



Government Ethics News

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Director's Column

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Continuous communication and timely sharing of information are key factors in the success of the executive branch ethics program. One way of making communication more effective, and ethics operations more efficient, is through a greater use of technology. A number of initiatives currently in place or under development at OGE seek to expand the use of information technology systems in order to make the ethics program work better, faster, cheaper.

◆ OGE is developing an electronic version of the SF 278 financial disclosure report that can be completed, submitted, reviewed, and stored on-line with an electronic signature. Initially, this Web-based system will be available for use by about 1,200 filers, mostly in Presidentially appointed, Senate confirmed positions. The system will eventually be expanded for use by all public filers. The start up phase is planned to be operational by October 2003.

◆ OGE expects to soon have an expanded email system that will allow the more than 8,000 ethics officials throughout the country to sign up on the mailing list and receive news of the latest ethics developments on a weekly basis. OGE has already been distributing ethics advisory memoranda electronically to approximately 225 ethics officials and has received favorable comment on this system.

◆ OGE recently acquired video conferencing capability. This new system provides another means of conducting ethics training and facilitating meetings between OGE staff and ethics officials and others. The system includes a document camera that can be used to transmit images of letters, forms, or objects to those who are viewing the transmission.

◆ OGE is also working on a system that will allow agencies to submit electronically certain reports to OGE. Eleven reports or transactions (such as reports of travel payments accepted from a non-Federal source, and the annual agency ethics questionnaire) that are currently being submitted in paper format could be submitted electronically. This closed and secure Web-based system will allow for on-line entry of transactions and reports.

Other uses of technology that we are looking into include expanded computer-based training, new features on the OGE Web site, and an on-line forum for ethics officials to discuss ethics issues. I encourage ethics officials to develop new ways to use technology to advance your own programs and to share with me your ideas for using technology to improve the ethics program for the executive branch.

To the extent that we can use technology to reduce administrative burdens and perform operations more efficiently, we can free up resources for key functions like training and counseling which should be our primary tools for resolving conflicts. Thus, technology can help us better fulfill the goal of our program - keeping the public trust and fostering public confidence in Government leaders and employees.


Amy L. Comstock



Ethics News and Information Mailing List Coming Soon!

The Office of Government Ethics will launch an ethics community mailing list in September 2002. The Ethics News and Information email list service will be OGE's primary means of communicating with executive branch ethics officials and other Government employees. OGE will use the list to provide timely information to the ethics community about changes in ethics regulations, statutes, interpretations, guidance, etc., as well as upcoming events such as the conference and ethics training.

You can subscribe to the mailing list through OGE's Web site under the Ethics Community Services section. Any questions regarding this new service should be directed to Barbara Mullen-Roth at bamullen@oge.gov.

Government Ethics Newsgram



The **Government Ethics Newsgram** is published by the:
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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.

OGE Says Farewell to the Newsgram

The Summer 2002 edition will be the final issue of the *Government Ethics News*, otherwise known as the “**Newsgram**.” OGE will be inaugurating the Ethics News and Information email list service in September 2002 to provide more timely information on the executive branch ethics program to the Government community (see article on page 2). As such, this service will replace the **Newsgram**.

For those outside of Government, we invite you to visit the OGE Web site as we continually update it with the latest ethics news and information. If for any reason you feel you are not getting the information you need, please email us at newsgram@oge.gov.



OGE Provides Guidance on 18 U.S.C. § 205 and Outside Organizations

OGE issued DAEOgram DO-02-018, (July 15, 2002) to emphasize that 18 U.S.C. § 205, which prohibits an employee from serving as agent or attorney before the Government on behalf of another person, is not implicated by an employee's service as an officer or otherwise in an outside organization when that service does not include such representational activity. This guidance was issued in response to concerns recently expressed by several non-governmental groups that some agencies have been interpreting section 205 as preventing Federal employees from holding office in, or otherwise participating in the affairs of outside organizations, even in the absence of any representational activities. OGE's memorandum emphasizes that section 205 should rarely prevent a Federal employee from serving with an outside organization when no representational activities are anticipated.

OGE Delegates Filing Extension and Waiver Authorities

OGE has issued a final rule to amend the regulations describing procedures for granting filing extensions and late filing fee waivers under the public financial disclosure system. Effective September 3, 2002, agencies will have the authority to (1) grant public filers the additional extensions of time, which shall not exceed 45 days, to file their public financial disclosure reports; and (2) waive the late filing fee. Currently, only the OGE Director can grant additional 45-day extensions and late filing fee waivers. The late filing fee waiver revision also expands the definition of extraordinary circumstances to include administrative oversight culminating in the failure to notify a new entrant, first-time annual, or termination public filer of the filing requirement.

OGE believes that these delegations of authority will expedite both processes, will grant agencies additional authority to make determinations affecting their employees, and will free up OGE resources to pursue other important Government ethics responsibilities. See 67 FR 49856-49857 (August 1, 2002) and DAEOgram DO-02-019 (August 8, 2002) for further information on the technical amendments.

OLC Issues Opinion on Commencement of Officer or Employee Status

On May 8, 2002, the Office of Legal Counsel (OLC), Department of Justice, issued an opinion to OGE addressing the question of when an individual who has been appointed by the President after Senate confirmation becomes an “officer” or “employee” for purposes of Federal ethics requirements. See Memorandum of M. Edward Whelan III, Principal Deputy Assistant Attorney General, for Marilyn L. Glynn, General Counsel, Office of Government Ethics, “Application of Conflict-of-Interest Rules to Appointees Who Have Not Begun Service,” May 8, 2002. The OLC opinion deals specifically with the question of whether such an individual becomes an officer or employee immediately upon appointment.

OLC concluded that “the conflict of interest rules do not apply by virtue of the appointment alone but instead apply only after the appointee has begun the duties of his office.” *Id.* at 1. The opinion relies on the definitions of officer and employee in 5 U.S.C. §§ 2104 and 2105, which require, in addition to an appointment, the performance of a Federal function, subject to the supervision of a Federal official. According to OLC, an individual who has received an appointment but has not yet performed any Federal duties cannot be said to be engaged in the performance of any Federal function under Federal supervision. The opinion does not specify how to determine when a given official has begun the duties of his or her office, but states that such determinations “are identical to . . . the routine determination of the time when the official begins to accrue his salary.” *Id.* at 8.

OGE Publishes Final Rule and Issues DAEOgram on Revocable Living Trusts

On May 31, 2002, OGE published a final rule amending 5 C.F.R. § 2634.310 by adding a new note that clarifies that financial disclosure reports do not have to disclose certain interests of beneficiaries under revocable living trusts. See 67 Federal Register 37965. OGE also issued DAEOgram DO-02-015 (June 11, 2002), which explains in more detail the subject of revocable living trusts and the context in which the new rule applies.

Revocable living trusts are popular estate planning devices that have evolved into widely accepted “will substitutes.” In the typical living trust, the grantor (or settlor) conveys property in trust to a trustee (who is often the grantor) and retains a life estate, with the remainder to go to specified beneficiaries upon the termination of the life estate. What makes a living trust revocable is that the grantor expressly reserves the power to revoke the trust entirely and to make lessor changes, such as substitutions of beneficiaries or trustees. In this regard, revocable living trusts have less in common with traditional irrevocable trusts, in which the grantor no longer retains substantial control over the administration of the trust or the disposition of the property, than with wills, which remain “ambulatory” until the death of the testator.

The new note following section 2634.310(a) treats certain beneficiaries under revocable living trusts in the same way as OGE already has been treating beneficiaries under the will of a living person. OGE has long taken the view that beneficiaries under the will of a living person do not have a reportable interest, but rather a nonvested interest or mere expectation. Based largely on the functional equivalence of wills and revocable living trusts for certain important purposes, OGE has determined that remainder interests in revocable living trusts likewise are not reportable, since they constitute a mere expectation. The one exception specified in the new note is where the filer, the filer’s spouse or the filer’s dependent child is the grantor of the trust; so long as the trust remains revocable, the grantor retains substantial rights of control and enjoyment with respect to the trust property and must be viewed as having a reportable interest.

The new note also provides that filers are not required to report the holdings and income of revocable living trusts from which they (or their spouses or dependent children) receive discretionary distributions. In OGE’s view, discretionary distributions from a revocable living trust should be viewed as gifts from the grantor of the trust, rather than as vested interests in the property or income of the trust. Consequently, filers would have to follow any applicable reporting requirements for gifts, under section 2634.304, with respect to such distributions, but would not have to follow the reporting requirements for interests in trusts, under section 2634.310. Again, the note is qualified in that it does not apply to situations where the filer, the filer’s spouse or the filer’s dependent child is the grantor of the trust. Moreover, the note does not apply to situations where distributions are mandatory under the terms of the trust instrument.

OGE Issues Guidance on 18 USC § 209

The Office of Government Ethics (OGE) recently issued a DAEOgram summarizing 18 U.S.C. § 209, which prohibits the supplementation of a Government employee's salary by outside sources. See "18 U.S.C. § 209 Guidance," DO-02-016 (July 1, 2002). OGE is currently studying possible revisions of the statutes found in Chapter 11 of Title 18, and, in light of that review, has decided not to issue regulations addressing section 209 at this time. However, much of the content of any such regulation would have been based on existing case law, Office of Legal Counsel opinions, and OGE Informal Advisory Opinions. The summary is based on that material, and is designed to assist in the interpretation and application of section 209.

Ethics News Briefs

Spring 2002 OGE Semiannual Regulatory Agenda:

OGE published its semiannual regulatory agenda for the spring at 67 FR 33947-33955 (part XXXV) (May 13, 2002). The OGE regulatory agenda, which is part of the executive branch Unified Agenda of Federal Regulatory and Deregulatory Actions, provides an updated listing of the various rulemakings OGE is developing.

OGE Publishes Its Final Touhy Regulations:

In May, OGE published in the Federal Register its final regulation on procedures regarding testimony by OGE employees, as well as former OGE employees and contractors, relating to official information and the production of official records in legal proceedings in which OGE is not a party (so-called Touhy regulations, named after the Supreme Court case of Touhy v. Ragen, 340 U.S. 462 (1951)). This procedural regulation applies to OGE, not the entire executive branch. See 67 Federal Register 35709-35713 (May 21, 2002), effective June 20, 2002, which added a new part 2608 to OGE's regulations as codified in title 5 of the Code of Federal Regulations.

OGE Paperwork Notices

OGE has published the following paperwork notices of requests, or forthcoming requests, to the Office of Management and Budget for proposed renewal for an additional three years under the Paperwork Reduction Act of the following information collections:

- ◆ 2nd round notice: a proposed slightly revised OGE Form 450 Executive Branch Confidential Financial Disclosure Report. See 67 Federal Register 47804-47806 (July 22, 2002).
- ◆ 1st round notice: a proposed somewhat revised OGE Form 201 Ethics Act access form. See 67 Federal Register 41728-41729 (June 19, 2002).



2003 Annual Government Ethics Conference

The Office of Government Ethics will host the 13th Annual Government Ethics Conference, March 10 through 13, 2003, at the Valley Forge Convention Center in King of Prussia, Pennsylvania.

Planning for the conference program is well underway and this year's conference will include a day of pre-conference training for ethics officials who are new to the field. These sessions, which will be conducted on Monday, March 10, will require a separate registration and fee. The pre-conference program may be attended independent of, or in conjunction with, the full conference program. The day will begin with a keynote address by Amy Comstock, Director of OGE, and will include introductory level sessions covering gifts, misuse of position and conflicting financial interests. In addition, there will be a special lunch time session on the realities of being an ethics official.

12th Annual Ethics Conference



The main conference program, which begins on Tuesday morning, March 11, and runs through noon on Thursday, March 13, will include speeches from Mr. Noel Hillman, Principal Deputy Chief, Public Integrity Section, Criminal Division, Department of Justice, as well as Professor Steven Schooner from George Washington University who will share his expertise on Government procurement and contracting. Other sessions, including breakouts, will cover topics such as working with senior management in your agency, improving your administrative ethics systems, ethics issues relating to special Government employees, and the role of the Inspector General in ethics-related matters. Additional suggestions for conference sessions can be submitted to Barbara Mullen-Roth at bamullen@oge.gov.

Registration information will be available in September on the OGE Web site.

Is Your Agency Scheduled for an Ethics Program Review?"

OGE has issued its Program Plan for the second half of 2002, designating the agencies scheduled to be reviewed before the end of calendar year 2002. See DAEOgram DO-02-017, (July 2, 2002). Any agency on this list should obtain the following documents from our Web site for assistance in preparing for an upcoming review:

- ◆ "Tips on Preparing for an Ethics Program Review" —This document provides a detailed listing of the key program elements OGE examines during a routine ethics program review. For each ethics program element there are useful tips, presented in a convenient question-and-answer format and designed to help ethics officials prepare for a review.
- ◆ "Guidelines for Conducting Reviews of Ethics Programs at Executive Branch Agencies"— This document provides specific guidance to OGE reviewers on the review requirements to which they must adhere when conducting an ethics program review. The "Guidelines" are an invaluable road map for anyone preparing for a review.

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