



Government Ethics News

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Director's Column

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We all recognize the importance of leadership in creating a vital ethical culture within an organization. But who are the ethics leaders in a Government agency? Clearly, it is crucial to have the support of the agency head, senior political leadership, as well as career executives and managers, in building and maintaining a strong ethical culture. Agency general counsels and, of course, ethics officials themselves provide ethics leadership. But, in my view, no list of ethics leaders in an agency is complete that does not include supervisors.



Supervisors can demonstrate ethics leadership and play a key role in translating broad ethical statements into the daily work of an agency in a number of ways:

- ◆ Supervisors can lead by personal example. Employees may come in contact with their supervisors on a daily basis and often take their cue from them. For example, the way a supervisor handles a gift offered by a prohibited source sends a powerful message to a supervisor's staff.
- ◆ Supervisors can lead by being active ethics spokespersons. Simply paying attention to ethics raises the importance of ethics in the work environment. For example, supervisors can provide information on ethics issues that are specific to the workplace through e-mail or at staff meetings.
- ◆ Supervisors can lead by answering ethics questions raised by their employees. OGE's recent Government employee survey found that employees often turn to their supervisor for guidance on how to behave ethically. By being receptive to employee questions and prepared to either answer those questions or guide the employee to an agency ethics official, supervisors can play an important role in keeping employees on the right track.

These are a few of the ways in which a supervisor can be a key resource in promoting a greater awareness of ethics concerns and creating a more positive perception of the ethical culture of an agency. Making the fullest possible use of this resource is a challenge for all of us. At OGE, we are working to develop training that is geared towards first and second line supervisors and their responsibility for the ethics program. I would certainly encourage all ethics officials to do what you can to reach out to supervisors with specially designed training. Bringing ethics to life at the grassroots builds a solid foundation for the executive branch ethics program.

Amy L. Comstock

OGE Director Moderates Ethics Panel at ASPA Conference

OGE Director Amy L. Comstock served as the moderator of a panel entitled, "Ethics Officials on the Front Line: The Challenges of Ethics Management" at the 63rd National Conference of the American Society for Public Administration (ASPA) in Phoenix, Arizona on March 25, 2002. The panelists included Stephen Epstein, Director of the Standards of Conduct Office at the U.S. Department of Defense, Robert Walker, Chief Counsel of the House Ethics Committee, and Mark Davies, Director of the New York City Conflicts of Interest Board.

The panel discussed the challenges of running a top-rate ethics program. The subjects they addressed included examining values-based ethics training and its integration into a compliance-based system, technological advancements and their effect on the ethics program, as well as the leadership responsibilities of ethics officials and supervisors in creating and maintaining a positive ethical culture in an agency.

ASPA members include public administrators from Federal, state, and local jurisdictions and academic institutions. The conference offered concurrent sessions in the areas of ethics and accountability, trust in government, and international issues, among others.

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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 permission.

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

Helpful Reminders for SF 278 Filers and Reviewers

It's once again time for the annual filing of Public Financial Disclosure Reports (SF 278s). In order to assist filers and reviewers, OGE has prepared some helpful hints to aid in the preparation and review of these reports.

Annual reports are to be filed at each agency by Wednesday, May 15, 2002. Those annual reports filed by Presidential appointees confirmed by the Senate (PAS) and by Designated Agency Ethics Officials should be reviewed by the agency and submitted to OGE immediately after agency approval. Likewise, any termination reports filed by PAS officials leaving prior to May 15 should be forwarded to OGE immediately after agency approval.



Reminders

Cover Page

- For annual reports, ensure that the filer's signature date is no earlier than January 1, 2002.
- For termination reports, be sure to include the filer's termination date and ensure that the filer's signature date is no earlier than the filer's last day of service in the position.
- If the filer was granted a filing extension, check the box in the "Comments of Reviewing Officials" section and indicate the number of days granted.

Schedule A: Assets and Income

- When reporting Individual Retirement Accounts (IRAs), filers should fully identify the specific name for underlying holdings, and disclose any accrued income generated during the reporting period attributable to those holdings. While the underlying holdings of an IRA can be Excepted Investment Funds (EIFs), the IRA itself is not an EIF because it is an account that is self-directed and not widely held.
- For any income reported under the "Other" column, an actual income amount must be reported.

Schedule B, Part I: Transactions

- If a "sale" appears on Schedule B for an asset that is still listed on Schedule A and is still showing a value exceeding \$1,000, indicate whether a partial sale occurred.
- If an asset was sold and generated income exceeding \$200, including any capital gains, the asset must also appear on Schedule A. If an asset was sold in its entirety, the asset value shown on Schedule A should be marked as "None (or less than \$1,001)."

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Helpful Reminders

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

- If a gift of travel is reported, it would be helpful to specify the basis for the acceptance, e.g. "a personal friend" or "agency approval under 5 U.S.C. § 4111." Specifying the basis for acceptance in this way may eliminate the need for further follow-up with the filer.
- If an employee has accepted a "meritorious service award" with a value greater than \$200 under 5 C.F.R. § 2635.204(d) and obtained written approval by the agency, agencies should forward a copy of the written determination to OGE with the employee's SF 278 for retention in OGE's files.

Schedule C, Part I: Liabilities

- If any rental property is sold during the reporting period, the mortgage must still appear on Schedule C, if the mortgage exceeded \$10,000 at any time during the reporting period.

Schedule C, Part II: Agreements or Arrangements

- Ensure that any agreement or arrangement reported on Schedule C is also reflected on Schedule A, where appropriate. For example, if the filer reports a continuing interest in a former employer's pension plan, a corresponding entry should also appear on Schedule A.
- Ensure that termination filers report any arrangements that they have made for future employment.

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

- For annual filers the reporting period for this section includes the previous calendar year, as well as the current calendar year up to the filing date.
- For termination filers the reporting period begins at the end of the period covered by the previous filing and ends at the date of termination from Government employment.
- All positions held at any time during the reporting period should be listed, including those from which the filer may have resigned before the end of the reporting period.
- For each position listed, the filer should provide a description of the organization that is sufficient to enable the reviewer to determine whether a potential conflict of interest exists.

Miscellaneous

- Ensure that all sections of the report are complete. If a filer has nothing to report for an applicable schedule, ensure that the "None" box is checked. Note that "None" and "Not Applicable" should not be used interchangeably.

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Helpful Reminders

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- ✓ Ensure that all report pages; including any attachments, are numbered, and that the filer's name appears on each page.
- ✓ Ensure that unneeded personal information that includes home addresses, social security numbers, and account numbers do not appear on the form or any attachments. For rental property, provide only the city and state where the property is located (i.e. do not list the street address).
- ✓ Brokerage statements can only be attached if they readily disclose in a clear and concise fashion all information which the filer would otherwise have been required to enter on the schedules.

OGE Issues Final Rule Amending Exemption Regulation

OGE published a final rule amending the regulation that describes financial interests that are exempt from 18 U.S.C. § 208(a). See 67 Fed. Reg. 12443-12446 (March 19, 2002). The final rule makes three important changes to the exemption regulation.

First, the final rule establishes a new de minimis exemption for particular matters affecting the holdings of a sector mutual fund. This new exemption, at 5 C.F.R. § 2640.201(b)(2), applies to the ownership of no more than \$50,000, by the employee and anyone else whose interests are imputed to the employee, in all affected sector funds that concentrate in the same sector. The \$50,000 limit applies to the value of the person's interest in the fund as a whole, not the proportionate share of any particular underlying holding of the fund.

Second, the final rule raises the current \$5,000 de minimis exemption for publicly traded securities to \$15,000, with respect to particular matters involving specific parties. This exemption is found at 5 C.F.R. § 2640.202(a)(2). The definition of "security" at 5 C.F.R. § 2640.102(r) also has been amended, in order to make clear that mutual funds are no longer covered by this exemption — or any other exemption for securities, except section 2640.202(e) and (f) — in view of the new de minimis exemption expressly for sector funds.

Third, the final rule creates a new \$25,000 de minimis exemption, at 5 C.F.R. § 2640.202(b), with respect to particular matters involving specific parties, where the interest is in publicly traded securities issued by a non-party to the particular matter. The proposed rule would have limited the application of this exemption to litigation matters. The final rule, however, was expanded to cover all types of particular matters involving specific parties that might have an effect on non-parties. Like the exemption in section 2640.202(a), this new exemption applies only to securities owned by the employee and the employee's spouse and minor children, and the affected holdings of all of those individuals must be aggregated. The language of this exemption makes clear that the \$25,000 limit includes securities exempt under section 2640.202(a).

The final rule became effective on April 18, 2002.

OGE Expands Ethics Agreement Tracking System

OGE recently issued a DAEOgram which describes changes in the tracking system used to monitor compliance with the terms of ethics agreements made by Presidential appointees confirmed by the Senate (PAS). See “Changes in the Ethics Agreement Compliance System for Senate-confirmed Presidential Employees,” DO-02-004, March 8, 2002. The current system for tracking recusal commitments arising under 18 U.S.C. § 208 has been expanded to include certain recusals arising under subpart E of 5 C.F.R. part 2635.

Agencies must provide evidence of compliance for all recusals under 5 C.F.R. § 2635.503, relating to the receipt by appointees of extraordinary payments from former employers prior to entering Government service.

In addition, OGE is requiring agencies to submit evidence of compliance for certain recusals under section 2635.502 arising from personal or business relationships. These relationships will have already been identified in the employee’s ethics agreement. The memorandum describes some of the more common recusal situations that will require evidence of compliance.

For example, the recusal may involve a covered relationship with a person or entity which is a law firm that is “Washington D.C.-based” or otherwise provides legal services in the metropolitan Washington area, or is a law firm located outside the Washington, D.C. area providing legal services (including lobbying services) in an area of law that is directly related to the appointee’s agency.

Other situations requiring evidence of compliance will include cases involving an entity or person with whom the employee has a covered relationship, and in which the entity or person involved (1) engages in a trade or business that relates to the mission, programs and operations of the appointee’s employing agency, (2) has matters currently or likely to be pending before the appointee’s agency, or (3) has some sort of continuing relationship or business association singled out for special treatment or coverage in the ethics agreement.

The memorandum provides specific examples for each of these situations. Determining whether other recusals under subpart E will require an agency to submit compliance documents will largely depend upon the specific facts in each case. This expanded tracking requirement applies prospectively to nominees whose ethics agreements are finalized after March 8, 2002.

The memorandum also provided guidance regarding extensions of time to complete ethics agreements. OGE requires that PAS employees complete their ethics agreements within the three-month period specified in their ethics agreement, unless another period of time has been specifically stated in the agreement. If the appointee finds that he or she cannot meet the three-month deadline, the agency should request an extension of time from OGE, showing good cause as to why an extension should be granted.

If an appointee wishes to obtain a Certificate of Divestiture from OGE, the Certificate should be requested by the agency from OGE as soon as possible after confirmation. This is to enable the Certificate to be processed and still allow the appointee sufficient time within the three-month period to complete his or her ethics agreement. It should be noted that a request for a Certificate does not extend the three-month compliance period.

Legislative Changes Affect Frequent Flyer Miles and IPAs

The National Defense Authorization Act for Fiscal Year 2002 (P.L.107-107) was signed into law by the President on December 28, 2001. Section 1116 of the legislation repealed Section 6008 of the Federal Acquisition Streamlining Act of 1994. As a consequence, Federal employees and military personnel are allowed to retain and make personal use of promotional items, such as frequent flyer miles, earned while on official Government travel.

The General Services Administration (GSA) issued guidelines for official Federal travelers using frequent traveler benefits. Federal Travel Advisory Number 5 was issued December 31, 2001 and can be found on GSA's Web site. In addition, GSA has issued two final rule amendments to both the Federal Property Management Regulations and the Federal Travel Regulation to reflect this legislative change. See 67 Federal Register 17649-17650 (April 11, 2002) and 67 Federal Register 17946-17947 (April 12, 2002), respectively.



Likewise the Internal Revenue Service (IRS) issued Announcement 2002-18, "Frequent Flyer Miles Attributable to Business or Official Travel," which discusses the taxability of frequent flyer miles or other promotional items that are received as the result of business travel and used for personal purposes. The announce-

ment is part of *Internal Revenue Bulletin* No. 2002-10, March 11, 2002 and is available on the IRS Web site. For more information regarding this announcement, call (202) 622-4606.

The National Defense Authorization Act for Fiscal Year 2002 also amended section 3374(c)(2) of title 5 of the United States Code, to apply both the Ethics in Government Act and Procurement Integrity provisions to detailees working under an Intergovernmental Personnel Act (IPA) agreement. IPA detailees are now subject to financial disclosure. Those identified as filers for purposes of financial disclosure will be subject to ethics training requirements, as well.

EPSD Holds Monthly Information Sessions


The Education and Program Services Division has begun holding a series of monthly "Information Sessions" for new ethics officials on a variety of ethics program topics. These sessions, which began in March and will run through July, provide the new ethics official with useful information for the day-to-day operation of an agency ethics program. The topics still to be covered include, providing advice and counseling and administering training. The final session will be dedicated to a variety of ancillary, but ethics-related, duties and responsibilities. All new ethics officials are invited to attend. If you haven't already signed up for one or more of these sessions, please contact your Desk Officer for the dates and times for the remaining sessions.

Ethics News Briefs

OGE Revises the OGE Form 202:

In February 2002, OGE made minor changes to the Notification of Conflict of Interest Referral form (OGE Form 202). OGE modified the formatting (dividing it into four major sections with headings and providing boxes for users to check) to make completing the form easier. Also, OGE updated the contact information to reflect recent organizational changes. The OGE Form 202 is available on the OGE Web site. Agencies should now use the updated form which replaces the previous edition.

Paperwork Approval Granted for Qualified Trust Model Certificates and Model Trust Documents:



In March 2002, the Office of Management and Budget (OMB) granted approval for an additional three years under the Paperwork Reduction Act (PRA) for slightly revised versions of the executive branch qualified trust model certificates and model trust documents. OGE had published a second round paperwork notice in January 2002 of its request for approval to OMB, with a 30-day comment period. See 67 Federal Register 2215-2216 (January 16, 2002).

OGE substituted the words "mailing address" for the words "home address" where they appear within the model trust documents, updated the paperwork contact information to reflect recent organizational changes, and added the phrase "judge-issued" subpoena to the Privacy Act Statement. OGE has published a technical rule revision in the Federal Register in order to modify the paperwork and privacy statements for the model certificates of independence and compliance in appendix C of 5 C.F.R. part 2634. See 67 Federal Register 22348-22349 (May 3, 2002). The 10 revised model trust documents are available on the OGE Web site. Agencies and the public should now use the newly updated trust documents which replace the previous editions.

Paperwork Approval Granted for Public Financial Disclosure Access Customer Service Survey:

In March 2002, OMB also granted approval for an additional three years under the PRA for a slightly revised version of OGE's Public Financial Disclosure Access Customer Service Survey form. OGE had published a second round paperwork notice in January 2002 of its request for approval to OMB, with a 30-day comment period. See 67 Federal Register 740-741 (January 7, 2002).

Based on an analysis of customer responses to question 4 of the survey, OGE modified the question to achieve greater clarity regarding faxing or mailing requests for documents. The revised OGE customer survey, which is not a branchwide form, replaces the previous edition.

First Round Paperwork Notice for a Slightly Revised OGE Form 450:

OGE has published an initial notice of its forthcoming request to OMB for a proposed slightly revised OGE Form 450 Executive Branch Confidential Financial Disclosure Report. See 67 Federal Register 12017-12018 (March 18, 2002). In that notice, OGE has proposed to update the paperwork contact information to reflect recent OGE organizational changes, add a continuation page to Part I, and adjust the threshold for reporting of gifts and travel reimbursements for regular employee annual filers in Part V. OGE

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anticipates the General Services Administration to redefine "minimal value" under the Foreign Gifts and Decorations Act, 5 U.S.C. 7342(a)(5), for the three-year period 2002-2004. Once the "minimal value" is redefined, OGE will adjust the threshold amounts on the OGE Form 450 accordingly.

Rulemaking on Filing Extensions for Certain Confidential Report Filers:

Last fall, the Office of Government Ethics (OGE) published a final rule procedural amendment to the executive branch financial disclosure regulation allowing agencies to extend the filing dates for filers of the OGE Form 450 Confidential Financial Disclosure Report who are active duty members of the Armed Forces, civilian employees or others in a combat zone or otherwise supporting, away from their permanent duty station, the Armed Forces or other governmental entities following a Presidential declaration of national emergency. See 66 Federal Register 55871-55872 (November 5, 2001), effective upon publication.

Final Rule Amendments Published on Compensation Definition for Standards Provision on Teaching, Speaking and Writing Activities:

OGE also published last fall its final rule amendments on the definition of compensation for purposes of the prohibition on acceptance of compensation in connection with certain teaching, speaking and writing activities under the executive branch standards of ethical conduct regulation. See 66 Federal Register 59673-59675 (November 30, 2001), which became effective on December 31, 2001. This rulemaking adopted the prior interim final rule amendments published in September 2000 as final, with minor modifications based primarily on the comments OGE received. An article on page 10 of the Fall 2000 edition of the **Government Ethics Newsgram** discussed the interim rulemaking and the underlying litigation in some detail.

Fall 2001 OGE Semiannual Regulatory Agenda:

OGE published its semiannual regulatory agenda for last fall at 66 Federal Register 62461-62468 (part XXXV) (December 3, 2001). OGE's agenda, which is part of the executive branch Unified Agenda of Federal Regulatory and Deregulatory Actions, provides an updated listing of the various OGE rulemakings under development.

Update to Agency Supplemental Standards Rulemakings:

With OGE's concurrence and co-signature, the following agencies have issued, for codification in title 5 of the Code of Federal Regulations, final rule amendments to the supplemental standards of ethical conduct for their employees:

- ◆ National Aeronautics and Space Administration — see 66 Federal Register 59135-59136 (November 27, 2001), effective upon publication (in a separate rulemaking published the same day, NASA also revised its residual conduct standards regulation in its own C.F.R. title — see 66 Federal Register 59136-59138, also effective upon publication).
- ◆ Department of Transportation (concerning the Federal Aviation Administration) — see 66 Federal Register 60139-60140 (December 3, 2001), effective upon publication.

Coming to a PC Near You!

OGE is in the planning stages of setting up an e-mail list service for ethics officials. The e-mail list service will be the primary medium for communicating with the ethics community. OGE will use the list to routinely inform ethics officials about ethics issues and decisions, as well as upcoming events such as the conference and ethics training. The e-mail lists will be maintained by the Government Printing Office using the L-soft product LISTSERV®.

Watch for additional information about the e-mail list service on OGE 's Web site.

12th Annual Government Ethics Conference

The 12th Annual Government Ethics is scheduled for March 10 through 13, 2003 at the Valley Forge Convention Plaza in King of Prussia, Pennsylvania. The full conference program will be offered Tuesday, March 11th through Thursday, March 13th. For the first time we will also be offering a day of pre-conference training for ethics officials new to the field. These sessions will be offered on Monday, March 10th and will require separate registration. The pre-conference may be attended independent of or in conjunction with the full conference program. More information on the conference program and registration will be available in the coming months!