



A Publication of the  
Office of Government Ethics  
for the Executive Branch

Summer 1997 Vol. 14 No. 2

Government

# Ethics Newsgram

## OGE Publishes Amendments to Training Regulation

OGE recently published interim rule amendments to subpart G of 5 C.F.R. part 2638, titled "Executive Agency Ethics Training Programs" (Training Regulation). 62 *Federal Register* 11307-11314 (March 12, 1997). With the exception of certain parts of the rule concerning the presentation of annual briefings to those covered employees who file SF 278, Public Financial Disclosure Reports, this interim rule became effective on June 10, 1997.

A number of agencies and ethics practitioners requested that OGE review the Training Regulation to better enable agencies to diversify their training programs. Specialized training for senior or "at-risk" employees, follow-up training for agency employees not subject to the annual briefing requirement, and other laudable training goals were hampered or

prevented entirely by the need to provide the required verbal briefing to all covered employees, according to the agencies requesting changes to the regulation.

The interim rule balances agency needs to be able to allocate their resources in a more flexible and efficient manner while still providing executive branch employees with sufficient training to understand the ethical responsibilities concomitant with their Government positions. OGE published the changes as an interim rule to allow agencies to take advantage of the increased flexibility provided by the amendments during the course of the calendar year 1997 training cycle. To assist agencies in taking advantage of the interim rule changes, OGE has included the answers to a few commonly asked questions about the interim rule in a related article (see FAQs, page 4).

The major change made by the interim rule goes to the nature of the annual ethics briefings that agencies must provide to employees covered by the annual briefing requirement. Instead of providing annual "verbal" briefings, agencies may now meet the annual briefing requirement for most covered employees by means of written briefings for up to two out of every three years. However, agencies generally must still provide verbal briefings to those covered employees who file Public Financial Disclosure Reports.

In addition, starting in 1998, those verbal briefings must include a qualified individual present during and immediately following the briefing. Agencies should note that "presence" does not require the qualified individual to be physically  
*Continued on page 2 column 1*

## OGE Receives Awards for Video

The OGE video, "The Battle for Avery Mann," has garnered two awards. It received a Bronze Award at the 30th Annual Worldfest-Houston International Film Festival. "The Battle for Avery Mann" was one of 4,150 entries in Worldfest-Houston, a ten-day event, with competitors from 31 countries. OGE received a framed award. In March OGE also received an "Addy," an award given by an advertising federation for commercials and programs produced in the Huntsville, Alabama, area.

The 20-minute video is the story of an average executive branch employee's struggles with the rules governing everyday conduct. Throughout the story, Avery is faced with different dilemmas including using Government equipment for personal

documents, accepting a gift from a subordinate and working on a project that involves his outside employer. Avery finds himself caught between what he knows is the right thing to do and what may not be right but would be more convenient or beneficial to him.



### i n s i d e :

Director's Column	2
Teaching, Speaking, and Writing Rule	3
7th Annual Ethics Conference	3
Ethics Training Program Survey	4
FAQs on Training Regulation	4
OGE Provides Information	4
Ethics News Briefs	5
Ethics in Action	5
Program Reviews and the OIG	6
OLC Issues Memo	6
OGE Optional Form 450-A	7
Newsgram on Internet	7
Recent Appointments	7

# Director's Column

## Government Ethics Newsgram

The **Government Ethics Newsgram** is published by the U.S. Office of Government Ethics, 1201 New York Avenue, NW., Suite 500, Washington, DC 20005-3917. Telephone 202-208-8000. Fax 202-208-8039.

**Editor:** Jo Lee Hazelwood.

**Assistant Editor:** Donna Cencer.

**Contributing Editors:** Laura Lanigan; Victoria R. May; James O'Sullivan; Lorna Syed.

**Publication Coordinator:** JoAnn Wood.

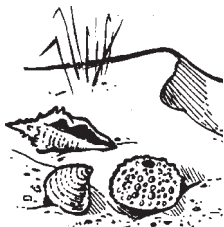
**Copying and Distribution:**

Victoria R. May; Sandy McKinzy; Yale Eisenman; Sonya Y. Hall.

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

In an effort to expedite the distribution of the Government Ethics Newsgram to the ethics community and other interested parties, the Director of the Office of Government Ethics has asked the **Government Ethics Newsgram** staff to publish this issue "in-house." As a result, the format has been modified to accommodate this request. If you have any comments or suggestions regarding the new format, please direct them to the editorial staff at the OGE address given above.

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.



Those of us in the Federal ethics community are well aware of the many developments that have taken place in the executive branch ethics program in recent years. A comparable trend has been under way in the business community where the interest in and growth of corporate ethics programs continue to accelerate. Signs of this growth may be seen in the expanding membership of the Ethics Officers Association, the active participation by the member companies in the Defense Industry Initiative, and the ethics forums sponsored by the Conference Board. All of this activity in the private sector is driven not merely by a need to comply with legal requirements but by a sense that a strong ethical culture contributes to business success.

Many corporate ethics programs have become quite sophisticated in both their organizational frameworks and their counseling and training functions. It is not uncommon for American corporations to have an ethics office, an ombudsman's office and a best practices office. Hotlines

are established to field employee questions. And training programs employ a variety of innovative approaches including the use of games and videos. A recent story in the press featured one defense industry company that used a very popular cartoon character (Dilbert) to effectively communicate its ethics message.

Typically corporate ethics programs take a proactive approach to dealing with ethics issues, place emphasis on fostering an ethical organizational culture based on fundamental values, and systematically review and evaluate performance through employee interviews, focus groups and surveys. They also stress the importance of maintaining strong channels of communication. While it is true that corporate ethics programs have a broader subject matter and a different focus than our Government ethics program, many of these features are worthy of our consideration as we seek to improve our own ethics program and fulfill our preventive mission.

## Amendments to Training

Continued from page 1

present at the location of the briefing, so long as those receiving the briefing have direct and immediate access to the qualified individual during and immediately following the briefing. According to information that OGE receives from agencies in our Annual Agency Ethics Questionnaire, public filers constitute about 5.4% of the "covered employees" for whom agencies must provide annual ethics briefings.

The interim rule also makes certain other changes to the Training Regulation. The interim rule deletes "procurement officials" from the list of covered employees that agencies must provide with annual ethics briefings. The procurement integrity statute was recently revised, and it no longer contains the term "procurement officials." The revised procurement integrity statute contains an informal reference to "procurement officers," who are referred to as those who are personally and substantially involved in a procurement in excess of the simplified acquisition threshold (generally \$100,000). See 41 U.S.C. § 423(c). OGE decided not to include "procurement

officers" as a category of covered employees in part because of the imprecision of the reference. Moreover, many of those formerly described as procurement officials are already considered covered employees for purposes of the annual ethics briefing requirement of the Training Regulation because they are contracting officers or OGE Form 450, Confidential Financial Disclosure Report filers. Thus, no substituting term was added. The interim rule also codifies OGE's policy change (announced in July 6, 1995 DAEOgram, DO-95-028) that agencies need no longer file their annual training plans with OGE, and makes other, minor changes throughout subpart G.

A more complete discussion of the entire rule may be found in the preamble of the interim rule amendments as published in the *Federal Register*. As with all OGE regulations, the interim rule is a product of an ongoing dialogue between executive agencies and OGE, and can only be improved through the furthering of this dialogue. In this regard, OGE would like to express our thanks to the Ethics Trainers' Partnership, which has provided invaluable input into this interim rule.

# Teaching, Speaking, and Writing Rule in Wake of Sanjour Case

On May 21, 1997, OGE issued a memorandum to the ethics community (DAEOgram DO-97-025) recommending that the part of the "teaching, speaking, and writing" rule at 5 C.F.R. § 2635.807 that was held unconstitutional in Sanjour v. Environmental Protection Agency, 56 F.3d 85 (D.C. Cir. 1995) (*en banc*) not be enforced against "nonsenior" executive branch employees. Specifically, OGE's recommendation concerns the rule's prohibition on acceptance of travel expenses for unofficial teaching, speaking, or writing that is considered "related to duties" under section 2635.807(a)(2)(i)(E)(2) because it "deals in significant part with . . . [a]ny ongoing or announced policy, program or operation of the agency." Pending the district court's issuance of a final order on remand in Sanjour and until further notice, the DAEOgram asks ethics officials to advise employees that this prohibition will not be enforced against executive branch employees other than "covered noncareer employees."

As defined in 5 C.F.R. § 2636.303(a), and consistent with the provisions of the Federal Employee Pay Comparability Act of 1990, 5 U.S.C. § 5376, the term

"covered noncareer employee" encompasses a variety of senior noncareer employees who are in positions "above GS-15." These include certain Presidential appointees, noncareer members of the Senior Executive Service (SES) or other SES-type systems, and Schedule C or comparable appointees. The term excludes special Government employees, Presidential appointees to positions within the uniformed services, and Presidential appointees within the foreign service below the level of Assistant Secretary or Chief of Mission.

According to the OGE memorandum, continuing enforcement of the prohibition against "covered noncareer employees" comports with the assertion by the court of appeals in Sanjour that "the balancing of interests relevant to senior executive officials might 'present a different constitutional question than the one we decide today'" and the court's determination, accordingly, to "express no view on whether the challenged regulations may be applied to senior executive employees." 56 F.3d at 93, *citing*, United States v. National Treasury Employees Union, 513 U.S. 454, 115 S. Ct. 1003, 1018 (1995). Relying on the definition of "covered noncareer employee" in 5 C.F.R.

§ 2636.303(a) as a means of distinguishing "senior" from "nonsenior" employees is consistent with the imposition of greater restrictions on covered noncareer employees in section 2635.807(a)(2)(i)(E)(3).

For the present, the Sanjour case, on remand from the court of appeals, continues in the district court, where the parties, unable to agree on the relief to which the plaintiffs are entitled as a result of the court of appeals decision, have submitted motions for a final order. Once the district court issues a final order clarifying the appellate court's ruling, OGE intends to amend the "teaching, speaking, and writing" rule to comport with the ruling.

In the interim, OGE, in its May 21 memorandum, cautions that its nonenforcement recommendation applies only to the ban on acceptance of travel expenses, not other forms of compensation, and affects acceptance of travel expenses only when the teaching, speaking, or writing is "related to duties" under section 2635.807(a)(2)(i)(E)(2) and is performed by an employee who is not a "covered noncareer employee," as that term is defined in 5 C.F.R. § 2636.303(a). All other applications of section 2635.807 remain fully enforceable.

## 7th Annual Ethics Conference

The 1997 U.S. Government Ethics Conference will be held September 15-18, at the Williamsburg Marriott in Williamsburg, Virginia. The 2-1/2 day conference will begin with early registration on Monday afternoon, September 15. The conference program officially begins Tuesday morning, September 16, and concludes at noon on Thursday, September 18.

As in the past, DAEOs nominated all registrants for their agencies. Registrants must make their own hotel reservations with the Williamsburg Marriott (757-220-2500). Overflow lodging hotels are the



Courtyard Marriott (757-221-0700) and the Quality Inn (757-220-1100). Conference registration deadline: Friday, July 11, 1997.

The conference will feature plenary sessions, panels presentations, and guest speakers. Mr. Charles F. C. Ruff, Counsel to the President, has accepted our invitation to speak. There will be more than 30 panel sessions with three of those sessions devoted to introductory-level courses for new ethics officials, and an OGE Program Managers' Update. For other conference information, contact OGE's conference coordinator, Sheila Powers at 202-208-8000, extension 1104.

# Ethics Training Program Survey

In February 1997, OGE conducted a survey to learn more about the experiences, opinions, and needs of agency ethics officials regarding their ethics training programs. See DAEOgram of February 7, 1997 (DO-97-010). The survey results (DAEOgram, June 2, 1997 (DO-97-026)) indicated that most ethics officials feel that they have been successful in meeting the requirements of their agency ethics training program and were generally satisfied with the assistance provided by OGE. However, a significant number thought that alternative training methods and regulatory changes would help them meet program objectives more efficiently and effectively while increasing employee satisfaction with the training program.

The need for relief from the annual ethics training requirement was the predominant message ethics officials sent OGE. The frequency of training was reported to

cause the most dissatisfaction among employees. These problems were addressed and should be alleviated, or at least greatly diminished, by our recent interim rule amendments to OGE's training regulation (see OGE Published Amendment to Training Regulation, page 1).



A large number of survey respondents requested that OGE help develop and produce interesting and relevant training

materials on a variety of topics, using the latest instructional methods including videos and computer-based training. OGE is continuing to work toward providing these tools for agency use.

## OGE Provides Information

OGE meets its mandate to provide ethics information in several ways. OGE employees are available to answer questions from the general public on a daily basis by means of a "random call system." Divisions within OGE answer random calls for an assigned two-week period of time on a rotating basis. A caller is as likely to speak with a desk officer as an attorney, management analyst, or an ethics specialist. OGE has received calls from sources as varied as the political science department of the University of Helsinki, a local attorney, a reporter from the **Washington Post**, and private citizens from across the country.

OGE's relatively small staff cannot answer questions of all executive branch employees. OGE is available to advise agency ethics officials who in turn provide advice to employees. A system of desk officers was created so that agency ethics officials might circumvent the random call system and contact someone with specific knowledge about their agency and ethics program. OGE strongly encourages agency ethics officials to contact the desk officer assigned to their agency who will likely offer advice and may provide additional information.

OGE provides general ethics information in periodic DAEOgrams, this triannual **Government Ethics Newsgram**, regional ethics training sessions, the Annual Government Ethics Conference, the Ethics CD-ROM, the OGE Web site, and numerous pamphlets, publications, and videotapes.

## FAQs

### Frequently Asked Questions on OGE Training Regulation

**Q.** If an agency provides a "read-only" copy or a summary of the Standards to new employees for their initial ethics orientation, may the agency meet the requirement that a complete copy of the materials be "retained and readily accessible" through posting the materials on an Internet Web site?

**A.** Yes, provided that all of the employees have access to the Internet.

**Q.** Do verbal briefings provided in 1997 prior to the effective date of the interim rule count towards the requirement that non-public filers receive a verbal briefing, so that an agency would not have to provide verbal briefings for these employees again until 2000?

**A.** Yes, verbal training provided under the prior form of the Training Regulation counts for this requirement.

**Q.** Does OGE have a minimum standard of what a written "briefing" must be?

**A.** Written annual ethics briefings must meet the content requirements found at 2638.704(c). The remainder of the briefing is a matter of agency discretion.

**Q.** What will OGE be looking for in the training area when it reviews my program next year?

**A.** The interim rule does not impose any one means of tracking the training that an agency is providing. Some means of verifying who the covered employees are and what form of training has been provided to those employees will be required, however. OGE program reviewers will also be reviewing agencies' written plans for annual ethics training, which should now be kept at the agency.

# Ethics News Briefs

## Supplemental Agency Ethics Regulations Update

With OGE's concurrence and co-signature, the following additional agencies have issued, for codification in title 5 of the Code of Federal Regulations (C.F.R.), interim final or final rule supplemental standards of ethical conduct for their employees (in addition to the executive branchwide Standards at 5 C.F.R. part 2635). A total of 37 departments and agencies have now issued supplemental standards.

Federal Deposit Insurance Corporation (final rule amendments) — 62 *Federal Register* 3771-3773 (January 27, 1997).

National Labor Relations Board (interim rule) — 62 *Federal Register* 6445-6448 (February 12, 1997).

Department of Justice (final rule) — 62 *Federal Register* 23941-23943 (May 2, 1997), as corrected at 62 *Federal Register* 31865 (June 11, 1997).

## Update to Post-Employment Regulation

OGE published a final rule update to its regulatory listings of exempt positions and departmental separate component designations for purposes of the senior employee post-Government employment restrictions under 18 U.S.C. § 207. See 62 *Federal Register* 26915-26918 (May 16, 1997), as corrected at 62 *Federal Register* 31865 (June 11, 1997).



## Final Hatch Act-Related Revisions to Standards Adopted

OGE adopted as final without change its prior interim rule revisions to the Standards of Ethical Conduct to bring them up-to-date in light of the Hatch Act Reform Amendments. See 62 *Federal Register* 12531 (March 17, 1997).

## Miscellaneous

OGE's Spring 1997 semiannual regulatory agenda was published as part of the executive branchwide Unified Agenda of Federal Regulatory and Deregulatory Actions. See 62 *Federal Register* 22486-22491 (part XXXIV) (April 25, 1997).

OGE published a further minor correction to its final regulation under 18 U.S.C. § 208. See 62 *Federal Register* 23127-23128 (April 29, 1997).

# Ethics in Action

In response to the Summer 1996 Readership Survey comments received, we provide you with ethics scenarios that apply the Standards of Ethical Conduct for Employees of the Executive Branch and certain criminal conflict of interest statutes.

**Q.** John recently resigned his position as the vice president of an electronics company in order to join the Department of the Army as a computer specialist. His new boss at the Army has asked him to participate in the administration of a contract for which his old company is a first-tier subcontractor.

May John do what his boss asked? What concerns should John have about this?

**A.** Under § 2635.502(b)(1)(iv), John has a covered relationship with the subcontractor since he was employed by the company within the last year. Since John knows that his former employer is a party to the contract administration, John has to determine whether a reasonable person would question his impartiality if he were to participate. If he determines that a reasonable person would question his impartiality, then he should not

participate in the administration of the contract unless authorized by the "agency designee." Moreover, the agency designee may make an independent determination concerning John's participation, and may disqualify John if he finds that his impartiality would be questioned.

**Q.** Bill is a career employee with the Department of Energy Office of the Inspector General. He works primarily on audits of the Department's Defense Programs. Bill is also a CPA, and in his spare time prepares Federal and state income tax returns for some of his friends during tax season. For these services, he receives a small fee.

Is it okay for Bill to continue his tax work?

**A.** Assuming the outside work does not conflict with his official duties at the Department of Energy (a call the agency has to make), Bill is not prohibited from preparing tax returns for his friends and collecting a fee for his services. However, because of two criminal statutes, 18 U.S.C. §§ 203 and 205, Bill cannot represent his friends before the IRS, other than to provide factual information, should the returns be audited.

# Q & A

# Program Reviews and the OIG

**D**uring every agency program review, the Program Review Division (PRD) of OGE examines the relationship between ethics officials and officials assigned to the Office of Inspector General (OIG), or a similar office in the absence of an OIG. Agency ethics officials often ask about PRD's purpose in speaking to the OIG.

In speaking with the OIG, PRD is sometimes able to gain an understanding of the internal culture of the agency, which is useful in placing events and processes in working context. Through conversations with both ethics officials and OIG officials, PRD tries to determine whether good communication and coordination exist

between the offices. Reviewers consider good communication and coordination critical to resolving conflict of interest issues once they have been identified. PRD ensures that, when appropriate, ethics officials utilize the investigative

powers of the OIG. PRD also determines whether the OIG, during the course of an investigation, confers with ethics officials if appropriate.

The OIG is often able to explain specific processes for dealing with potential criminal conflicts of interest. PRD determines whether the agency has referred or is intending to refer for criminal or civil prosecution or injunctive relief any violations of the criminal conflict of interest statutes to the Department of Justice and if OGE has been notified of such referrals. Finally, the meeting alerts the OIG to the upcoming ethics program review report. Reports are issued to the OIG as a standard practice.



# Service on Outside Boards Clarified

## OLC Issues Memorandum

**O**n November 19, 1996, the Office of Legal Counsel (OLC) issued a memorandum addressing whether 18 U.S.C. § 208 would prohibit Federal Bureau of Investigation (FBI) personnel from serving on the boards of directors of non-Federal nonprofit entities in their official capacities. That office determined that the statutory prohibition does prevent an employee from such service absent explicit statutory authority or a waiver under 18 U.S.C. § 208(b).

OLC found that the prohibition in section 208 "extends to **any** official action by a government employee that affects the employee's financial interests or those of other specified persons or entities, such as an organization for which the employee is

a director." Thus an FBI employee who performs official duties for the FBI in serving on the board of an outside organization is subject to section 208 with respect to any action the employee takes as a director of the outside organization.

Since the publication of the OLC memorandum, several agencies have decided to issue waivers under section 208(b)(1) to permit employees to serve on the boards of outside organizations. In accordance with the requirements of 5 C.F.R. § 2640.303, these agencies have consulted with OGE regarding issuance of the waivers. After reviewing the various proposed waivers for service in an official capacity as an officer or director of a private organization, OGE has determined that it will provide consultation only with respect to whether the procedures set forth

under paragraph (a) of § 2640.301 have been followed, and whether the factors set forth under paragraph (b) of that section have been adequately considered.

Because OGE does not have the authority to interpret agencies' organic statutes, OGE will not concur with, provide guidance on, or make any determination regarding an agency's decision that it has statutory authority to appoint an employee to an outside board position. For similar reasons, OGE also can not concur with, or advise on, issues arising from the employee's authorization to serve on the board, including the legality or propriety of agency payment of dues or other expenses, employee participation in fundraising, or the employee's use of Government resources in fulfilling board responsibilities.

# Standardized Alternative Confidential Disclosure Form

## OGE Optional Form 450-A

In 1995, OGE authorized the Department of Education (DoEd) to test an alternative approach to the annual Confidential Financial Disclosure Reports for regular employees who had submitted a previous report. Annual filers who had no new items to report for themselves, their spouse, and their dependent children on any part of the OGE Form 450 (450), formerly the SF 450, since their last report and who had no significant change in their Government work responsibilities during the reporting period were permitted to sign a "certificate of no new interests" in lieu of filing a new 450 for the October 1995 filing cycle.

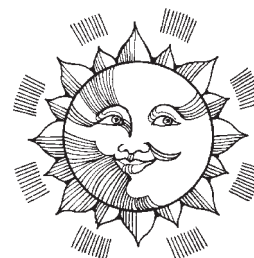
DoEd reported to OGE that the experiment was a success. They also recommended that this alternative certificate be continued and expanded for use by other departments and agencies. Prior to expanding

the use of this certificate, OGE conducted both a survey of agency ethics officials and a focus group, soliciting comments on the suitability and desirability of standardizing such a certification as an alternative to the 450 executive branchwide.

The responses OGE received were overwhelmingly positive. Consequently, OGE published a proposed rule in the *Federal Register* on January 15, 1997, which would authorize this procedure throughout the executive branch. OGE received seven comment letters from agencies and made minor changes to the proposal based on those comments. The final rule was approved by OMB in June 1997 and was published in the *Federal Register* on June 24, 1997 at 62 *Federal Register* 33972-33977.

The certificate of no new interests, OGE Optional Form 450-A, can be used during the 1997 annual filing cycle at agencies

that approve its use by regular employees who qualify and who wish to use it in lieu of filing an OGE Form 450. The regulatory amendment to 5 C.F.R. Part 2634 prescribes a uniform format and methodology. A camera-ready copy of OGE Optional Form 450-A with this standardized format, along with administrative guidance, was disseminated in a June 25, 1997 DAEOgram (DO-97-028) to each DAEO for local agency reproduction.



## Recent Appointments

Two appointments in OGE's Office of General Counsel became effective in April 1997. Marilyn Glynn, who served as OGE's Deputy General Counsel since June 1996, was named General Counsel. She has been an attorney at OGE since June of 1990. Stuart Rick was appointed Deputy General Counsel. Mr. Rick has been an Associate General Counsel with OGE since January 1993.

## Read the Newsgram on the Internet



**NEW OGE URL:**  
[www.usoge.gov](http://www.usoge.gov)

Did you know that you can read the **Government Ethics Newsgram** on OGE's Web site, [www.usoge.gov](http://www.usoge.gov)? If you are computer savvy, you can print a copy to share in your office. Please let us know if you would prefer to stop receiving a mailed copy by sending an e-mail message to:

[usoge@oge.gov](mailto:usoge@oge.gov)

In the body of the message include the following:

"Attn: Jo Lee  
Stop mailing **Government Ethics Newsgram** to:  
[From Newsgram Mailing Label ]  
Name  
Agency  
Agency Street Address  
City, State, Zip"

Office of Government Ethics  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

---

Official Business  
Penalty for Private Use, \$300

---