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for the Executive Branch

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Government

Ethics Newsgram

Ethics Trainers Form Partnership

To foster effective ethics training, executive branch ethics trainers have joined forces to form an Ethics Trainers' Partnership. In June 1994, ethics trainers gathered at OGE to answer the question, "How can we help each other?" As an answer to that question, they began to work together to present educational programs, to assess ethics trainers' needs, and to create training materials.

The Partnership has three active task forces, each with a very important mission:

Program Planning presents a quarterly program intended to inform and train participants in various aspects of ethics training.

Needs Assessment develops a needs-assessment tool to determine the training needs of agency ethics programs.

Universal Training prepares training materials for universal use by agencies to meet the annual ethics training requirement.

Two very successful programs, which were open to all executive branch ethics



Segments of a good ethics training program are presented, in part, by Arthur A. Lopez at the Ethics Trainers' Partnership meeting in January. Mr. Lopez is an attorney-advisor at the Department of Transportation's Federal Transit Administration.

officials, have already been presented by the **Program Planning** task force. On October 18, 1994, the program, "Alternative Ethics Training Formats or Don't Shoot the Messenger," featured effective ethics training using several different formats. On January 24, 1995, "Who Wants a Piece of the Pie? or The Segments of a GOOD Training Program" highlighted seven segments of a good ethics training program and how each "slice" fits together in an "ethics training pie." Look for details on upcoming programs in future Partnership memorandums.

The **Needs Assessment** task force developed a survey tool and is currently analyzing the responses from agencies in order to determine which training materials should be created. The **Universal Training** task force is producing a one-hour ethics satellite transmission to fulfill the annual ethics training requirements for covered employees, which will be used by agencies who wish to participate in its preparation. The task force will be issuing more details concerning the transmission specifications, should your agency want to participate. This project is the Partnership's primary goal for 1995.

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OGE Acquires TDD Capability

Expanding communications capability and accessibility, OGE recently installed a telecommunications device for the deaf (TDD) to its telephone system. A TDD is essentially a phone with a keyboard and digital display which is used by speech and hearing-impaired individuals. A message typed in at one TDD is sent over regular phone lines and displayed on another TDD at the end of the phone line. In addition to the display,

some TDDs have a built-in printer that can record both sides of the conversation, or be used to take a message. OGE's TDD has printer capability.

OGE's new TDD phone number is (202) 523-1200, and should appear in the next edition of the GSA's **U.S. Government TDD Directory**. All TDD calls will be answered by one of OGE's staff members. *Continued on page 2 column 3*

Dangerous Dilemma

As reported in the Fall 1994 issue of the **Government Ethics Newsgram**, OGE has produced an ethics game, "Dangerous Dilemmas," for classroom use. See "An Assortment of Ethics Training Offered in 1994," **Government Ethics Newsgram**, Vol. 11, No. 3. The game can be played as a competition between teams or individually. You may test your ethics knowledge on the following dilemma which is similar to those used in the game. A model answer follows.

Dilemma

Ellen is a computer specialist with an agency that awards grants to cities. Her job, however, does not involve the grant review process. Each year, her home town, using written guidelines, selects a Citizen of the Year based on a person's record of public service. This year Ellen has been selected by the town in recognition of her many years of public service in various community organizations and projects. In addition to a banquet in her honor, the town plans to give her a crystal bowl engraved with the town seal and a five-day Caribbean cruise for two. The town is currently an applicant for a grant from her agency. Ellen may:

- a. Attend the banquet and accept the bowl and cruise because public service awards are excluded from the definition of a gift.
- b. Attend the banquet and accept the bowl and cruise under the exception for awards and honorary degrees without obtaining a written determination by the agency ethics official.
- c. Attend the banquet and accept the bowl and cruise under the exception for awards and honorary degrees provided that the agency ethics official makes a proper written determination.
- d. Attend the banquet but decline the bowl and cruise because the town is a prohibited source and the aggregate value of the bowl and cruise exceeds \$200.

Answers

Because the town is a grant applicant, it is a "prohibited source" of gifts for employees of Ellen's agency. However, under the exception at 5 C.F.R. § 2635.204(d), employees may accept certain awards and honorary degrees that would otherwise be prohibited. In the case of gifts that have an aggregate value in excess of \$200, the gifts may be accepted provided that the donor does not have interests that may be substantially affected by the performance or nonperformance of the employee's official duties and provided that the proper written determination is made. The agency ethics official must determine that the award is made as part of an established program of recognition under which awards are made on a regular basis and pursuant to written standards.

You receive 2 points for answer c.

You recognized that Ellen may attend the banquet and accept the bowl and the cruise even though the aggregate value exceeds \$200 provided that the agency makes the necessary written determination.

You receive 1 point for answer b.

You recognized that this is a bona fide public service award and that the donor did not have interests that could be substantially affected by Ellen's official duties. However, you did not recognize that because the gifts exceed \$200 in value, Ellen must obtain a written determination from her agency.

You receive 1 point for answer a.

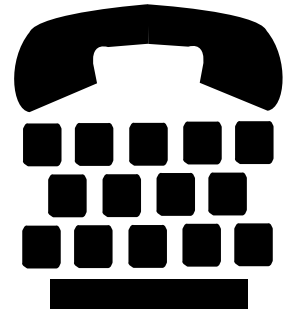
You recognized that this is a bona fide public service award and that the donor did not have interests that could be substantially affected by Ellen's official duties. However, you mistakenly believed that such awards were an exclusion from the definition of a gift.

You receive 0 points for answer d.

Unfortunately, you would deprive Ellen of the bowl and cruise which she may accept provided the proper determination is obtained. There is no \$200 cap on the value of gifts that may be accepted under this exception.

Acquires TDD continued from page 1

However, if the individual is on another line or away from his/her desk, the display asks the caller to leave a message. That message is then forwarded to the appropriate staff member for a prompt response.



Government Ethics Newsgram

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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.

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.

An International Exchange of Ideas

OGE and the United States Information Agency (USIA) recently cosponsored the International Conference on Ethics in Government which was held November 20 through 23, 1994. Over 80 representatives from 49 countries traveled to Washington, DC to attend. Ethics experience among attendees varied, as some were from countries with highly structured ethics systems, and others from new democracies where ethics systems are only beginning to emerge. Ethics officials from throughout the executive branch shared their perspectives and experiences on government ethics with Conference attendees.

The excerpts which follow are taken from a production on WORLDNET, USIA's Television and Film Service, which was broadcast during the Conference. In it, OGE's Director Potts shares his thoughts on government ethics with two Conference participants: Dr. Lenora Vasquez de Jesus, Secretary of the Cabinet and Head of the Presidential Management Staff in the Philippines, and Dr. Sibusiso Nkomo, Commissioner of the Public Services Commission in South Africa. The questions were asked by callers to the show.

Whose values were promoted at the Conference?

Mr. Potts:

The very first seminar of this Conference recognized the cultural differences between participants. Every country will have to decide its ethical standards and expectations based on its own culture, history, and mores; there can be no universal code of conduct for all countries. Still, I found quite remarkable coming out of that discussion an amazing convergence of views on certain fundamental principles: that government operations should be transparent, and that democracy is thwarted by public officials who misuse their offices for private gain.

Ms. Vasquez de Jesus:

This Conference has proceeded on the principle that we are all different from each other, but in some ways all human beings are the same. There may be certain basic principles that are universal, but all of these principles are somehow bound by differences that cross nations and societies. The Conference has proceeded quite

well in realizing what we have in common, including the similarities in ethics systems between different countries.

Dr. Nkomo:

A central theme is emerging from the Conference. As societies like South Africa begin to emerge, now that the Cold War is over, they must understand the notion of ethics. Still, the whole issue of unethical behavior is not unique to developing countries. We have been meeting in Washington to discuss efforts made by all nations to make government ethics a central issue.

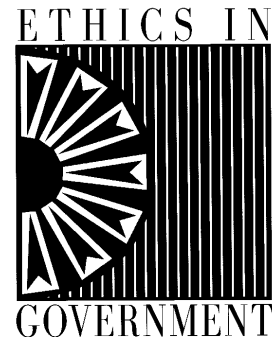
What contributes to the erosion of public confidence in government officials?

Mr. Potts:

The erosion of public confidence in government officials is usually the result of high-level officials engaging in misconduct that is given a tremendous amount of play in the press. From my perspective at the Office of Government Ethics, I believe the vast majority of career civil servants in the United States are honorable and honest people. The number of incidents of misconduct that result in punishment are remarkably few, given the fact that we have over three and a half million executive branch employees.

Ms. Vasquez de Jesus:

Public confidence in Philippine government officials has eroded for two reasons. The public has had direct experiences with government officials who demand tips on the side, including transactions with policemen and those who grant licenses and permits. The reason for this may be due to the low salary structure we have for government officials. This points to an underlying cause of eroded trust in government: a basic problem in the Philippines' economic power structure, where money is concentrated in the hands of the very powerful few. We have attempted to come up with solutions that will attack the simple problems and their root causes as well.



Dr. Nkomo:

When we talk about ethics in South Africa, we also have to look at the issue of human rights and address our historical baggage in order to move forward. Erosion of confidence in the newly-founded democracy in South Africa will be caused by the government's failure to meet its challenges. If officials are corrupt, they are not committed to the effective delivery of services or the protection of human rights. Our government will not be representative if we fail as government officials to accommodate our civil society.

What ethics structures are forming or are already developed in your country?

Ms. Vasquez de Jesus:

In the Philippines, our general ethics structure is very similar to the American system, as the legislative, executive, and judicial branches of government have their own administrative codes of conduct and ethics offices. However, our new constitution adopted an independent body, called the Ombudsman, that was given the mandate of investigating, prosecuting, and preventing corruption in government offices. This covers government officials from all three branches of government.

Dr. Nkomo:

In South Africa, the Public Protector is charged with the responsibility of dealing with corruption, maladministration and ethics. The authority of this Public Protector is enshrined in South Africa's newly-written constitution. In addition, the Public Service Commission has the responsibility of drafting a code of conduct and making recommendations to government on conflicts of interest and other ethics-related matters.

Ethics News Briefs

Second Additional Grace Period Extension Granted

OGE has again extended the grace period for certain existing agency regulatory standards prohibiting financial interests and setting forth prior approval requirements for outside employment and activities. Most agency standards of conduct regulations were superseded two years ago when the executive branch-wide standards of ethical conduct promulgated by OGE took effect on February 3, 1993. However, OGE did provide a one-year grace period for any existing agency regulatory financial interest prohibitions and prior approval for outside employment/activities requirements. The purpose of the grace period was to give agencies having such provisions time to issue supplemental standards under part 2635. That grace period was extended last year for an additional year.

OGE has now extended the grace period until January 3, 1996 (or issuance of each entitled agency's supplemental standards, whichever comes first). The further extension applies to those agencies that had submitted draft supplemental regulations to OGE by January 25, 1995. All tolled, 42 agencies are so entitled to the further grace period extension as listed in new appendix B to part 2635. Agencies not listed either did not have such "grace period" standards, were not interested in further extending them, or had already issued, with OGE concurrence/co-signature, final or interim final supplementals. Ten agencies fit in the latter category.

Further, the grace period only applies to existing agency regulatory standards prohibiting financial interests and/or requiring prior approval for outside employment/activities. If a separate statute underlies such requirements, agency authority (including any implementing regulations) is not superseded by the OGE ethical conduct standards in the first place. After conferring with OGE, such statutorily based restrictions may be included in a supplemental ethics regulation or be retained or issued separately by the agency concerned in its own C.F.R. title.

Moreover, the further grace period extension until next January (which is the final extension OGE intends to grant) is not

a deadline for submission of agency supplemental standards regulations. Agencies may continue at any time to submit supplementals to OGE for review as the need arises. See 60 *Federal Register* 6390-6391 (February 2, 1995).

Revised Public Disclosure Report Issued

OGE has issued a revised edition of its Standard Form 278, "Executive Branch Personnel Public Financial Disclosure Report." The new rose-shaded version of the form, which bears a June 1994 edition date, contains higher reporting thresholds for tangible gifts (\$250 reporting threshold with a \$100 threshold for aggregation purposes) and has a continuation sheet for Schedule A (Assets and Income).

OGE has notified all executive branch departments and agencies of the availability of the new edition through the Federal Supply Service, the General Services Administration's (GSA) distribution facilities. OGE also determined that agencies should be allowed to exhaust their existing supplies of the January 1991 gold-shaded edition of the SF 278. However, editions prior to 1991 should not be used.

Electronic Financial Disclosure Forms

After conferring with various agencies and departments, OGE will request that the requirement to obtain prior OGE and GSA clearance for the development of electronic versions of financial disclosure report forms be lifted. OGE is coordinating with GSA and the Office of Management and Budget to make this change.

Consistent with GSA's policy on electronic standard form duplication, agencies must still adhere to the strict duplication standards for such electronic forms. See GSA's Federal Information Resources Management Regulation Bulletin B-3. OGE is also working on its own stand-alone, self-running software program for completing and printing out both the public and confidential disclosure forms. Once completed, OGE will make its software program available free of charge to all agencies. OGE notes that, for now, it is working on electronic forms, not electronic filing (which remains a goal for the future).

Supplemental Agency Ethics Regulation Update

The following agencies have issued, for codification in title 5 of the Code of Federal Regulations, with OGE concurrence, supplemental ethics conduct standards for their employees:

Federal Deposit Insurance Corporation (proposed rule) - 59 *Federal Register* 35480-35487 (July 12, 1994);

National Aeronautics and Space Administration (final rule) - 59 *Federal Register* 49335-49338 (September 28, 1994);

Federal Retirement Thrift Investment Board (final rule) - 59 *Federal Register* 50816-50818 (October 6, 1994); and

Department of Education (interim final rule) - 60 *Federal Register* 5816-5819 (January 30, 1995).

NASA, the FRTIB and Education also revoked the superseded provisions of their old standards and added cross-references to the new provisions in their own C.F.R. titles; the FDIC proposed to do the same.

Miscellaneous News

OGE has published final internal Freedom of Information Act and Ethics Act SF 278 Access Fee rules. See 60 *Federal Register* 10006-10013 (February 23, 1995).

Once again, OGE has updated its regulatory agenda, which now includes significant procedural rules. See 59 *Federal Register* 58380-58385 (pt. XXXV) (November 14, 1994).

Technical corrections/updating/addition of paperwork clearance numbers to certain OGE regulations have been published. See 59 *Federal Register* 34755-34756 (July 7, 1994).

1995 Ethics Conference

The fifth annual U.S. Government Ethics Conference is scheduled for September 12-15, 1995, in Williamsburg, Virginia. Watch for an upcoming announcement with full details to be mailed out this spring to all Designated Agency Ethics Officials.

Upcoming Ethics Training Workshops

OGE will continue conducting its 4-hour ethics training workshops throughout the remainder of fiscal year 1995. These workshops are designed for ethics officials who are familiar with the standards of conduct and conflict of interest statutes. Hands-on exercises challenge participants to analyze and apply the standards of conduct provisions and conflict of interest statutory elements.

For the remainder of this year, the workshops will be offered in the following cities: Albuquerque, Boston, Chicago, Cincinnati, Cleveland, Dallas, Denver, Indianapolis, Kansas City, Los Angeles, Philadelphia, San Diego, St. Louis, St. Paul, and Washington, DC. Announcements of training dates and locations will be mailed to all Designated Agency Ethics Officials.



OGE Publishes First Ethics CD-ROM

In January 1995, OGE entered the age of electronic publishing with the issuance of its first CD-ROM, **The Ethics CD**. This compact disk (CD), produced by OGE's Office of Information Resources Management, is intended to be a complete reference library of ethics materials issued by OGE since its inception.

This 5 1/2" CD can hold over 400,000 pages of information. It contains a collection of Federal executive branch ethics laws, executive orders, regulations, OGE advisory memoranda and formal opinions, and selected OGE policy letters. It also includes ethics program administration aids, such as ethics reporting forms, and OGE publications **Take The High Road**, **Do It Right**, the **SF 450 Review Guide**, and **Public Financial Disclosure: A Reviewer's Reference**.

All of the databases included on the CD can be searched using the search software provided on the CD. The user can also view, print, or save to a file on their CD, any portion of the information on the CD.

Although a CD-ROM drive is required to read the information on the CD, **The Ethics CD** can be used either by a single stand-alone PC or over a network. Instructions for installing and using the CD are included on the CD in "README" files. Additional instructions and tips are available through our electronic bulletin board, TEBBS, under the Miscellaneous-Files area.

Individuals who attended either the 1993 or 1994 U.S. Government Ethics Conference were mailed copies of **The Ethics CD** in late January. At present, the Superintendent of Documents stocks **The Ethics CD** (GPO stock number 052-003-01337-1) at a cost of \$28.00. OGE plans to issue semiannual updates, with the next update scheduled for April 1995.

Since the CD will be a dynamic publication, we welcome your suggestions as to how we can improve its content. If you have any questions or suggestions, please contact Jim Parle at 202-523-5757, extension 1113.

Ethics Information Center Update

Representatives from 32 agencies have visited the Ethics Information Center since its opening in May 1994. The Center now contains nearly 200 various ethics-related materials. Currently, the two most popular items are the Resolution Trust Corporation's video, "Standards of Conduct for Seeking Employment & Post Employment" and OGE's paper ethics game, "Dangerous Dilemmas."

As always, if you have developed a great training tool, a good method of reviewing financial disclosure forms, or anything you feel would help the training efforts of other agencies, please share your ideas by forwarding a copy to the Center at the following address:

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

The Center operates Monday through Friday from 8:30 a.m. to 4:00 p.m. Due to space limitations, please contact either Tonda King or Jennifer Kang at (202) 523-5757, extensions 1229 and 1111, respectively, to schedule an appointment.

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Honorarium Ban Ruled Unconstitutional

On February 22, 1995, the Supreme Court issued a decision in the honorarium case, **United States v. National Treasury Employees Union**. The Supreme Court partially affirmed the ruling of the United States Court of Appeals for the District of Columbia which had struck down the honorarium ban with respect to payments to all executive branch employees. The Supreme Court agreed that the ban was unconstitutional as it applied to the class of executive branch employees (basically those it described as "below grade GS-16") who had challenged the ban.

However, the Court found that it was not necessary to rule on the constitutionality of the ban as it applied to certain senior executive branch officials who were not represented in the group of employees who had taken the case to court. It therefore reversed the Appeals Court decision insofar as it had struck down the ban with respect to those senior officials and remanded the case to the Appeals Court for further proceedings consistent with its opinion.

Justice Stevens delivered the opinion of the Court, in which Justices Kennedy, Souter, Ginsburg, and Breyer joined. Justice O'Connor filed an opinion concurring in the judgement in part and dissenting in part. Chief Justice Rehnquist filed a dissenting opinion, in which Justices Scalia and Thomas joined.

Improving the Confidential Disclosure System

Since March 1994, OGE has been conducting a study of the effectiveness of the confidential financial disclosure system. After interviewing ethics officials at 75 agencies and analyzing their comments, OGE decided that a number of improvements should be instituted.

Chief among the concerns expressed by the agencies was the process for designating confidential filers. The designation criteria in the 1992 regulation (see subpart I of 5 C.F.R. part 2634), it seems, had the unintended consequence of increasing the

number of filers at many agencies. In response to this concern, OGE issued a Memorandum to Designated Agency Ethics Officials (DAEO) on September 14, 1994 (DO-94-031), that strongly urged agencies to reevaluate their designations and offered guidance designed to limit the number of filers.

Subsequently, in October and November 1994, OGE sponsored two brown bag lunch meetings to further discuss appropriate policy changes to the substantive disclosure requirements of the confidential system. In the wake of those meetings, OGE is undertaking several new initiatives to improve the confidential system. These initiatives are outlined in a second Memorandum to DAEOs dated January 19, 1995 (DO-95-005), and include providing guidance in interpreting phrases used in the designation and exclusion criteria of the financial disclosure regulation. OGE also intends to review the SF 450 and draft a revision which will be distributed for comment later this year, and will explore the feasibility of modifying the regulation that governs the content of confidential disclosure.

As OGE enters into new phases in the overall plan to improve the confidential financial disclosure system, the **Government Ethics Newsgam** will continue to provide updates on its progress. As always, OGE welcomes the ethics community's advice and suggestions.

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