency's master list of PAS public filers.
- C.    Through a review of OGE's and the agency's master lists, determine whether or not there are any discrepancies as to PAS filers and, if so, reconcile the discrepancies.
- D.    Obtain all of the ethics agreements (e.g., letters, memoranda, or any other written documentation) associated with the PAS public filers and the DAEO (if the DAEO is not a PAS employee).
- E.    Ensure that:
  1.    if the DAEO has entered into an ethics agreement, the DAEO has, as applicable, included the agreement with his or her initial public report submitted to OGE or has apprised OGE promptly of any subsequent

agreement (§ 2634.803(c));

2. there is written evidence of actions taken to comply with the agreements (i.e., waivers, disqualifications (recusals),<sup>5</sup> divestitures, resignations from non-Federal positions, and blind trusts), in accordance with § 2634.804(b);
3. actions have been taken within the timeframe included in each agreement, except in cases of unusual hardship as determined by OGE (§ 2634.802(b)), and supporting documentation was forwarded to OGE shortly after the actions were taken (§ 2634.804(a)(1)) and, if not, why; and
4. all terms of an agreement have been honored, including any required disqualification prior to an agreed action to divest/resign or to be granted an 18 U.S.C. § 208(b)(1) waiver.

- F. At agencies with a large number of PAS employees, determine whether the agency has established a tracking system to monitor compliance with ethics agreements.

*18 U.S.C. § 208(b)(1) Waivers*

- G. Obtain from the agency and from OGC copies of all of the 18 U.S.C. § 208(b)(1) waivers that were granted to current employees (where there is a large number of waivers, a judgmental sample including all of the waivers associated with the PAS public filers can be determined during **pre-review**).
- H. Through a comparison of copies of waivers obtained from the agency and OGC, ensure that the agency has forwarded a copy of each waiver to OGE (5 C.F.R. § 2640.303).
- I. Through an examination of the waivers and, as appropriate, discussions with ethics officials, ensure that the waivers comply with subpart C of 5 C.F.R. part 2640, including that:

---

<sup>5</sup>Evidence of action taken to comply with a disqualification is the screening arrangement, usually described in a separate document drafted subsequent to the disqualification agreement (although some screening arrangements are described in the agreement).

1. each waiver describes the disqualifying financial interest, the particular matter or matters to which it applies, the employee's role in the matter or matters, and any limitations on the employee's ability to act in such matters (5 C.F.R. § 2640.301(a)(3));
2. each waiver is based on a determination that the disqualifying financial interest is not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government (§ 2640.301(a)(4));
3. each waiver is issued prior to the employee taking action in the matter (§ 2640.301(a)(5)) or, if not, the employee disqualified him- or herself before being granted the waiver;
4. the appointing official or other Government official who has been delegated authority to issue waivers considered the factors in § 2640.301(b) in determining whether to issue each waiver, regardless of whether or not the official is an ethics official;
5. if an official other than the appointing official has been delegated authority to issue waivers, the official, as appropriate, is properly supervised;
6. the agency has consulted with The White House Office of the Counsel prior to granting a waiver to a PAS employee for the purpose of negotiating for outside employment (January 6, 2004 White House memorandum from the Assistant to the President and Chief of Staff to heads of executive branch departments and agencies, entitled "Policy on Section 208(b)(1) Waivers with Respect to Negotiations for Post-Government Employment").
7. where practicable, the agency has consulted formally or informally with OGE prior to granting each waiver (5 C.F.R. § 2640.303) and, if not, why not; and
8. ethics officials are aware that the waivers are to be maintained by the agency for public inspection (18 U.S.C. § 208(d)(1) and 5 C.F.R. § 2640.304).

*Divestitures, Resignations, and 18 U.S.C. § 208(a)  
Disqualifications*

- J. Obtain all of the written notifications of divestiture/resignation and all of the disqualifications associated with the PAS public reports.
- K. Ensure that:
1. the written notifications of divestiture/resignation are in accordance with the ethics agreements;
  2. each written screening arrangement lists and describes the specific matters or subjects to which the disqualification applies, a statement of the method by which the agency will enforce the disqualification, and a list of the positions of those agency employees involved in the enforcement (i.e., the individual's immediate subordinates and supervisors) (5 C.F.R. § 2634.804(b)(1)); and
  3. the language in each written screening arrangement is consistent with the language in the disqualification agreement (where the screening arrangement does not merely reference the agreement);
- L. If an employee violated the terms of the ethics agreement by acting in a matter before divesting/resigning or from which he or she was disqualified, determine whether this resulted in a violation of any substantive ethics statute or regulation.
- M. Through discussions with ethics officials, determine:
1. whether the screening arrangements are an ingrained part of the office information flow to the disqualified individual;
  2. how often someone else has had to act for the disqualified individual and whether any problems have occurred due to the screening arrangement; and
  3. whether there is an understanding or awareness of the following guidance contained in DAEOgram DO-99-018 concerning disqualifications and screening arrangements, as to:



- a. the technical terms used in 18 U.S.C. § 208 (e.g., "particular matter") and, as applicable, in 5 C.F.R. §§ 2635.502 and 2635.503 (e.g., "particular matter involving specific parties" and "extraordinary payment");
- b. the continuing obligation to update the disqualification whenever relevant changes occur in the conflicting financial interest (e.g., acquisition of a new asset, spouse's clients change, etc.);
- c. the continuing obligation (by screeners as well) to be alert to situations in which disqualification may be necessary, particularly where an agency requires employees to document a general disqualification;
- d. screeners knowing an ethics official is available to handle a question regarding disqualification;
- e. the advantages of identifying an appropriate person or persons to help in screening (e.g., a person from whom an employee receives most written materials and a person from whom the employee receives requests to attend meetings), and practical ways of dealing with situations where a matter or a contact inadvertently slips through the screening arrangement (e.g., documentation of the inadvertent contact);
- f. who should be told about the disqualification (e.g., the entire staff (in addition to the immediate subordinates and supervisors)); and
- g. practical ways to set up screening arrangements (e.g., e-mail to immediate subordinates and supervisors, oral briefings, and memoranda).

*Other Disqualifications*

N. Determine whether:

1. written disqualification agreements are used to carry out the requirements of 5 C.F.R. §§ 2635.502 and 2635.503;

2. there are screening arrangements similar to those described in 5 C.F.R. § 2634.804(b)(1);
3. any employees acted in a matter from which he or she was disqualified and, if so;
4. this resulted in a violation of any substantive ethics statute or regulation.

*Non-PAS Public Filers and Confidential Filers*

- O. Determine whether the agency requires non-PAS public filers and confidential filers to carry out ethics agreements for which there is written evidence of actions taken (i.e., waivers, disqualifications, divestitures, resignations from non-Federal positions, and blind trusts).
- P. If so, obtain all or a judgmental sample of the actions taken to carry out the agreements to ensure that:
  1. each filer entered into with or promptly notified the DAEO of any ethics agreement (5 C.F.R. § 2634.803(d)),
  2. actions were taken within three months after the date of each agreement except in cases of unusual hardship as determined by OGE (§ 2634.802(b)), and
  3. each disqualification provided for a screening arrangement (§ 2634.804(b)(1)).

*Best Practice*

- Q. Determine whether the agency sends cautionary warnings to filers (e.g., the Department of Defense (DOD) may send a memorandum of caution to any covered employee whose report reveals no violation of applicable statutes and regulations, but which discloses a financial interest in a non-Federal entity doing or seeking to do business with DOD).

### III. Written advice/counseling

- OBJECTIVES:     --     To determine whether the employee survey results addressing advice/counseling reveals a discernible breakdown in support of the ethics program by any category or categories of employees.
- To determine whether the advice/counseling services are effective in preventing ethics violations.

REPORT FOCUS:   The strengths and weaknesses of the advice/counseling services in getting employees, especially the agency head and other PAS employees, to support the ethics program.

- A.   Timely obtain copies of all of the advice/counseling provided to current PAS employees and all or a judgmental sample of written advice/counseling provided to other employees addressing various ethics matters (e.g., gifts, invitations, conflicts of interest, outside employment, seeking employment, post-employment, etc.) to make an assessment pursuant to III.B. and C. below (time period and all or sample size for non-PAS employees determined during **pre-review**).
- B.   Ensure that:
1.   a counseling program for agency employees concerning all ethics and standards of conduct matters, including post-employment matters, has been developed and conducted (5 C.F.R. § 2638.203(b)(7));
  2.   records have been kept, where appropriate, on advice rendered (5 C.F.R. § 2638.203(b)(8)); and
  3.   the advice/counseling accurately and completely applies the provisions of any substantive statute or regulation.
- C.   In assessing the accuracy and completeness of the advice/counseling above in **step III.B.3.**, timely provide copies of the advice/counseling to the Associate Director for Program Services for review by the Desk Officer to whom the agency is assigned,<sup>6</sup> who:

---

<sup>6</sup>Timeliness in providing advice/counseling to the Desk Officer is to enable

1. assesses whether the advice/counseling accurately and completely applies the provisions of any substantive statute or regulation, such that there is no:
    - a. routine misapplication or neglect in applying one or more statutory/regulatory provisions, or
    - b. misapplication or neglect in applying one or more statutory/regulatory provisions in one instance, although of such magnitude as to bring into question the completeness and accuracy of the advice/counseling in general;
  2. discusses his or her assessment with the Associate Director for Program Services and the PRD Team Leader;
  3. as necessary, contacts OGC for assistance, advising the Associate Directors for Program Review and Program Services and including, as practicable, the Team Leader in any discussions; and
  4. timely discusses any findings with the Team Leader concerning the completeness and accuracy of the advice/counseling and report in writing to the Team Leader his or her conclusion as to whether or not the advice/counseling is complete and accurate.
- D. Determine whether employees have been made aware of the provision at 5 C.F.R. § 2635.107(b) providing that disciplinary action for violating 5 C.F.R. part 2635 or any supplemental standards will not be taken against any employee who has engaged in conduct based on a good faith reliance upon the advice/counseling from an ethics official.

*Best Practices*

- E. Determine whether ethics officials:
1. have established a written policy concerning the definition of "where appropriate" at 5 C.F.R. § 2638.203(b)(8) for use in determining when to keep

---

the Desk Officer to have a reasonable amount of time to develop findings and conclusions for discussion at the exit conference and inclusion in the report.

records of the advice/counseling;

2. advertise the ethics office, including providing current contact information;
3. communicate with employees regularly about current ethics issues (e.g., issues that have been raised during individual advice/counseling);
4. convey the message that they are there to help employees;
5. make post-employment counseling available to all departing employees, including providing written materials;
6. have a process for sharing among ethics officials records of advice/counseling provided;
7. survey employees concerning current ethics issues; and
8. survey employees concerning the quality and timeliness of the advice/counseling provided.

#### IV. EDUCATION AND TRAINING

- OBJECTIVES:     --     To determine whether the ethics education and training efforts overall are persuasive in getting employees, especially the agency heads and other PAS employees, to support the ethics program as the principal means by which to prevent ethics violations.
- To determine whether initial ethics orientation exceeds the minimal requirements, as it may be many employees' initial and only exposure to the ethics program.
- To determine whether annual ethics training exceeds the minimal requirements, as annual ethics training, along with financial disclosure, may be the only continuing exposure most covered employees have to the ethics program.

REPORT FOCUS:   The strengths and weaknesses of the education and training efforts in getting employees, especially the agency head and other PAS employees, to support the ethics program, and crediting the agency for any efforts that exceed minimum requirements or are creative.

##### *Initial Ethics Orientation*

- A.   Through discussions with ethics officials, a review of any pertinent documents, and, as appropriate, monitoring one or more sessions, ensure that initial ethics orientation is provided to each new employee (time period determined during **pre-review**) and consists of:
1.   the Standards and any supplemental standards to keep or review<sup>7</sup> or summaries of the Standards, any supplemental standards, and part I of Executive Order 12674, as modified (Executive Order), to keep;

---

<sup>7</sup>If not to be kept, the complete text of the Standards and any supplemental standards must be readily available in an employee's immediate office.

2. the names, titles, office addresses, and telephone numbers of the DAEO and other agency officials available to advise the employees on ethics issues; and
  3. one hour to review the matters described above in **steps IV.A.1. and 2.**
- B. In addition, determine whether current PAS employees appointed during the current and preceding three calendar years received initial ethics orientation.

*Annual Ethics Training Plan*

- C. Determine whether there is a written plan for annual ethics training for the current calendar year that was developed in accordance with 5 C.F.R. § 2638.706. If so, ensure that the plan was in place at the beginning of the calendar year.

*Annual Ethics Training*

- D. Through discussions with ethics officials, a review of any pertinent documents, and, as appropriate, monitoring one or more sessions, ensure that verbal annual ethics training is provided to public filers each calendar year (time period determined during **pre-review**) and:
1. includes at least one aspect of part I of the Executive Order, the Standards, any supplemental standards, or the conflict-of-interest statutes, and the names, titles, office addresses, and telephone numbers of the DAEO and other agency ethics officials available to advise employees on ethics issues;<sup>8</sup>
  2. one hour of official duty time for verbal annual ethics training is given to each public filer, either presented by a qualified instructor or prepared by a qualified instructor and presented by telecommunications, computer, audiotape, or videotape;

---

<sup>8</sup>Section 2638.704(b) of 5 C.F.R. encourages agencies to vary the content of the verbal training from year to year.

3. the qualified instructor is available during and immediately after verbal annual ethics training; and
  4. for any exception under 5 C.F.R. § 2638.704(e)(1) to the requirement for a qualified instructor to be available because it would be impractical, the determination is made in writing by the DAEO before annual ethics training without a qualified instructor occurs.
- E. Through discussions with ethics officials, a review of any pertinent documents, and, as appropriate, monitoring one or more sessions, ensure that annual ethics training is provided to all other covered employees each calendar year and (time period and all or a sample size determined during **pre-review**):
1. includes at least one aspect of part I of the Executive Order, the Standards, any supplemental standards, or the conflict-of-interest statutes, and the names, titles, office addresses, and telephone numbers of the DAEO and other agency ethics officials available to advise employees on ethics issues;
  2. one hour of official duty time is given for verbal annual ethics training to other covered employees at least once every three years, either presented or prepared by a qualified instructor;
  3. an amount of official duty time the agency determines is sufficient is given for written annual ethics training, prepared by a qualified instructor, to other covered employees in the years in which the employees do not receive verbal training; and
  4. for any exception under 5 C.F.R. § 2638.705(d)(1) to the requirement for verbal annual ethics training because it would be impractical, the determination is made in writing by the DAEO before written annual ethics training occurs.
- F. Determine whether the agency has employees acknowledge/officials certify in writing/electronically that other covered employees completed annual ethics training.
- G. If so, obtain all or a judgmental sample of the acknowledgments/certifications to ensure that other



covered employees completed the training.

- H. In addition, determine whether current PAS employees received annual ethics training in each of the preceding three calendar years.

*Best Practices*

- I. Determine whether initial ethics orientation was provided to PAS employees in-person, one-on-one by the DAEO or Alternate DAEO.
- J. For monitoring purposes, determine whether the agency has employees acknowledge/officials certify in writing/electronically that initial ethics orientation was completed.
- K. Determine whether the agency has otherwise exceeded the minimum initial ethics orientation requirements and, if so, how.
- L. Determine whether annual ethics training was provided to PAS employees in-person, one-on-one by the DAEO or Alternate DAEO.
- M. Determine whether ethics officials are invited to senior staff meetings or other meetings attended by PAS employees and, if so, whether ethics officials are afforded the opportunity to discuss ethics issues.
- N. Determine whether the agency has employees complete written/electronic evaluations of the annual ethics training received and, if so, review the evaluations.
- O. For monitoring purposes, determine whether the agency has:
1. employees acknowledge/officials certify in writing/electronically that annual ethics training was completed and, if so;
  2. acknowledgments/certifications covering at least the prior two calendar years for other covered employees.
- P. Determine whether the agency has otherwise exceeded the minimum annual ethics training requirements, including providing:
1. annual ethics training to non-filers, such as contracting officers (5 C.F.R. § 2638.705(a)(5)),

other employees designated by the agency head (§ 2638.705(a)(6)), and/or other employees;

2. verbal annual ethics training that exceeds one hour;
3. ethics training to covered employees more frequently than once a year;
4. verbal annual ethics training to confidential filers more frequently than once every three years;
5. financial disclosure training to filers;
6. to filers of a self-certification form under an alternative procedure, annual ethics training or other training that addresses 18 U.S.C. § 208 and 5 C.F.R. § 2635.502;
7. computer-based training that is interactive;
8. training to employees by means of routine ethics-related discussions by managers and supervisors at staff meetings and in other work settings;
9. training (by headquarters ethics officials) to ethics officials assigned throughout large departments/agencies having components/regional offices, by means of periodic meetings, conferences, etc.
10. ethics training targeting supervisors;
11. training focusing on the 14 Principles of Ethical Conduct contained in part I of the Executive Order;
12. ethics training based on prudently sanitized information gleaned from advice/counseling, OIG cases, etc;
13. ethics materials presented in written documents (e.g., booklets, handbooks, pamphlets, etc.) or online (e.g., Intranet or intranet Web site) and, if so, whether the materials are current, particularly any Standards presented on a Web site; and/or
14. training that is notably creative.

## V. PUBLIC FINANCIAL DISCLOSURE<sup>9</sup>

- OBJECTIVES:      --    To determine whether the ethics issues raised on public financial disclosure reports, especially those filed by PAS employees and new entrants, result in the agency providing advice/counseling to filers on preventing ethics violations.
- To determine whether public reports, especially those filed by PAS employees and new entrants, have been filed and reviewed timely to ensure timely advice/counseling to filers on preventing ethics violations and to ensure timely detection of ethics issues.
- To determine whether the public report reviewers are sufficiently trained in how to review the reports.

REPORT FOCUS:    The strengths and weaknesses of the public financial disclosure system and its impact on the agency's ability to prevent and detect ethics violations through the use of the reports.

- A.    Determine whether the ethics issues raised on the public reports, especially those filed by PAS employees and new entrants, result in the agency providing advice/counseling to filers on preventing ethics violations.
- B.    Review the written procedures the agency has established (section 402(d)(1) of the Ethics Act) for public financial disclosure to ensure that they conform with all statutes, regulations, and policies and adequately address all organizational levels of filers in the agency (e.g., components, field offices, etc.).
- C.    Obtain a master list of employees required to file public reports (SF 278) (and, if applicable, any supplemental confidential financial disclosure reports) (time period determined during **pre-review**).

---

<sup>9</sup>A review of public reports, as applicable, would include certain review steps described above in II. for ethics agreements.

- D. Independently verify its completeness and accuracy with the personnel office in terms of PAS, Presidential appointee (PA), career Senior Executive Service (SES), non-career SES, and Schedule C employees.
- E. At agencies with a large number of public filers, determine whether the agency has established a tracking system to monitor the filing and review of the public reports.
- F. Obtain from PSD's Government Ethics Assistant the current master list of PAS employees required to file public reports.
- G. Through a review of the agency's and OGE's master lists, determine whether or not there are any discrepancies as to PAS filers and, if so, reconcile the discrepancies.
- H. Determine what mechanisms, if any, are in place to identify public filers within 30 days of entering or departing from a covered position and to provide them with the SF 278 to complete.
- I. Using the master list(s), obtain all of the public reports filed by PAS, PA, non-career SES, and Schedule C employees. Also, obtain all or a judgmental sample of the remaining reports filed by career SES employees (all or a sample size determined during **pre-review**). Exclude PAS nominee reports and, for PAS annual and termination reports, include copies of reports maintained at both OGE and the agency.
- J. Determine the status of any public reports that could not be obtained.
- K. Review the PAS annual and termination public reports to ensure that:
  - 1. they have been filed in a timely manner;
  - 2. they have been reviewed by the agency by no later than 60 days after being filed (although a report is not specifically required to be certified within 60 days, it should be certified immediately following the completion of the review unless the reviewer is awaiting requested additional

information);<sup>10</sup> and

3. for PAS annual and termination reports that have been reviewed by the agency:
  - a. annual reports have been copied and forwarded to OGE immediately after being certified but generally by no later than August 1,
  - b. termination reports have been copied and forwarded to OGE for review immediately after being certified, and
  - c. annual and termination reports have been reviewed and certified by OGE by no later than 60 days after being forwarded to OGE
- L. Ensure, as appropriate to an agency, that a current list is maintained of contractors, grantees, regulated companies, or other entities with which the agency does business. If so, determine whether the list is used in reviewing public reports. If not, follow up to determine how the agency reviews the reports for conflicts of interest (e.g., reviewers' direct knowledge of non-Governmental entities with whom the agency does business, assistance from filers' supervisors in identifying such entities, availability of data bases in identifying such entities, relying on filers advising reviewers of conflicts, etc.).
- M. Using any such list of contractors, etc., obtained above in **step V.L.** as appropriate to an agency, review the non-PAS public reports to ensure that:
  1. they have been filed in a timely manner,
  2. they have been reviewed and certified by the agency by no later than 60 days after being filed (a report that has not been certified by the 61<sup>st</sup> day pending the receipt of requested additional information generally will be considered to have

---

<sup>10</sup>The 60-day review requirement may be met by an initial review, preceding the final review, if performed no later than 60 days after a report is filed.

been reviewed within 60 days),<sup>11</sup>

3. they are complete and accurate,
  4. they reveal no actual or potential conflict-of-interest or other ethics violations, and
  5. if the agency has supplemental standards requiring the prior written approval of outside employment/activities (also, see review of approvals below in step **VII.D.**), there is written approval, as required, for any reported outside employment/activities.
- N. If any public reports have been filed more than 30 days late, either by PAS or non-PAS employees, ensure that the the agency has assessed the \$200 late filing fee or granted a filer a waiver of the fee.
- O. If any fee has been waived by the agency, determine whether the agency has applied OGE's criteria for granting waivers.
- P. If any public report has not been filed after its due date, determine:
1. whether the agency has considered civil action (5 C.F.R. § 2634.701(b)) or administrative remedies (§ 2634.701(d)); and
  2. if not, why not.
- Q. Determine whether the public report reviewers are trained in how to review the reports. If so, determine:
1. the frequency of the training;
  2. the content of the training (e.g., 5 C.F.R. part 2634, the Standards, the conflict of interest statutes, waivers and disqualifications, and any supplemental standards, at a minimum);
  3. whether they have taken the OGE public financial disclosure training course;

---

<sup>11</sup>Same as footnote 10.

4. whether they have received on-the-job training; and
  5. whether any problems identified above in **step V.M.** demonstrate the need for training.
- R. Determine whether the agency is using an electronic SF 278 and, if so:
1. determine whether it is a non-fillable, fillable, or "smart" fillable version of the SF 278; and
  2. review the electronic SF 278 to ensure that:
    - a. it precisely duplicates (to the extent technically possible) the original SF 278;
    - b. it represents the most recent edition, or allowable previous edition, of the SF 278;
    - c. if it varies in substance from the original SF 278, it has been approved by OGE and the General Services Administration (GSA);
    - d. if it is a "smart" fillable version, it has been approved by OGE, GSA, and the Office of Management and Budget (OMB)<sup>12</sup> and the series of questions or prompts are complete, accurate, and logical; and
    - e. it or portions thereof are not being transmitted via connectivity to the Internet's World-wide Web or any other type of bounce-back e-mail system for obtaining filers' SF 278s using the Internet.
- S. Determine whether the public reports are retained for six years after receipt, after which they are destroyed.
- T. Determine, for PAS and non-PAS public reports, how many requests the agency has received for the SF 278s to be released to the public and how many forms were released.

---

<sup>12</sup>OMB approval is required unless nine or fewer private citizens (including new entrants and terminees) are reasonably expected to use the form per year.

## VI. CONFIDENTIAL FINANCIAL DISCLOSURE<sup>13</sup>

- OBJECTIVES:
- To determine whether the ethics issues raised on confidential reports, especially those filed by new entrants, result in the agency providing advice/counseling to filers on preventing conflicts of interest.
  - To determine whether the agency has effectively designated filing positions by applying the coverage criteria at 5 C.F.R. § 2634.904 in conjunction with the exclusion criteria at § 2634.905.
  - To determine whether confidential reports, especially those filed by new entrants, have been filed and reviewed timely to ensure timely advice/counseling to filers on preventing ethics violations and timely detection of ethics violations.
  - To determine whether confidential report reviewers are sufficiently trained in how to review the reports.

REPORT FOCUS: The strengths and weaknesses of the confidential financial disclosure system and its impact on the agency's ability to prevent and detect ethics violations through the use of the reports.

- A. Determine whether the ethics issues raised on the confidential reports, especially those filed by new entrants, result in the agency providing advice/counseling to filers on preventing ethics violations.
- B. Review the written procedures the agency has established (section 402(d)(1) of the Ethics Act) to ensure that they conform with all statutes, regulations, and policies and adequately address all organizational levels of filers in

---

<sup>13</sup>A review of confidential reports, as applicable, would include certain review steps described above in **II.** for ethics agreements.



the agency (e.g., components, field offices, etc.).

- C. Obtain a master list of individuals required to file confidential reports (OGE Form 450 and, if applicable, Optional Form 450-A and any supplemental report) (time period determined during **pre-review**).
- D. Independently verify its completeness and accuracy with the personnel office.
- E. Determine whether the agency has effectively designated filing positions by applying the coverage criteria at 5 C.F.R. § 2634.904 in conjunction with the exclusion criteria at § 2634.905.
- F. At agencies with a large number of confidential filers, determine whether the agency has established a tracking system to monitor filing and review of confidential reports.
- G. Determine what mechanisms, if any, are in place to identify confidential filers within 30 days of entering a covered position and to provide them with the OGE Form 450.
- H. Using the master list, obtain all or a judgmental sample of the the OGE Form 450s, including any OGE Optional Form 450-As (all or a sample size determined during **pre-review**).
- I. Determine the status of any confidential reports that could not be obtained.
- J. Using any current list of contractors, etc., obtained above in **step V.L.** as appropriate to an agency, review the OGE Form 450s to ensure that:
  - 1. they have been filed in a timely manner,
  - 2. they have been reviewed and certified by the agency by no later than 60 days after being filed (although a report is not specifically required to be certified within 60 days, it should be certified immediately following the completion of the review unless the reviewer is awaiting requested additional information),<sup>14</sup>

---

<sup>14</sup>Same as footnote 10.

3. they are complete and accurate,
  4. they reveal no actual or potential conflict-of-interest or other ethics violations, and
  5. if the agency has supplemental standards requiring the prior written approval of outside employment/activities (also, see review of approvals below in step **VII.D.**), there is written approval, as required, for any reported outside employment/activities.
- K. Review OGE Optional Form 450-As, if applicable, to ensure that they have been filed in accordance with 5 C.F.R. § 2634.905(d).
- L. If any confidential reports have been filed late or not at all, determine whether the agency has considered administrative remedies (5 C.F.R. § 2634.704(d)) and, if not, why not.
- M. Determine whether the agency uses an alternative reporting procedure form that has been approved by OGE in accordance with 5 C.F.R. § 2634.905(c) as being adequate to prevent conflicts of interest. If so, ensure that:
1. the form, if required to be filed annually, has been filed and reviewed timely and reveals no actual or potential conflict-of-interest or other ethics violations (e.g., substitute form);
  2. the form, if required to be filed/updated before an employee begins work on a contract, grant, case, etc., or attends a meeting, has been filed/updated and reviewed timely;
  3. each form that is not filed/updated before an employee begins work, reveals no conflict-of-interest or other ethics violations;
  4. each form is maintained in a file for a contract, grant, case, meeting, etc., and in a central file, and that there is a master list of work assignments including when employees were assigned (e.g., self-certification form); and
  5. the form (or an OGE Form 450 /SF 278) is filed by supervisors or managers who assign work to filers

of an alternative reporting form.

- N. If the agency does not use an alternative reporting procedure, discuss with ethics officials whether the agency could use an alternative reporting procedure that might be better than the OGE Form 450 system.
- O. Determine whether the confidential report reviewers are trained in how to review the reports. If so, determine:
  - 1. the frequency of the training;
  - 2. the content of the training (e.g., 5 C.F.R. part 2634, the Standards, the conflict of interest statutes, waivers and disqualifications, and any supplemental standards, at a minimum);
  - 3. whether they have taken the OGE confidential financial disclosure training course;
  - 4. whether they have received on-the-job training; and
  - 5. whether any problems identified above in **steps VI.J. and M.** demonstrate the need for training.
- P. Determine whether the agency is using an electronic OGE Form 450 or OGE Optional Form 450-A and, if so:
  - 1. determine whether it is a non-fillable, fillable, or "smart" fillable version; and
  - 2. review the electronic form to ensure that:
    - a. it precisely duplicates (to the extent technically possible) the original OGE Form 450 or Optional Form 450-A;
    - b. it represents the most recent edition, or allowable previous edition, of the OGE Form 450 or Optional Form 450-A;
    - c. if it varies in substance from the original OGE Form 450, it has been approved by OGE;
    - d. if it is a "smart" fillable version of the OGE Form 450, it has been approved by OGE and OMB<sup>15</sup>

---

<sup>15</sup>Same as footnote 12.

and the series of questions or prompts are complete, accurate, and logical; and

- e. it or portions thereof are not being transmitted via connectivity to the Internet's World-wide Web or any other type of bounce-back e-mail system for obtaining filers' forms using the Internet.

Q. Determine whether OGE Forms 450s and other confidential reporting forms are retained for six years after receipt, after which they are destroyed.

## VII. AGENCY-SPECIFIC ETHICS PROHIBITIONS, RESTRICTIONS, AND REQUIREMENTS

OBJECTIVE: To determine whether any properly authorized agency-specific ethics prohibitions, restrictions, or requirements, especially those found in the supplemental standards, have been integrated into the ethics program.

REPORT FOCUS: The strengths and weaknesses of the agency's ability to integrate the supplemental standards' prohibitions, restrictions, or requirements into the ethics program.

- A. Determine whether the agency has supplemental standards<sup>16</sup> that have been approved by OGE in accordance with 5 C.F.R. § 2635.105 and, if so, determine whether there are:
1. prohibitions or restrictions on certain financial interests (either holdings or outside employment/activities) (§ 2635.403(a)); and/or
  2. requirements for prior written approval to engage in outside employment/activities (§ 2635.803).
- B. If the agency prohibits/restricts financial interests, ensure, as appropriate to the agency, that a current list is maintained of prohibited/restricted entities. If not, determine how the agency reviews financial disclosure reports for violations of the prohibitions/restrictions (e.g., reviewers' direct knowledge of restricted/prohibited entities, assistance from filers' supervisors in identifying such entities, etc.).
- C. If the agency requires prior written approval to engage in outside employment/activities, obtain all or a judgmental sample of the approvals (time period and all or a sample size determined during **pre-review**).

---

<sup>16</sup>Subpart G of 5 C.F.R. part 2638 requires any supplemental standards to be included with the initial ethics orientation and annual ethics training.

- D. Using any current list of contractors, etc., obtained above in **step V.L.**, as well as any list of prohibited/restricted entities obtained above in **step VII.B.**, review these approvals, as well as any approvals obtained in reviewing the financial disclosure reports above in **steps V.M.5. and VI.J.5.**, to ensure that:
1. they have been granted in accordance with the supplemental standards,
  2. they reveal no actual or potential conflict-of-interest or other ethics violations, and
  3. outside employment/activities have been reported, as required, on the corresponding financial disclosure reports.
- E. Ensure that financial disclosure reviewers, as appropriate, use any current list of prohibited/restricted financial interests (or supplemental standards provisions) and written prior approvals in reviewing the reports.
- F. Determine whether the agency has any agency-specific ethics prohibitions, restrictions, or requirements, which are not authorized in the supplemental standards, and, if so:
1. whether they are authorized in an organic authority and, if so:
  2. whether they have been integrated into the ethics program (e.g., financial disclosure reviews, education and training, advice/counseling, etc.).
- G. If an agency has any agency-specific ethics prohibitions, restrictions, or requirements that are neither authorized by supplemental standards nor organic authority, determine the basis for them.

## VIII. TRAVEL PAYMENTS UNDER 31 U.S.C. § 1353

- OBJECTIVE:       --    To determine whether the travel payments accepted under 31 U.S.C. § 1353 are being properly authorized, including conflict-of-interest analyses, to enable the agency to carry out functions (not required by statute or regulation) that are important but, perhaps because of budget constraints, would not be accomplished otherwise.
- To determine whether OGE is receiving semiannual reports timely, providing a means by which the public may review the agency's acceptance of § 1353 travel payments.

REPORT FOCUS:    The strengths and weakness of the agency's system of accepting § 1353 travel payments and reporting them to OGE.

- A.    Obtain from PSD, for the agency being reviewed, the semiannual report(s) submitted to OGE of payments for travel and related expenses accepted from non-Federal sources under 31 U.S.C. § 1353 (time period determined during **pre-review**).
- B.    Ensure that the agency uses the Semiannual Report of Payments Accepted from a non-Federal Source (Standard Form 326) when reporting payments to OGE.
- C.    Determine whether the semiannual reports were filed timely or at all and, if not, why not.
- D.    Determine whether the agency has a policy of not accepting payments under 31 U.S.C. § 1353. If so, do not follow any more of the **steps** under **VIII**.
- E.    Through discussions with ethics officials and, as appropriate, other officials, determine:
1.    who at the agency is responsible for collecting the information to be reported, drafting the semiannual report, and forwarding the report to OGE; and
  2.    whether an ethics official reviews the semiannual report before it is submitted to OGE.

- F. Determine whether the agency has any written procedures implementing 41 C.F.R. part 304-1, especially at agencies with a large number of payments from employees at various component and field offices, and, if so, whether the procedures are in compliance with part 304-1.
- G. For all or a judgmental sample of the payments identified on the semiannual report(s) obtained above in **step VIII.A.**, obtain the written authorizations and any other documentation supporting acceptance of the payments (all or sample size determined during **pre-review**).
- H. If there are no written authorizations, determine how payments are approved for acceptance.
- I. Review the written authorizations and any other accompanying documentation to ensure that each payment was:
  - 1. authorized by officials at as high an administrative level as practical (41 C.F.R. § 304-1.3(c) and, as appropriate, coordinated with ethics officials;
  - 2. for a meeting or similar function which the employee has been authorized to attend in an official capacity on behalf of the agency (§§ 304-1.3(a), 301-1.2(c)(3), and 304-1.4);
  - 3. for travel and related expenses which have been accepted from a non-Federal source which is not disqualified on the basis of a conflict-of-interest analysis (§ 304-1.5);
  - 4. in kind or by check or similar instrument (§§ 304-1.2(c)(5) and 304-1.6); and
  - 5. if for an accompanying spouse, properly approved (§ 304-1.3(b)).



*Best Practices*

- J. Determine whether training is given to those officials authorized to approve travel payments and whether an ethics official spot checks or monitors the travel payment approvals (if an ethics official does not perform the conflict-of-interest analysis).

## IX. SPECIAL GOVERNMENT EMPLOYEES

- OBJECTIVES:     --    To determine whether the agency has an effective ethics program for SGEs in terms of financial disclosure, education and training, advice/counseling, and, as appropriate, other program elements.
- To determine whether individuals who serve as members of committees, councils, boards, commissions, etc., that advise or run agencies are properly designated as SGEs, since certain requirements and restrictions related to financial disclosure, the conflict of interest statutes, the Standards, and training apply to SGEs that do not apply to non-SGEs.

REPORT FOCUS:     The strengths and weaknesses of the agency's ethics program for SGEs, especially the agency's ability to properly designate as SGEs members of committees, councils, boards, and commissions.

- A.   Determine whether there are individuals assigned to the agency who serve for 130 days or less during any period of 365 days (i.e., temporarily on either a full-time, intermittent, or part-time basis) and are assigned to committees, councils, boards, commissions, etc., that advise<sup>17</sup> or run the agency.
- B.   Determine whether there are any other individuals who serve for 130 days or less during any period of 365 days, such as experts/consultants.
- C.   If the agency has advisory committees, etc., determine whether the ethics office or some other entity (e.g., a committee management council or office) manages the advisory committees.
- D.   If a committee management council or office manages the advisory committees, etc., determine whether ethics

---

<sup>17</sup>The home page on GSA's Web site, at <http://fido.gov/facadatabase/public.asp>, identifies Federal Advisory Committee Act (FACA) advisory committees by agency.

officials have any involvement at all, including:

1. establishing appropriate or improving existing lines of communication with agency committee management officials or others who have a role in managing or running advisory committees within their agencies;
2. helping ensure that the agency has a systematic approach or process for making status determinations for ethics purposes of the agency's advisory committee members and that the determinations of a member's status is made prospectively at the time of an individual's appointment or retention by a committee;
3. being a part of the final clearance process for appointing members who are to serve on advisory committees, especially those committees that are newly created or are being renewed or reestablished by the agency;
4. periodically reviewing the status determinations that are made by the agency to ensure that they are being properly made by committee management officials, especially for those advisory committees from which the enabling authority may have been amended or the mission or purpose may have changed in recent years, or which are standing committees with indefinite charters;
5. ensuring that relevant committee management officials are aware of OGE's and the agency's guidance and procedures on SGE and representative status determinations and are provided or made aware of appropriate ethics points of contact to discuss issues involving status determinations and other ethics matters;
6. providing advice and legal counsel to committee management officials, as appropriate, on matters concerning the status determinations of advisory committee members for ethics purposes;
7. reviewing periodically the agency's practices, procedures, policies, and guidance for advisory committees to ensure that appropriate mechanisms exist for properly receiving ethics officials'

input on the status determination issues;

8. ensuring, as appropriate, that appointment letters or other committee documentation of appointments state clearly whether members are serving as SGEs or representatives and that committee members are properly informed of their member status, the application of Government ethics rules if they serve as SGEs, and the "recognizable group of persons" they represent if they serve as representatives; and
  9. in cases where members are serving as representatives, recommending to committee management officials that committee members are informed about the group of persons that each respective member is expected to represent on the committee.
- E. If there are individuals who serve for 130 days or less during any period of 365 days, ensure that the agency has properly determined whether or not they are SGEs (18 U.S.C. § 202(a), OGE Informal Advisory Memoranda 82 x 21, 82 x 22, and 00 x 1, and DAEOgram DO-04-022) (all such individuals/committees or a sample size of individuals/committees determined during **pre-review**).
- F. For each advisory committee, review any statute and obtain and review copies of any Presidential directive, charter, member appointment document, etc., applicable to the committee.
- G. For each advisory committee member not determined by the agency to be an SGE (e.g., representatives), based on the review conducted in **step IX.F.** and, as necessary, discussions with ethics/committee management officials, ensure that:
1. all relevant factors in OGE Informal Advisory Memorandum 82 x 22 were considered;
  2. the member is a representative based on his or her role in speaking for a "recognizable group of persons," rather than based only on:
    - a. the member being an expert in a field of expertise,

- b. the use of the term "represent" or "representative" in the statute or documents, and/or
- c. the member being recommended for appointment by an outside group or organization.

(DO-04-022)<sup>18</sup>

- H. For any other individuals who serve for 130 days or less during any period of 365 days (other than advisory committee members) not determined to be SGEs (e.g., independent contractors), ensure that agency considered the guidance in OGE Informal Advisory memoranda 82 x 21 and 00 x 01 that distinguish between SGE experts/consultants and independent contractors.
- I. If the agency has advisory committees, etc., whose members are SGEs, determine:
  - 1. whether the SGEs file an OGE Form 450 or a form under an alternative reporting procedure, and
  - 2. whether the OGE Form 450 or a form under an alternative reporting procedure is filed once a year or before each meeting.
- J. If the agency has advisory committees, etc., whose members are SGEs who file a confidential reporting form under an alternative reporting procedure, follow **step VI.M.** above in reviewing the forms.
- K. If the agency has SGEs who file OGE Form 450s, follow the **steps** under **VI.** above, as applicable, in reviewing the OGE Form 450s.
- L. If the agency has SGEs who file OGE Form 450s, follow the **steps** under **II.** above, as applicable, in reviewing the ethics agreements and, in addition, if there are 18 U.S.C. § 208(b)(3) waivers granted to advisory committee SGE filers:
  - 1. obtain from the agency and from OGC copies of all of the 18 U.S.C. § 208(b)(3) waivers that were granted to current SGEs (where there is a large

---

<sup>18</sup>After this analysis, bring to the attention of the Associate Director for Program Reviews any agency determinations about which you still have questions.

number of waivers, a judgmental sample can be determined during **pre-review**);

2. through a comparison of copies of waivers obtained from the agency and OGC, ensure that the agency has forwarded a copy of each waiver to OGE (5 C.F.R. § 2640.303); and
3. ensure that the waivers comply with subpart C of 5 C.F.R. part 2640, including that:
  - a. the advisory committee upon which the individual is serving or will serve is an advisory committee within the meaning of FACA (5 C.F.R. § 2640.302(a)(1));
  - b. each waiver describes the facts upon which the waiver is based, including the nature of the financial interest, the particular matters to which the waiver applies, and any limitations on the ability of the individual to act (§ 2640.302(a)(4)and (5));
  - c. each waiver includes a certification that the need for the individual's services on the advisory committee outweighs the potential for a conflict of interest (§ 2640.302(a)(3));
  - d. each waiver is issued prior to the employee taking action in the matter (§ 2640.302(a)(6)) or, if not, the employee disqualified him- or herself before being granted the waiver;
  - e. the Government official responsible for the individual's appointment (or other Government official to whom authority to issue such waivers has been delegated), and based on a review of a financial disclosure report filed pursuant to the Ethics Act, has considered the factors in § 2640.302(b) in determining whether to issue each waiver, regardless of whether or not the official is an ethics official;

- f. where practicable, the agency has consulted formally or informally with OGE prior to granting each waiver (§ 2640.303) and, if not, why not; and
  - g. ethics officials are aware that waivers are to be maintained by the agency for public inspection (18 U.S.C. § 208(d)(1) and 5 C.F.R. § 2640.304).
- M. Ensure that where an SGE has agreed to obtain an 18 U.S.C. § 208(b)(3) waiver and disqualification is required prior to the granting of the waiver, all terms of the agreement have been honored.
- N. If the agency has SGEs, follow the **steps** above under **I.**, as applicable, in reviewing enforcement.
- O. If the agency has SGEs, follow the **steps** above under **III.**, as applicable, in reviewing written advice/counseling.
- P. If the agency has SGEs who file confidential reports, follow the **steps** above under **IV.**, as applicable, in reviewing education and training.
- Q. If the agency has SGEs to whom agency-specific ethics prohibitions, restrictions, or requirements apply, follow the **steps** above under **VII.**, as applicable.

**X. INDEPENDENT BOARDS AND COMMISSIONS**

OBJECTIVE: To determine whether the agency has an effective ethics program for employees assigned to independent boards and commissions -in terms of financial disclosure, education and training, advice/counseling, and, as appropriate, other program elements.

REPORT FOCUS: The strengths and weaknesses of the agency's ethics program for independent boards and commissions.

- A. Determine whether the agency is supplying ethics services (i.e., collecting and reviewing financial disclosure reports, providing education and training and written advice/counseling, etc.) to employees assigned to any board or commission not organizationally a part of the agency.
- B. If so, review the ethics services being provided (scope determined during **pre-review**).



**ATTACHMENT**

**TABLE 1.** Questions Concerning DAEO-OIG Responsibilities for Notifying OGE about Criminal Referrals and Related Matters

<b>Action:</b>	<b>DAEO</b>	<b>OIG</b>	<b>Both</b>	<b>Other (Identify Office)</b>	<b>None</b>
Referring criminal matters to DOJ					
Notifying OGE of criminal referrals					
Ensuring that disciplinary action is taken after DOJ declination					
Ensuring that disciplinary action is taken regarding regulatory violations					
Notifying OGE of disciplinary action taken					

**TABLE 2:** Questions Concerning DAEO-OIG Responsibilities for Various Functions (other than Notifying OGE about Criminal Referrals)

<b>Action:</b>	<b>DAEO</b>	<b>OIG</b>	<b>Both</b>	<b>Other (Identify Office)</b>	<b>None</b>
Counseling employees on "after the fact" matters					
Conducting preliminary (threshold) inquiry into ethics hotline calls					
Conducting preliminary (threshold) inquiry based on other sources					
Weeding out non-meritorious matters					
Referring criminal matter to OIG for investigation					
Referring regulatory matter to OIG for investigation					
Notifying ethics official or management when an investigation is declined					
Investigating criminal allegations					
Providing support to investigators by interpreting criminal conflicts laws and developing facts					
Providing support to investigators by interpreting ethics regulations and developing facts					
Training investigator staff on the elements of a violation					
Keeping ethics records on training and advice					

Providing documented support to investigators, e.g., by furnishing training records, written advice, documented post-employment briefings					
Providing support to investigators through analysis of financial disclosure reports					
Preparing investigative report					
Consulting on draft investigative report					
Notifying ethics officials or management of the results of an investigation					
Maintaining liaison with OGE					
Auditing ethics program systems					
Single issue audits of ethics issues					
Referral to DOJ for knowingly and willfully failing to file a financial disclosure report					
Referral to DOJ for knowingly and willfully falsifying information in a financial disclosure report					
Enforcing 31 U.S.C. § 1353					
Training and counseling OIG employees on ethics laws and regulations					