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Ethics Newsgram

OGE Recommends Changes to Streamline Financial Disclosure

Under the Presidential Transition Act of 2000, Congress directed OGE to study the nomination and confirmation process for Presidential appointments and propose ways to: (1) streamline, standardize, and coordinate the financial disclosure process for Presidential nominees under the Ethics in Government Act of 1978; (2) avoid duplication of effort and reduce the burden of financial disclosure filings; and (3) address other matters OGE deemed appropriate, without making any proposal that would have the effect of lessening substantive compliance with any conflict of interest requirement.

OGE subsequently studied the issue and prepared and submitted a report titled, "Report on Improvements to the Financial Disclosure Process for Presidential Nominees" to both the Senate Committee on Governmental Affairs and the House Committee on Government Reform. On April 5, 2001, OGE Director, Amy Comstock, appeared before the Senate Committee on Governmental Affairs to discuss OGE's recommendations. (See [DAEOgram DO-01-015](#) of April 6, 2001 and OGE's Web site for copies of both the [report](#) and the [Director's Statement](#).)

In her statement before the Senate, the Director discussed the steps OGE took in

preparing the report and the report's recommendations. In analyzing the nomination and confirmation process, OGE obtained the opinions of various interested parties; reviewed studies of the nomination and confirmation process, as well as questionnaires used by others in that process; compared the public financial disclosure forms used by all three branches of Government; sought and obtained comments about the process through a notice in the Federal Register; and discussed possible proposals for changes with executive branch ethics officials involved in the process.

These outreach efforts confirmed what OGE's own experience had indicated:

while the *concept* of public financial disclosure is not considered to be unduly burdensome by nominees or others entering into public service, the current statutory requirements of public financial disclosure are more onerous than is useful or necessary to achieve the fundamental goals of disclosure. OGE found that some of the excessive detail and redundancy in reporting assets, transactions and other items was unnecessarily intrusive and time consuming, and could be eliminated without lessening substantive compliance with any conflict of interest requirement or reducing public confidence in Government. Eliminating such nonessential detail, OGE noted, would benefit not only Presidential
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2001 Annual Government Ethics Conference

The 2001 Annual Government Ethics Conference will be held September 11-13, at the Norfolk Waterside Marriott Hotel in Norfolk, VA. The overflow hotel is the Radisson Hotel Norfolk, located a few blocks away. The deadline for hotel reservations at both hotels is August 10. The two and a half-day conference will begin on Tuesday morning, September 11 and continue through noon on Thursday, September 13. The conference announcement and registration information were sent out May 21, 2001. (See [DAEOgram DO-01-020](#) and attachments.)

As in years past, this year's conference program will include a mix of plenary and concurrent sessions. The structure of the program, however, has been modified. Concurrent sessions will be divided into six tracks: Statutes and Standards;



Technology and Training; Financial Disclosure; Ethics Program Administration; Matters Outside of OGE and Introductory Level Sessions. Within these tracks you will find sessions covering everything from the most basic elements of an ethics program to the latest innovations in training
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Director's Column

As part of an ongoing dialogue with the ethics community, OGE recently held a one-day conference for a small group of senior agency ethics officials to discuss legal and policy issues affecting the executive branch ethics program. It was an opportunity for OGE to hear the views of ethics officials on a number of program initiatives, including revising the training regulation and implementing alternative disclosure systems. Such input from ethics officials is absolutely critical to making improvements to the ethics program that are carefully tailored to meet agency needs.

The conference also provided a forum to launch a discussion of possible changes to the criminal conflict of interest laws. Some of these statutes could be improved to make them clearer, to meet the needs of contemporary Government service, and to address certain applications that do not appear to serve the underlying policies and purposes of these laws. It is important that ethics officials be involved in this process from the beginning and be actively engaged as possible amendments are developed.



At the conference, OGE also discussed a draft legislative proposal to revise the statutory scheme for public financial disclosure. The draft would propose changes to simplify the disclosure system without sacrificing its effectiveness as a tool for preventing conflicts of interest and

fostering public confidence in the integrity of Government officials. Among other things, the proposed changes would reduce the number of valuation categories, shorten certain reporting periods, and eliminate redundant reporting.

Finally, the conference provided an opportunity to recognize the tremendous team effort that has been made thus far in the nominee clearance process. This has been a collaborative work of the White House Counsel's Office, agency ethics officials and OGE reviewers. As of early June, more than 200 nominee financial disclosure reports had been cleared. Numbers alone, however, do not tell the full story. The quality of the review has been most impressive. This is a good example of what can be accomplished through the cooperative effort of the ethics community.

Amy L. Comstock

Financial Disclosure

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nominees, but also the approximately 20,000 Government employees who are subject to public reporting.

To simplify financial disclosure and mitigate the burden, OGE recommended changes to the Ethics in Government Act of 1978 for the executive branch that would: (1) reduce the number of valuation categories; (2) shorten certain reporting time-periods; (3) limit the scope of reporting by raising certain dollar-thresholds; (4) reduce details that are unnecessary for conflicts analysis; and (5) eliminate redundant reporting.

Specific examples of OGE's proposed changes include:

- ◆ substituting three categories of value for the current 11 used for reporting assets;
- ◆ eliminating the current requirement to report exact amounts of earned income (except for honoraria) and raising the reporting threshold from "\$200 or more" to "more than \$500";
- ◆ substituting three categories of value for the current 11 categories used for reporting investment income;

- ◆ allowing *all* investment income to be reported by category of amount and raising the reporting threshold to "more than \$500";
- ◆ raising the reporting threshold for deposit accounts from \$5,000 to \$100,000;
- ◆ eliminating the requirement to report any transactions involving property or securities already reported as an asset or source of income elsewhere on the form;
- ◆ raising the reporting threshold for liabilities from \$10,000 to \$20,000; and
- ◆ raising the threshold for reporting compensation for personal services from \$5,000 to \$25,000 and shortening the look-back from two years plus the current year to one year plus the current year.

OGE has incorporated these recommendations, among others, into draft legislation amending the Ethics in Government Act of 1978, as amended, to streamline the financial disclosure process for executive branch employees. OGE's draft legislation is currently undergoing interagency review at the Office of Management and Budget (OMB). Once it has been cleared by OMB, the draft legislation will be transmitted to the House and Senate for their consideration.

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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. We also welcome your candid critiques and suggestions. Quoting or reprinting materials contained in this publication is strongly encouraged and does not require OGE's 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.

The DAEO Handbook: A “How To” Guide

A common concern among ethics officials (both new and veteran) is the apparent lack of practical guidance available on “how to” carry out the regulatory requirements of an ethics program. To address this concern, OGE is currently drafting a user-friendly, “how to” guide titled, *The DAEO Handbook (Handbook)*. The *Handbook* is designed with both the new and experienced ethics official in mind, providing practical tips and methods for establishing, maintaining, and operating an ethics program.

The *Handbook* will contain approximately nine chapters covering, among other things, each of the “core elements” of an ethics program: education and training; advice and counseling; public and confidential financial disclosure; relationship with the Inspector General; and gifts

of travel from non-Federal sources. Additional topics include training resources for ethics officials and tips for preparing for an OGE ethics program review. The *Handbook* will provide numerous “exhibits” of successful practices, modeled after actual documents collected by OGE’s Program Review Division during ethics program reviews. These exhibits, along with a discussion of other proven methods and ideas, make the *Handbook* a valuable repository of practical guidance for operating an effective ethics program.

The *Handbook* will also feature a chapter on “non-OGE issues.” These issues, such as the Hatch Act, procurement integrity, the anti-lobbying statutes, and foreign gifts, while not within OGE’s jurisdiction, nevertheless are often topics that ethics

officials are consulted on or responsible for. The *Handbook* will provide the addresses, telephone numbers and/or Web sites of the cognizant authorities in each of these areas for easy reference in obtaining guidance or for referral. Finally, the *Handbook* will contain a glossary of commonly used terms, a user-friendly index, and an ethics calendar containing relevant ethics due dates, activities and reminders.

The *Handbook* is slated for completion by the beginning of fiscal year 2002. Agencies will be notified when it becomes available. In the meantime, OGE plans to conduct a concurrent session devoted to *The DAEO Handbook* at this year’s annual ethics conference in September. Stay tuned!

Guidance on Nominee Ethics Agreements

The early months of any new administration are a busy and challenging time for Designated Agency Ethics Officials (DAEOs). Among their many duties during this season, DAEOs play a crucial role in the review of financial disclosure reports filed by Presidential nominees prior to Senate confirmation proceedings. As part of that process, DAEOs frequently must prepare ethics agreements for nominees for submission to OGE and the Senate, along with the nominee’s financial disclosure report.

In order to assist DAEOs in fulfilling this responsibility, on March 28, 2001, OGE issued DAEOgram DO-01-013, “Nominee Ethics Agreements.” The DAEOgram addresses the purpose and importance of ethics agreements for nominees to Presidentially appointed and Senate confirmed (PAS) positions, and it provides guidance concerning the contents of such agreements. OGE also included a model ethics agreement as an attachment to the DAEOgram.

The DAEOgram emphasizes that nominee ethics agreements are important because they ensure that the steps necessary for the nominee to comply with the ethics laws are clear to the nominee, the agency, OGE and the Senate. “Ethics agreement” is broadly defined as “any oral or written promise by a reporting individual to undertake specific actions in order to

alleviate an actual or apparent conflict of interest.” See 5 C.F.R. § 2634.802(a). In the case of nominees for PAS positions, such agreements must be reduced to writing, in some form, so that they may be transmitted to OGE along with the nominee’s SF 278. As a practical matter, these nominee agreements take various written forms, such as a letter from the nominee to the Designated Agency Ethics Official (DAEO), a letter from the nominee to OGE, or a letter from the DAEO to OGE summarizing the actions the nominee has agreed to undertake.

Among the more common actions specified in ethics agreements are recusals, divestitures, and resignations. Ethics agreements also may detail various other actions necessary to comply with any ethics law or regulation. The DAEOgram emphasizes that ethics agreements should be specific in describing the actions to be undertaken in order to prevent an actual or apparent conflict of interest. It also notes that Congress has expressed concern in the past that the coverage of some ethics agreements has been unclear.

OGE provided a model ethics agreement as an attachment to the DAEOgram in order to assist agencies in preparing ethics agreements for nominees. Use of the model is not mandatory, and agencies are advised that no model can address all ethics issues that may arise or convey all the nuances and details that may be relevant in a given case.

The DAEOgram also touches briefly on the subject of public disclosure of ethics agreements. Basically, all ethics agreements that are attached to SF 278s or otherwise incorporated by reference on the face of the SF 278 are subject to public disclosure to the same extent as the SF 278. Ethics agreements which have not been made part of the SF 278 are subject to the disclosure requirements of the Freedom of Information Act, including any relevant exemptions, and subject to the constraints of the Privacy Act. Agencies that wish to avoid questions concerning the need to redact certain information prior to public disclosure of the agreements may follow the former practice of attaching ethics agreements to the SF 278.

Finally, the DAEOgram discusses the requirement of timely compliance with ethics agreements and documentation of such compliance. Generally, persons must comply with their ethics agreements and provide documentation of such compliance within three months after their confirmation. The DAEO then must provide the evidence of compliance to OGE. The DAEOgram specifies the type of evidence that is acceptable for several common types of actions. Agencies are reminded that OGE monitors the compliance of all PAS appointees with the terms of their ethics agreements.

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Staff Directory



Ethical Requirements for Potential Appointees Serving as Advisors or Counselors

On January 26, 2001, the White House issued a memorandum to all Cabinet members and agency heads, titled "Employment Guidelines for Potential Presidential Appointees," (White House Memorandum). The White House Memorandum addresses the procedures and guidelines under which potential future Presidential appointees requiring Senate confirmation (PAS appointees) to sub-Cabinet positions may be employed as an "advisor or counselor" to the secretary or agency head of their prospective agency. On March 15, 2001, OGE in turn issued a DAEOgram to address the ethical requirements that govern those potential sub-Cabinet PAS appointees covered by the White House Memorandum while they serve as "advisors" or "counselors." (See [DAEOgram DO-01-009](#), "Ethical Requirements Applicable to Potential PAS Appointees Employed as 'Advisors' or 'Counselors.'")

Based on the White House Memorandum and other information provided by the White House, OGE has concluded that potential PAS appointees who are hired to perform temporary services as "advisors"

or "counselors" are properly viewed as special Government employees (SGEs). These individuals retain their status as SGEs until such time as they are actually appointed to a Senate-confirmed position, after which they will be deemed regular employees. As SGEs, these advisors and counselors are subject to certain less restrictive ethical requirements than are regular employees.

While the various restrictions and exceptions applicable to SGEs are discussed in more detail in a prior OGE issuance (see [DAEOgram DO-00-003](#) and its [attachment](#) of February 15, 2000), the current DAEOgram on potential PAS appointees addresses several provisions of special note. First, as SGEs, advisors and counselors are not subject to the restrictions on certain

outside activities, compensation, and affiliations applicable to "covered noncareer employees" pursuant to 5 U.S.C. app. §§ 501-505, 5 C.F.R. part 2636, and § 102 of Executive Order 12731. Additionally, they are not subject to the bar on supplementation of salary, 18 U.S.C. § 209.

With respect to financial disclosure requirements, the DAEOgram notes that all potential PAS appointees covered by the White House Memorandum will be submitting draft SF 278s as part of the standard pre-nomination review process. OGE has concluded that this disclosure and review process will satisfy any financial disclosure obligations of advisors or counselors who are potential PAS appointees.

Annual Conference

Continued from page 1

and program administration. In addition, the conference will feature sessions on topics that agency ethics officials are often responsible for, but that fall outside of OGE's jurisdiction, such as the Intergovernmental Personnel Act and the Combined Federal Campaign.

Just a reminder—in order to attend the OGE conference, you must be nominated by your Designated Agency Ethics Official. We look forward to seeing you in Norfolk in September.

For more information, please check the "[OGE Conference](#)" section of the OGE Web site or contact Sheila Powers by phone at (202) 208-8000, extension 1104, or by email at sapowers@oge.gov.

OPIC's Ethics Toolbox for Employees

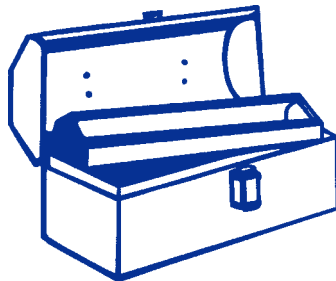
Having a hard time keeping employees interested in and updated on ethics? The Overseas Private Investment Corporation (OPIC) has come up with a solution they think you might want to consider. OPIC recently inaugurated its Ethics Toolbox (Toolbox), a question and answer series that addresses current ethics topics. The Toolbox is located prominently on the lead page of OPIC's internal Intranet site.

The Toolbox attracts readers with lively illustration and a question and answer format that addresses, with humor, a

situation OPIC employees encounter on a day-to-day basis. The Toolbox is updated biweekly. Prior entries are maintained, along with a comprehensive collection of other ethics materials, on a separate ethics Intranet site called the Compass. To date, the Toolbox has addressed topics such as widely-attended gatherings, financial disclosure, travel reimbursements, and even the Hatch Act. The Toolbox answers often contain links to relevant documents maintained on the Compass, such as financial disclosure forms and a widely-attended gathering checklist.

Since its launch last fall, the Toolbox has logged 101 hits per day—not bad for an agency of only 200 people!

If you have any questions about the Ethics Toolbox or the Compass, or would like to see a sample Toolbox entry, please contact Ms. Rumu Sarkar, OPIC's Alternate DAEO, at rsarkar@opic.gov.



Training Design Tips

Is your live ethics training boring even you? If so, you may have overlooked the importance of making your presentation interesting. Why do you think there are so many “train the trainer” courses out there?

While this article isn't intended to replace a “train the trainer” course, it does offer some tips to help you design practical and interesting training. Briefly stated, include the three phases of instruction into your training: *presentation, application and feedback.*

Presentation is simply the method you use to deliver the content of the training. Many presentation methods exist. They include panel discussion, interviews, skits, job aids, and brainstorming, just to name a few. Lecture is probably the most common presentation method. But, beware. It is not always the most effective. Most people, and probably most agency ethics trainers, rely on lecture because it is the easiest training to prepare. Effective training, however, is not about what is easiest for the trainer. It is about satisfying the needs of the people who attend the



training, known in the trade as “adult learners.”

Although a tremendous amount of material has been written about adult learners, here are just a few noteworthy items. Adult learners thrive in training situations where they can use their life experience. They wish to speak, participate and contribute to the training. Adults want training that focuses on real-life situations and current issues. When the training is not relevant, they will think you are wasting their time. Training is about what adults need to be able to *do*. That is why the *application* phase of training is where the real learning takes place.

Application is the opportunity for your employees to apply or practice what you are teaching. Confucius said it best—“*What I hear, I forget. What I see, I remember. But what I do, I understand.*” If you want your employees to understand the ethics statutes and rules, include *application* in your training. For example, elicit employees' experiences. Ask how things can be applied back on the job. Use discussion groups, create games, or design case studies.

Lastly, it does no good to have your employees apply what they are learning if you don't let them know whether they are applying it correctly. That is called *feedback*. Adult learners expect regular feedback and positive reinforcement.

So, the next time you are asked to design training, remember: *presentation, application, and feedback.* Your employees will appreciate it, and it might make you feel better about training, too.

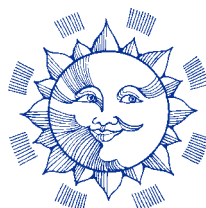
Ethics News Briefs

OGE Publishes Paperwork Notice for Its Access Customer Survey Form:

Late last spring, OGE published a first round notice of its forthcoming request for three-year renewal under the Paperwork Reduction Act of the “Public Financial Disclosure Access Customer Service Survey” form, with a couple minor revisions. See [66 Federal Register 32823-32824](#) (June 18, 2001), with any comments due by September 4, 2001. This short survey instrument is not a branchwide form; rather, it is designed to measure access requester satisfaction with OGE's own provision of copies of SF 278 public reports and to identify any areas for improvement.

Spring 2001 OGE Semiannual Regulatory Agenda:

The Office of Government Ethics published its latest semiannual regulatory agenda at [66 Federal Register 26339-26346](#) (part XXXV) (May 14, 2001). OGE's agenda, which is part of the executive branch Unified Agenda of Federal Regulatory and Deregulatory Actions, provides an updated listing of OGE rulemakings under development.



GSA Publishes Proposed Amendments to Section 1353 Travel Regulation:

The General Services Administration has published a set of proposed amendments, written in “plain language,” to its regulation at 41 C.F.R. Part 300-2 and Chapter 304, on the acceptance by agencies of payments of travel expenses from non-Federal sources under 31 U.S.C. § 1353. See [66 Federal Register 22491-22498](#) (May 4, 2001).

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