

UNITED STATES OFFICE OF
GOVERNMENT ETHICS



Preventing Conflicts of Interest
in the Executive Branch

Government Ethics Year in Review

Office of General Counsel and Legal Policy

18th National Government Ethics Conference
September 13-15, 2011

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in the Executive Branch

Regulatory Developments

Rick Thomas

OGE Regulatory Developments



Two Proposed Rules in 2011:

1. Outside Board Exemption
2. Lobbyist Gift Rule

OGE Regulatory Developments



"Section 208 . . . prohibits a government employee from serving on the board of directors of an outside organization in his or her official capacity . . ."

1996 OLC Opinion

OGE Regulatory Developments



- OPM Recommendation
- OSTP Directive

OGE Regulatory Developments



76 Federal Register 24816 (5/3/11)

OGE Regulatory Developments



Textual “NOTE” following exemption:

- Agency determines own authority
- Agency discretion to assign
- Agency may impose limits on service

OGE Regulatory Developments



Proposed Lobbyist Gift Rule

Why a Lobbyist Gift Ban?



OGE Regulatory Developments



Executive Order 13490: Lobbyist Gifts

1. Immediate Pledge ban for politicals
2. Directs OGE to apply to all employees

OGE Regulatory Developments



- Full-time Political Appointees:
Ban in addition to OGE gift bar
- Most Employees:
Just limits OGE gift exceptions

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2010 Pledge Report- Executive Order 13490

Leigh J. Francis

Facts and Figures from the 2010 Report

- 100% Compliance with 1,096 Appointees required to sign in 2010
- 37 Appointees were not required to sign

Changes and Trends from the 2009 Report to the 2010 Report



- Number of lobbyists entering the Government dropped
- No Pledge Paragraph 3 and only 12 Paragraph 2 waivers
- Enforcement: Two enforcement actions were carried out during 2010

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Legislative Update

Shelley Finlayson

Legislative Update



- The legislative process and you
- Ethics-related trends in the 112th Congress
- Modernizing the Ethics and Government Act

The legislative process and you



- Executive branch-wide proposals
- Agency-specific proposals

Ethics-related trends in the 112th Congress



- Streamlining the Nominations Process
- Conflicts of Interest
- Regulating the Regulators

Modernizing the Ethics in Government Act



Highlights of OGE's Proposal:

- Allow OGE to establish Executive Branch public financial disclosure requirements by regulation
- Allow electronic requests for 278s
- Streamline review of OGE regulations
- Require agencies to provide key information to OGE

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OGE and Contractor Ethics Initiatives

Emory Rounds

ACRONYM ROADMAP



- **OFPP** – Office of Federal Procurement Policy, Office of Management & Budget
- **FAR** – Federal Acquisition Regulation
- **ACUS** – Administrative Conference of the United States
- **PCI** – Personal Conflict of Interest

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Nominee Financial Disclosure Program Highlights

Deborah Bortot



Sector Unit Investment Trusts

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Date of Appointment, Candidacy, Election or Nomination (Month, Day, Year)	Reporting Status (Check appropriate boxes) <input type="checkbox"/> Incumbent	Calendar Year Covered by Report	Entrant, Nominee, Candidate <input type="checkbox"/>	Termination Filer <input type="checkbox"/>	Termination Date (If Applicable) (Month, Day, Year)	Fee for Late Filing Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period shall be subject to a \$200 fee.	
Reporting Individual's Name		Last Name		First Name and Middle Initial			
Position for Which Filing		Title of Position		Department or Agency (If Applicable)		Reporting Periods Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable. Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.	
Location of Present Office (or forwarding address)		Address (Number, Street, City, State, and ZIP Code)		Telephone No. (Include Area Code)			
Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)		Title of Position(s) and Date(s) Held					Nominees, New Entrants and Candidates for President and Vice President: Schedule A-- The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing. Schedule B-- Not applicable Schedule C, Part I (Liabilities)-- The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing. Schedule C, Part II (Agreements or Arrangements)-- Show any agreements or arrangements as of the date of filing. Schedule D-- The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.
Presidential Nominees Subject to Senate Confirmation		Name of Congressional Committee Considering Nomination		Do You Create a Qualified Diversified Trust? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Certification		Signature of Reporting Individual			Date (Month, Day, Year)		
I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.		Signature of Other Reviewer			Date (Month, Day, Year)		
Other Review (If desired by agency)		Signature of Designated Agency Ethics Official/Reviewing Official			Date (Month, Day, Year)		
Agency Ethics Official's Opinion On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).		Signature			Date (Month, Day, Year)		
Office of Government Ethics Use Only		Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)					
		(Check box if filing extension granted & indicate number of days _____) <input type="checkbox"/>					
		(Check box if comments are continued on the reverse side) <input type="checkbox"/>					
		Agency Use Only					
		OGE Use Only					

OGE Form 278 (Rev. 09/2010)
 5 C.F.R. Part 2634

U.S. Office of Government Ethics

OGE Form 278 (Rev. 09/2010)
 5 C.F.R. Part 2634
 U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC

Date of Appointment, Candidacy, Election, or Nomination (<i>Month, Day, Year</i>) 	Reporting Status (Check Appropriate Boxes)	Incumbent <input type="checkbox"/>	Calendar Year Covered by Report 	New Entrant, Nominee, or Candidate
Reporting Individual's Name	Last Name			First Name
Position for Which Filing	Title of Position			Department
Location of Present Office (or forwarding address)	Address (<i>Number, Street, City, State, and ZIP Code</i>)			
Position(s) Held with the Federal Government	Title of Position(s) and Date(s) Held			



Transparency

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Public Access to Ethics Records

Elaine Newton

New Routine Use in OGE/GOVT-1



To disclose on the OGE website any written ethics agreements filed with OGE by individuals nominated by the President and requiring Senate confirmation when the position also requires the individual to file a public financial disclosure report. (New Routine Use in OGE/GOVT-1, System of Records, 76 Fed. Reg. 24489 (May 2, 2011)).



Ethics Record	Authority	Key Points
Public Financial Disclosure Reports (OGE/SF 278)	Ethics in Government Act of 1978 (EIGA), 5 U.S.C. app. §105	Must be made available to the public in accordance with §105 of EIGA – not FOIA (<u>Church of Scientology v. IRS</u>, 816 F. Supp. 1138, 1152 (W.D. Tex. 1993)). OGE Form 201 was created to simplify the §105 process.



Ethics Record	Authority	Key Points
18 U.S.C. § 208(b)(1) and (b)(3) waivers	18 U.S.C. § 208(d)(1)	Must be made available by the agency that issued the waiver (not OGE) and the agency must follow the EIGA §105 procedures. Also §208(d)(1) allows agencies to withhold information under the FOIA exemptions

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18 U.S.C. 209 After
US v. POGO

Allison C. George

U.S. v. POGO



A long, straight asphalt road with a dashed white center line, flanked by rows of trees with green and yellowing leaves. The road leads towards a horizon under a blue sky with light clouds. In the distance, some buildings and fields are visible.

Future of 209?



**Does 18 U.S.C. § 209:
Contain an Intent
Element?**

Intent is Required



"[A] defendant's intent to give or receive compensation for government services is a required element" of 209(a). 616 F.3d at 546.

Intent Separates Wrongful from Innocent Conduct



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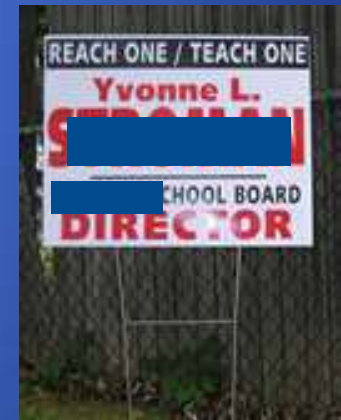
Nonpartisan Political Activity: LA-11-06

Allison C. George

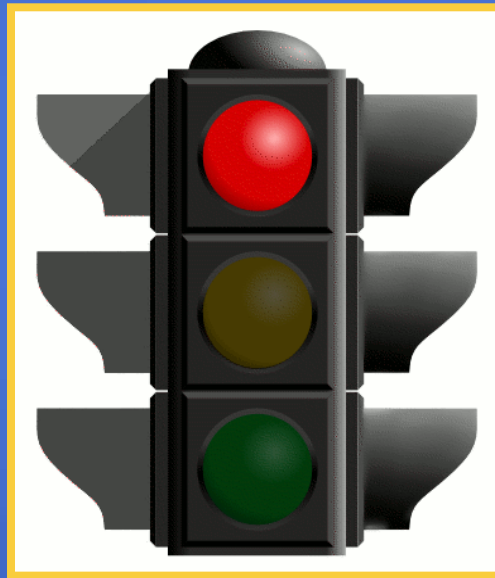
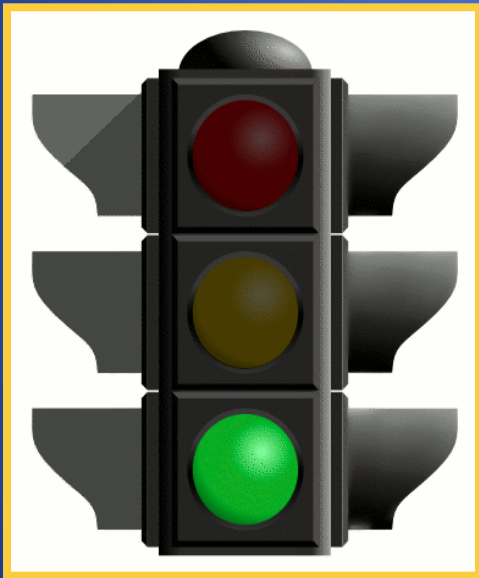
“John Q. Citizen”



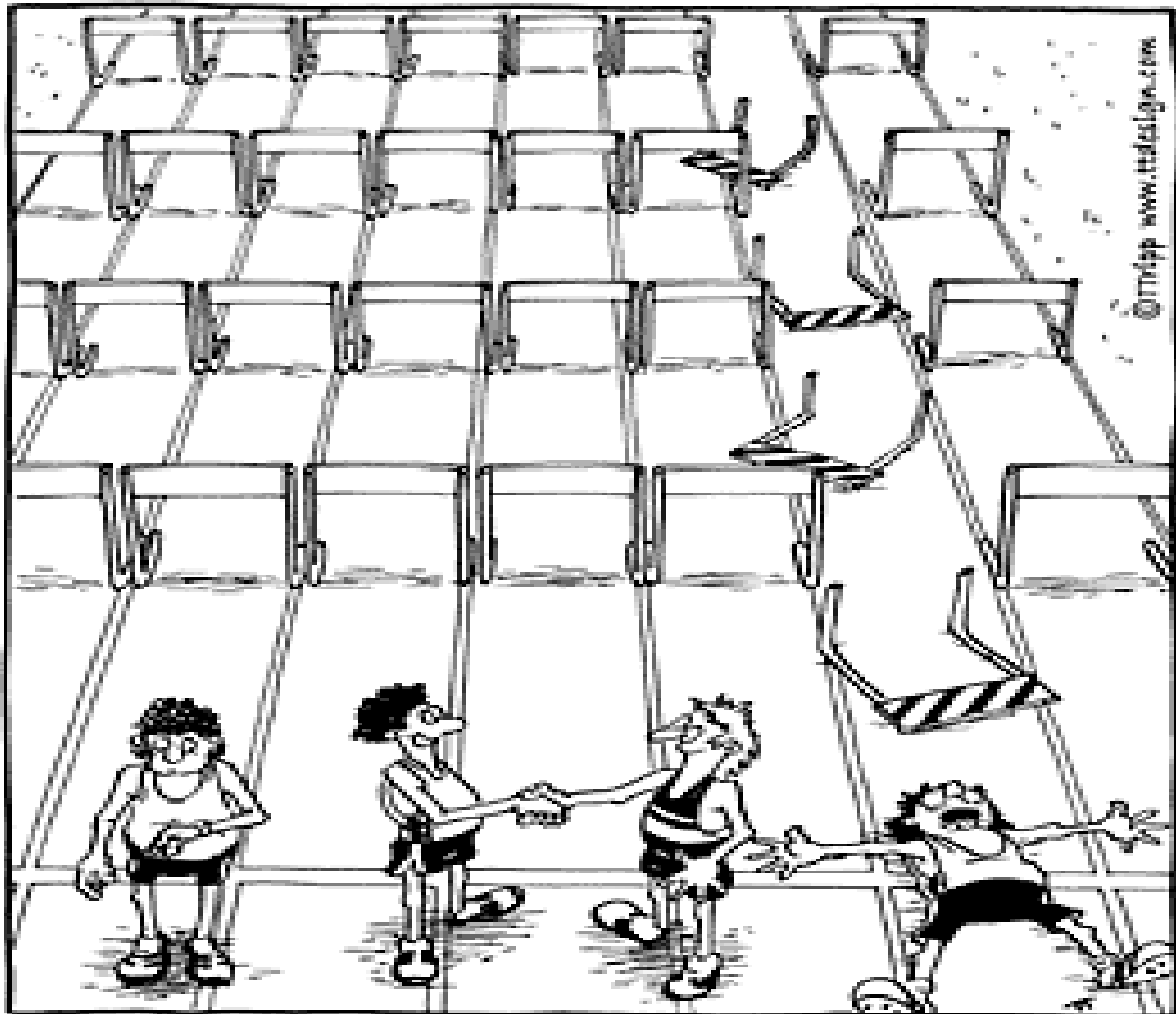
Nonpartisan Political Office



What would you do?



The Novice



First Amendment Concerns



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The OGE Supplemental Agency Ethics Regulation Process: LA-11-07

Seth H. Jaffe

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Candidate Financial Disclosure Requirements: LA-11-03

Seth H. Jaffe

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OGE Website

Amy Braud

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SEARCH

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- TOPICS ABOUT LAWS & REGULATIONS FINANCIAL DISCLOSURE OGE ADVISORIES PROGRAM MANAGEMENT EDUCATION

- TOPICS >
Financial Conflicts of Interest & Impartiality
Gifts & Payments
Use of Government Position & Resources
Outside Employment & Activities
Post-Government Employment
Selected Employee Categories
Enforcement

THE U.S. OFFICE OF GOVERNMENT ETHICS
Establishes standards of ethical conduct for the executive branch
Ensures transparency in government through financial disclosure
Educates executive branch employees
Promotes good governance
Learn More

This is an Announcement from OGE
Summary text for the announcement.

Dates & Deadlines RSS
9/15 The late filing fee now applies to annual Public Financial Disclosure filers who were granted second 45-day filing extensions.

OGE's Latest Advisories RSS
97x16: Post-employment restrictions; senior employees; 18 U.S.C. § 207(c)
Legal
98x12

Open Government at OGE
Presidential Appointee & Nominee Records
Program Review Reports
Travel Reports

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TOPICS

- ▶ Financial Conflicts of Interest & Impartiality
- ▶ Gifts & Payments
- ▶ Use of Government Position & Resources
- ▶ Outside Employment & Activities
- ▼ Post-Government Employment
 - ▶ Before Leaving Government
 - ▼ After Leaving Government
- ▶ Selected Employee Categories
- ▶ Enforcement

After Leaving Government

An executive branch employee may be affected by conflict of interest restrictions after leaving Government service (or after leaving certain high-level positions). As highlighted in the bullet points below, there are several legal authorities that address post-Government employment, and certain authorities contain more than one restriction. A particular former employee can be affected by more than one post-Government restriction.

Caveat: The bullet points are not comprehensive. Ethics officials and others should consult the legal authorities, regulatory guidance, and relevant legal opinions. In general, former executive branch employees should seek advice from the Designated Agency Ethics Official or another ethics official at the agency in which the individual formerly served.

Restrictions on Contacts with the Government on Behalf of Others

- ◆ A former employee may be prohibited from having contact with an employee of any Federal agency or court, on behalf of another person or entity, concerning an official matter with which the former employee was involved as a Government employee. 18 U.S.C. § 207.
- ◆ A former high-level employee or former political appointee may be prohibited from

Current Government Employees



Executive branch employees have a continuing obligation to take the actions necessary to comply with ethics laws and regulations concerning conflicting financial interests and impartiality. Executive branch agencies are required to [educate](#) employees about these and other ethics provisions. Moreover, many employees are required to file periodic [financial disclosure](#) reports.

Disqualification Required by Conflict of Interest Statute

A criminal conflict of interest statute, [18 U.S.C. § 208](#), prohibits an employee from participating personally and substantially, in an official capacity, in any "particular matter" that would have a direct and predictable effect on the employee's own financial interests or on the financial interests of:

- ◆ the employee's spouse or minor child;
- ◆ a general partner of a partnership in which the employee is a limited or general partner;
- ◆ an organization in which the employee serves as an officer, director, trustee, general partner, or employee; or
- ◆ a person with whom the employee is negotiating for or has an arrangement concerning prospective employment.

Laws & Regulations

Statute: 18 U.S.C. § 208: Acts affecting a personal financial interest

Regulation: 5 C.F.R. Part 2635: Standards of ethical conduct for employees of the executive branch

Federal Register Issuances: 3

Legal Advisories & Opinions

Legal Advisories (98)

Judicial Opinions (9)

DOJ Office of Legal Counsel Opinions (15)

Search Legal Advisories

Keywords:

Topics: Outside Employment & Activities

--Select--

Subtopics: Financial Conflicts of Interest & Impartiality

Gifts & Payments

Use of Government Position & Resources

Post-Government Employment

Citation: Selected Employee Categories

Enforcement

Focus: Outside Employment & Activities

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(1979-198

Index to A
(1990-20

February 8, 2011

LA-11-01: Effect of the Freeze on Pay Adjustments on Ethics Provisions for Calendar Year 2011

This Legal Advisory updates the three statutory pay-level thresholds for certain purposes under either the Ethics in Government Act (Ethics Act) or 18 U.S.C. § 207(c) for calendar year 2011.

Topics: [After Leaving Government](#) | [Outside Employment Limitations](#)

March 19, 2010

10x1: Uncompensated Teaching, Writing, and Speaking

OGE clarifies its views on the application of 5 C.F.R. § 2635.702 and 5 C.F.R. § 2635.807 pertaining to uncompensated teaching, writing, and speaking.

Topics: [Use of Title or Agency's Name](#) | [Teaching, Speaking & Writing](#)

December 10, 2009

DO-09-032: A Reminder about Holiday Gifts and Fundraising

OGE updates a poem that reminds executive branch employees, in an entertaining way, about the ethics rules on solicitation and acceptance of gifts.

Topics: [Gifts between Employees](#) | [Gifts from Outside Sources](#) | [Use of Government Position & Resources](#) | [Political Appointees](#) | [Fundraising](#)

Government Ethics Year in Review



Conclusion