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

Spring 2000 Vol. 17 No. 1

Government
Ethics Newsgram

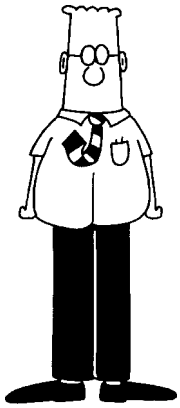
"Ethics: Know the Code"

The Office of Government Ethics (OGE) is pleased to announce the availability of a new ethics video entitled, "Ethics: Know the Code," (produced in cooperation with cohen/gebler associates, inc. in Boston, Massachusetts and the U.S. General Services Administration). This motivational video focuses on the "Code of Ethics" as embodied in the 14 Principles of Ethical Conduct. The video casts Stephen D. Potts, Director of OGE, opposite the comic strip characters, DILBERT® and Dogbert in a debate over the question: "Do Government employees know 'The Code?'" One of the highlights of this new video is a montage of real Government employees from ten different agencies and their candid and honest comments on the basic principles of ethical conduct.

The video has a running time of approximately 12 minutes, and is ideally suited for use both as an introduction to annual ethics briefings and as an orientation for new employees.

Please note that there are special licensing requirements pertaining to the use of the DILBERT animated characters in this video. As a result, no portion of the video, including or making reference to the DILBERT animated characters, can be reproduced or copied without the permission of cohen/gebler associates, inc. Additionally, all orders must be received no later than **April 15, 2000**, after which the video will no longer be available for purchase.

Each video costs $20.00 plus shipping charges. (See order form inside this **Newsgram**.) Please fax your completed order form directly to OGE at 202-208-8039, attention: Kaneisha Cunningham. OGE will forward all orders to INFOCUS in Herndon, Virginia, the distributor for VHS copies of "Ethics: Know the Code." INFOCUS, will bill you directly and payment must be made directly to INFOCUS.



OGE would appreciate receiving your feedback on this new video. Please contact Ms. Cunningham with any comments you or your employees would like to share with us.

DILBERT (c) United Feature Snydicate, Inc.

OGE Addresses Questions under 18 U.S.C. § 203

In a continuing effort to provide guidance to agency officials concerning recurring questions, OGE recently issued two DAEOgrams that deal with 18 U.S.C. § 203, the criminal statute that applies to the receipt of compensation in matters affecting the Government. The DAEOgrams discuss contingency fees and the representational services element of the statute.

Contingency Fees

By DAEOgram of November 3, 1999 (DO-99-042), OGE discussed the implications of 18 U.S.C. § 203 for a prospective Government employee, such as an attorney or other provider of representational services, who has an interest in a pending contingency fee case. In a contingency fee case, the fee itself and/or its amount will depend on continued representation and the future outcome of the matter. Because of the criminal statute at 18 U.S.C. § 203, an employee cannot share in compensation for representational services by anyone that occurs while he is employed by the Federal Government, if it will involve communications to or appearances before the executive branch or a court in a matter where the United States is a party or has a direct and substantial interest.

Where those circumstances may occur, a prospective employee must take appropriate steps before entering Government service to avoid violating § 203, such as completely relinquishing any rights to the contingency fee or obtaining an advance payment for the fee (or legal obligation for a fixed amount) from those who will continue the representation. Because these resolutions may be impractical or undesirable, however, some prospective employees have proposed assigning to another person their legal rights to any anticipated contingency fee.

The DAEOgram noted the following conditions and safeguards for such an

Continued on page 3 column 1

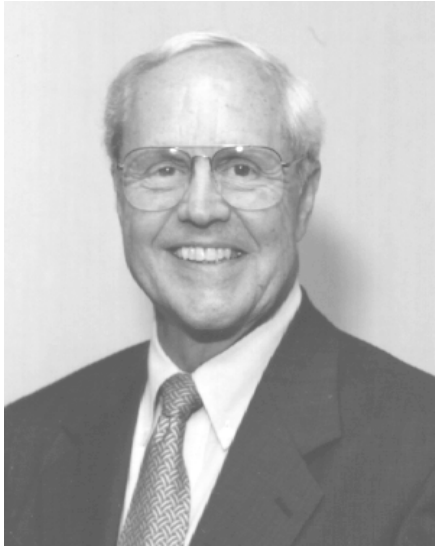
inside:

Director's Column 2
Workgroup Focuses on Ethics Records 2
PRD Year-End Summary 3
Helpful Hints for SF 278 4
EIC Seeks Your Training Materials 4
Ethics News Briefs 5
Nominate a Distinguished Ethics Official 5
Ethics in Action 5
SGEs and Conflict of Interest 6-7
Use of Attachments with SF 278 8
Student Employees and Ethics Laws 8
Regional Training 8
Assessing Ethical Culture 9
Linking Together 9
Just around the Corner? 9
Tests Your Conflicts Knowledge 10

Director's Column

Research in the field of business and organizational ethics has found that executives who speak up for ethics can have a profound impact on the ethical culture of an organization. However, organization leaders who are silent about ethics, even though above reproach in their own individual conduct, miss an opportunity to have a positive effect on organizational culture and employee perceptions of the importance of ethics. The same conclusions should hold true for Government agencies.

Agency heads who articulate an understanding of, and dedication to, serving the public interest can help to bring our code of conduct to life and demonstrate its deeper significance. Agency heads can and should exercise personal leadership by speaking up in support of high ethical standards. The agency head can play an active role in building a strong ethical culture within the agency by communicating a personal commitment to ethical principles and by making ethical considerations an integral part of the conduct of the agency's business. Ethics officials should continue their efforts to cultivate and maintain a close working relationship with



the agency head and should encourage the agency head to be a spokesperson for ethical standards and the agency ethics program.

On the cover of this issue of the **Newsgram** is an article on the new ethics training video, "Ethics: Know the Code."

Whenever you have an opportunity to see this video, I think you will be gratified, as I was, to see and hear the Federal employees interviewed for the video demonstrate such a deep appreciation of the obligations, principles, and values of Government service.

Each of us has opportunities to be a spokesperson for ethics in public service. We can do this by not accepting the view that Government ethics is irrelevant or an oxymoron. We can make it clear that we do not see our ethical obligations as Government employees through a lens of cynicism. Nor do we view ethics in terms of a minimalist adherence to legal obligation. We can make it clear that we are motivated by ideals of public service, and not simply by a desire to stay out of trouble. We can show that we know that serving the public interest is a special calling that we are proud to have answered.

Interagency Workgroup Focuses on Ethics Records Retention

This past January, ethics officials from the Department of Health and Human Services; the National Endowment for the Arts; the Department of the Navy; the National Imaging and Mapping Agency; and the Pension Benefit Guaranty Corporation met with representatives from OGE and the National Archives and Records Administration (NARA) to form an interagency workgroup. The purpose of the group is to assist OGE and NARA in revising and expanding the General Records Schedules' (GRS) coverage of ethics program records. (See DAEOgram of November 23, 1999 (DO-99-046)). The GRS, which is published by NARA, provides disposal authority for records common to several or all agencies of the Federal Government.

OGE Director Stephen D. Potts opened the meeting by recognizing the important role sound records management practices play in the administration of agency ethics programs. He emphasized the importance of the workgroup in assisting NARA and OGE in developing comprehensive guidance for agency ethics officials on how long to retain common ethics records. Mr. Potts thanked the participants, who represent a broad cross section of executive branch agencies, for their willingness to assist OGE and NARA in this project and concluded his remarks by affirming OGE's commitment to involving agencies in the development of such initiatives.

During the meeting, workgroup members discussed plans for identifying, describing, and proposing disposal authorities for common ethics program records suitable for inclusion in the GRS. Over the course of the next few months, the workgroup will inventory their current ethics program records. The information collected during the inventory process will later be used to develop a request for disposal authority for submission to NARA. OGE and NARA anticipate that the new guidance will be approved in time for release at this year's Annual Government Ethics Conference in September.

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
Web site: www.usoge.gov

Editor: Donna Cencer
Assistant Editor: Peggy Harris
Contributing Editors: Mary Hennessey; Victoria R. May; James O'Sullivan; Lorna Syme
Publication Designer: JoAnn Wood
Mailing List Coordinator: Sonya Hall

We welcome any news and information related to Government ethics that you 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's 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.

Questions

Continued from page 1

assignment. These requirements will eliminate any direct or indirect receipt of compensation prohibited by § 203, and will help ensure that the employee does not create a sham arrangement. The assignment must, therefore: (1) be executed and effective prior to entering Government service; (2) be complete, unconditional, and irrevocable; (3) not be made to the employee's spouse, minor child, legal dependent, or household member; and (4) not permit the employee's involvement, after entering Government service, in determining the amount of the fee, other than to provide factual information about his services.

As a separate issue, the DAEOgram also noted advice from the Office of Legal Counsel at the Department of Justice, that a Government employee may personally recover certain expenses (not fees) from a contingency payment. Because it is not considered compensation for representational services under § 203, reimbursement is permitted for legitimate litigation expenses that have been properly advanced by the prospective Government employee on behalf of a client and would be billed separately from a professional fee, such as advance payments to cover court costs, medical examination, telephone and facsimile, or deposition reporting.

Representational Services

A DAEOgram of December 22, 1999 (DO-99-049) clarifies and updates guidance previously published in several informal advisory letters during the 1980s. The DAEOgram emphasizes that section 203 is applicable only in situations involving compensation in exchange for the provision of representational services to a third party.

Section 203 generally prohibits employees from receiving "any compensation for any representational services" in connection with a matter in which the United States is a party or has a direct and substantial interest. One of the distinctive features of section 203 is that it prohibits employees even from sharing in compensation for representational services *provided by someone else*, such as a partner or business colleague with whom the employee is associated. In this connection, the question often has arisen whether section 203 is implicated in situations where an employee's outside compensation merely results from the successful negotiations or other representations by persons or organizations with which the employee is associated.

OGE previously addressed such issues in a variety of factual contexts. See, e.g., OGE Informal Advisory Letters 83 x 19; 85 x 12; 86 x 9; 89 x 7. In these advisory letters, OGE generally concluded that section 203 prohibits any outside compensation that is "contingent" on someone else's efforts in obtaining Government action, such as getting or performing a Government contract. Thus, for example, if a Government employee were owner of a firm that sought Government contracts, the employee could not receive any income tied to the profitability of the firm's activities with the Government.

The new DAEOgram explains that the statutory prohibition would apply only to compensation that is expressly given in exchange for the provision of representational services. A common example would be a Federal employee who is a partner in a consulting or law firm and who shares in fees generated by other partners who represent clients before the Government. The DAEOgram concludes that this interpretation is more consistent with the purpose of section 203, which is to prevent employees from receiving compensation for their actual or supposed influence and access in assisting third parties in their dealings with the Government. The DAEOgram therefore clarifies that section 203 applies only to compensation in exchange for the provision of representational services to a third party.

Where an organization does not provide representational services to third parties, but simply deals with the Government in order to obtain Federal funding or approval for its own business purposes, section 203 does not prohibit an employee from receiving any compensation that may result from those dealings. The DAEOgram does note, however, there are several other ethical restrictions, apart from section 203, that may limit an employee's ability to receive outside compensation in connection with certain Government contracts, grants, and other particular matters.

PRD Year-End Summary

In 1999, PRD reviewed 58 agency ethics programs, and reported the results of these reviews in 36 reports to the agencies. The majority of agencies reviewed were found to have strong ethics programs, and 26 of the resulting reports contained no recommendations.

OGE issued one Notice of Deficiency in 1999, while one Notice remained in effect from a prior year. Ten reports contained a total of 62 recommendations, down from 92 recommendations in 1998.

Financial disclosure accounted for 59% of the recommendations, while ethics training issues accounted for 21%. Two recommendations were made concerning inadequate staffing of agency ethics programs.

Twenty-one follow-up reviews were conducted in 1999. OGE closed 86 recommendations during these reviews as a result of the agencies taking appropriate actions to correct problems. Six agencies still had open recommendations.

OGE conducted three single-issue reviews during the year. These included a review to determine issues concerning agency use of the 18 U.S.C. § 208(b)(2) exemptions, a review of the confidential financial disclosure system, and a review of agency procedures for submitting timely requests to OGE for Certificates of Divestiture.

In summary, agency ethics programs continue to get stronger. Where we do find major problems, they are often caused by inadequate staffing of the ethics program. We urge agencies to use their OGE desk officer to obtain any assistance they may need.

Helpful Hints for SF 278 Filers and Reviewers

Once again, OGE offers some hints intended to help facilitate the preparation of Public Financial Disclosure Reports (SF 278) for the upcoming annual filing cycle.

Annual reports are due to be filed at the agency by Monday, May 15, 2000. Reports filed by Presidential appointees confirmed by the Senate, and Designated Agency Ethics Officials should be reviewed by the agency and submitted to OGE *immediately after agency approval*, but no later than Friday, September 15, 2000.

Cover Page:

☑ For annual reports, ensure that the filer's signature date is no earlier than January 1, 2000. 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.

☑ Indicate in the "Comments of Reviewing Officials" section if the filer received an initial 45-day extension.

Schedule A: Assets and Income

☑ For assets valued at over $1 million on Schedule A, indicate whether the value is between $1,000,001 and $5,000,000, between $5,000,001 and $25,000,000, between $25,000,001 and $50,000,000, or over $50,000,000. For income valued at over $1 million, indicate whether the earnings are between $1,000,001 and $5,000,000, or over $5,000,000. Note that the categories over $1 million apply to the assets of a spouse or dependent child only if the asset is held jointly with the reporting individual.

☑ Individual Retirement Accounts (IRAs) do not qualify as Excepted Investment Funds because they are self-directed and not widely held. Therefore, all underlying assets held within the IRA, and all accrued income earned during the reporting period, should be disclosed on the report.

☑ For any income reported under the "Other" column, an actual income amount must be reported.

Schedule B, Part I: Transactions

☑ If a "sale" transaction appears on Schedule B for an asset listed on Schedule A, with a value exceeding $1,000, indicate whether a partial sale occurred. If the asset was sold entirely, the asset value shown on Schedule A should be changed to "None (or less than $1,001)."

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

☑ If a gift of travel is reported, specify the basis for the acceptance, e.g., "a personal friend" or "agency approval under 5 U.S.C. § 4111." Under 5 C.F.R. § 2635.204(d), an employee must obtain written approval by the agency in order to accept a meritorious service award with a value greater than $200. 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 real estate which was rented during the reporting cycle is sold, the mortgage must still appear on Schedule C if the mortgage exceeded $10,000 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.

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

☑ Remember that the reporting period for this section includes the previous calendar year as well as the current year up to the filing date. 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. Any new position should have an adequate organizational description so that the reviewer can 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.

☑ Ensure that all report pages, including any attachments, are numbered, and that the filer's name appears on each page.

Address Changes?

Please e-mail the *Newsgram* editor at dmcencer@oge.gov or call 202-208-8000, ext. 1188, with address changes or to be removed from the mailing list. Thank you for helping us keep our records up to date.

EIC Seeks Your Training Materials

Have you developed innovative ethics training for your agency? In this time of "doing more" with less, we strongly encourage you to share training materials and resources that you have developed, whether in written, electronic, computer-based, or other formats, with the Ethics Information Center (EIC) at OGE. The EIC serves as a valuable resource for agencies to obtain training materials, to assist them in organizing their training efforts, and to inspire ideas for creating new resources.

If you think that your agency materials are too specific, don't let that stop you from sharing them! Other agencies may be able to adapt your materials to meet their needs. If you have any questions, or if would like to visit the EIC, please contact Tonda King at 202-208-8000, ext. 1229, or Angelique Ewell, ext. 1111, to make an appointment.

Ethics News Briefs

Training Regulation Interim Amendments

OGE has published in the Federal Register interim rule amendments to the executive agency ethics training programs regulation at subpart G of 5 C.F.R. part 2638. See 65 FR 7275-7281 (2/14/00). The amendments are effective March 15, 2000, with any comments due by May 15, 2000. These interim amendments rewrite the training regulation in "plain language." They also address the comments OGE received regarding the two changes made by the previous interim regulation: the clarification that a qualified instructor need not be physically present at the training site, and the one-in- three rule that permits agencies to provide certain employees with annual verbal training once every three years.

Update on Procedural Clearances for the Forthcoming 2000 Edition of the SF 278 Public Financial Disclosure Report

In December 1999, OGE published in the Federal Register a second round paperwork notice announcing its submission of a request to the Office of Management and Budget for three-year approval under the Paperwork Reduction Act of a proposed moderately revised version of the SF 278 Executive Branch Personnel Public Financial Disclosure Report. See 64 FR 70259-70262 (12/16/99). As this issue of the **Newsgram** went to press, OGE was still working to secure final approval for the new 2000 edition of the SF 278, including General Services Administration's (GSA) standard form clearance, and then nationwide stocking of the form at GSA Customer Supply Centers. OGE will inform the departments and agencies when the new edition is ready to be phased in. In the meantime, the existing editions (6/94 & 1/91) of the SF 278 can be used for the calendar year 1999 annual reports due May 15, 2000.

OGE Publishes its Fall 1999 Semiannual Regulatory Agenda

The Office of Government Ethics (OGE) published its semiannual regulatory agenda at 64 Federal Register 65226-65232 on November 22, 1999. OGE's agenda, which is part of the executive branch Unified Agenda of Federal Regulatory and Deregulatory Actions, lists the various OGE rulemakings under development. *Reminder:* OGE's Federal Register issuances, including the regulatory agenda, are now available when issued under the "What's New in Ethics?" section of the OGE Web site at www.usoge/gov.

Nominate a Distinguished Ethics Official

For the past three years, OGE has presented a Distinguished Service Award at the Annual Government Ethics Conference each September. The award winner has been selected by OGE's senior staff. Once again, we would like to solicit nominations and input from the ethics community.

The nominees should have rendered distinguished service to the executive branch ethics program for several years. This includes not only managing or assisting in managing a successful ethics program, but also contributing their time and efforts to the overall executive branch ethics program.

Please send your nominations for this award to the Director, OGE, by July 1, 2000. Your nomination and justification for the award will be considered when OGE senior staff convenes to discuss nominees and to select this year's Distinguished Ethics Official.

There is no specific format for the justification; however, we request a two-page maximum. Include your name and telephone number so we may contact you for more information. If you have any questions, contact Jack Covaleski

Ethics in Action

Q&A

Q. I've heard that some agencies have issued rules that allow their employees to use Government office equipment for personal purposes. Don't the Standards of Ethical Conduct prohibit such use? What's this all about?

A. The Standards of Ethical Conduct for Employees of the Executive Branch, at 5 C.F.R. § 2635.704, provide that an employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes. "Authorized purposes" are those purposes for which the property is made available to members of the public or those purposes authorized in accordance with law or regulation.

Some agencies have issued internal regulations authorizing their employees to use agency property for personal purposes. Typically, the personal uses permitted by these internal agency regulations involve only negligible expense such as electricity and ink. For example, the Department of Justice, under the authority conferred to executive departments and military departments by 5 U.S.C. § 301, has issued such a regulation at 28 C.F.R. § 45.4.

In May 1999, the Chief Information Officers (CIO) Council issued "Recommended Executive Branch Model Policy/Guidance on 'Limited Personal Use' of Government Office Equipment Including Information Technology." The purpose of the guidance is to provide a model for agencies to consider when and if they are developing a personal use policy for Government office equipment. Each agency will need to consider its authority to allow it to adopt and implement the CIO Policy or any other rules regarding employees' personal use of Government property.

SGEs and Conflict of Interest

OGE recently issued a document titled "Conflict of Interest and the Special Government Employee," which is a comprehensive summary of the ethical requirements applicable to special Government employees (SGE). See DAEOgram of February XX, 2000 (DO- 00-XX).The following article is a condensed synopsis of some of the main points addressed in that document. This article does not attempt to discuss all of the requirements applicable to SGEs or the many unique issues that may arise in connection with SGEs. Readers are advised to consult "Conflict of Interest and the Special Government Employee" for more detailed guidance on this subject. It can be found on OGE's Web site at www.usoge.gov*, under "What's New in Ethics?"*

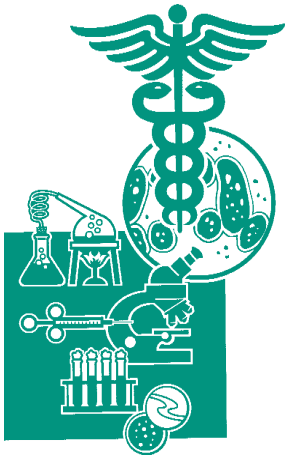
For most purposes, an SGE is defined as an officer or employee who is retained, designated, appointed, or employed to perform temporary duties, with or without compensation, for a period not to exceed 130 days during any period of 365 days, either on a full-time or intermittent basis. The 130-day limit includes all days on which the SGE is expected to render any services to the Government, including services for more than one agency.

Financial Disclosure Requirements

SGEs generally are required to file either public or confidential financial disclosure reports, which will be reviewed by agency ethics officials to ensure that the filer avoids actual or apparent conflicts of interest. SGEs who meet certain salary thresholds must file Public Financial Disclosure Reports (SF 278), unless they perform or are expected to perform the duties of their office for 60 days or fewer during a calendar year. All other SGEs generally file confidential financial disclosure reports. Note, however, that SGEs may not file the Confidential Certificate of No New Interests (OGE Optional form 450- A).

Criminal Conflict of Interest Statutes

18 U.S.C. § 201—SGEs are subject to the criminal bribery and illegal gratuities statute, which prohibits an employee from seeking, accepting, or agreeing to receive anything of value for or because of any official act, or in return for being influenced in the performance of an official act.



18 U.S.C. §§ 203 and 205—These two statutes impose related restrictions on the outside representational activities of employees. Section 203 prohibits employees from receiving compensation for representational services, rendered personally or another, before a court, a Federal department, agency or other specified entity, in connection with a particular matter in which the United States is a party or has a direct and substantial interest. Section 205 prohibits employees from personally representing another person, whether or not for compensation, before a court, Federal department, agency or other specified entity, in connection with a particular matter in which the United States is a party or has a direct and substantial interest. Section 205 also prohibits employees from representing anyone in the prosecution of a claim against the United States or from receiving any gratuity, or share or interest in a claim as consideration for assistance in prosecuting such a claim.

With respect to SGEs, however, the prohibitions of these two statutes are narrowed in several ways. First, the prohibitions only cover particular matters involving specific parties—such as specific contracts, applications, lawsuits, etc.—not matters of general applicability, such as rules, legislation or policy of general applicability. Furthermore, the prohibitions apply only to matters in which the SGE participated personally and substantially as a Government employee, and also, in the case of SGEs who have actually served more than 60 days during the immediately preceding period of 365 days, to matters pending in the department or agency in which the SGE is serving. SGEs also are eligible for a special waiver, applicable to representations required in the performance of work under a Federal grant or contract, if the agency head certifies in writing that it is required in the national interest and publishes the certification in the Federal Register. Like regular Government employees, SGEs also may be eligible for other exceptions under sections 203 and 205.

18 U.S.C. § 207—This statute imposes a number of different restrictions on the post-employment activities of former employees. This brief summary addresses only three of the restrictions, concerning which SGEs most commonly raise questions.

First, there is a permanent prohibition on representing another person before the Government in connection with a particular matter involving specific parties in which the employee participated personally and substantially for the Government. Second, there is a two-year prohibition on representing another person before the Government in connection with a particular matter involving specific parties that was pending under the employee's official responsibility during the final year of Government employment. Both of these restrictions are limited to matters involving "specific parties," such as specific contracts, grants, applications, etc., and do not apply to matters of general applicability, such as most legislation, rulemaking, and general policymaking. Both restrictions also require that the United States be a party or at least have a direct and substantial interest in the matter at the time of the representation. SGEs are subject to these first two restrictions to the same extent as regular Government employees.

A third restriction applies only to so-called "senior employees," who serve at certain designated pay levels. These former senior employees are prohibited from making any representational contact to their former agency for one year after they leave their senior position. This restriction applies to representational contacts in connection with any matter, not just matters involving specific parties and not just matters in which the employee formerly participated or had any kind of official responsibility. However, unlike regular employees, SGEs are covered by this restriction only if they served 60 or more days during the one-year period before terminating their senior position.

These three basic post-employment restrictions focus only on appearances or communications made with the intent to

Continued on page 7 column 1

SGEs and Conflict of Interest

Continued from page 6

influence official action. None of these three restrictions applies where the SGE is not making any communication or appearance before the Government, but is merely advising another person "behind-the-scenes." Moreover, these restrictions do not apply to communications or appearances that are not made with the intent to influence the Government, such as purely social contacts or routine requests for publicly available documents. In addition, these restrictions do not prevent former SGEs of the executive branch from making post-employment contacts with members of Congress and their staffs.

In addition to these three prohibitions, there are several other restrictions in section 207, including provisions governing post-employment activities of former "very senior employees," former employees who participated in trade and treaty negotiations, and former employees who perform certain activities for foreign entities. SGEs also may be subject to certain post-employment restrictions under the Procurement Integrity Act.

Like all former employees, SGEs may be eligible for certain exceptions to the various prohibitions in section 207.

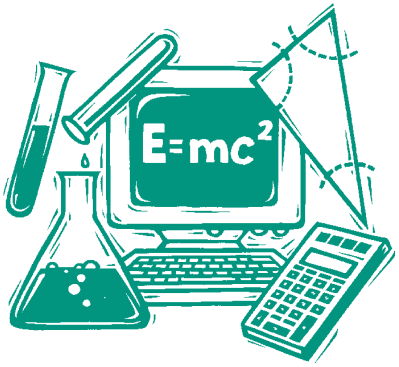
18 U.S.C. § 208—This statute prohibits employees from participating personally and substantially in any particular matter that has a direct and predictable effect on their own financial interests or the financial interests of others with whom they have certain relationships. In addition to an employee's own personal financial interests, the financial interests of the following persons or organizations are also disqualifying: spouse; minor child; general partner; organization which the individual serves as officer, director, trustee, general partner or employee; person or organization with which the employee is negotiating or has any arrangement concerning prospective employment. Particular matters covered by section 208 include not only matters involving specific parties, but also matters of general applicability, such as legislation or rulemaking, that focus on a discrete and identifiable class of persons, such as a particular industry.

In certain circumstances, some SGEs are eligible for special treatment under section 208. First, SGEs who serve on advisory committees, under the Federal Advisory Committee Act, are eligible for a waiver of the prohibition of section 208, where the official responsible for their appointment determines in writing that the need for the SGE's services in connection with a particular matter outweighs the potential for a conflict of interest. Second, SGEs serving on such advisory committees also uniquely benefit from an important regulatory exemption, promulgated by OGE, concerning financial interests arising from certain outside employment. Specifically, SGEs serving on advisory committees may participate in matters of general applicability where the disqualifying financial interest arises from the SGE's non-Federal employment or prospective employment. This exemption is subject to certain limitations: (1) the particular matter cannot have a special or distinct effect on the SGE or the SGE's outside employer; (2) the exemption does not cover interest arising from the ownership of stock in the employer; (3) the non-Federal employment must involve an actual employee/employer relationship, not just an independent contractor relationship. There are also other waiver provisions and regulatory exemptions that may be applicable to SGEs under certain circumstances.

18 U.S.C. § 209—This statute, which prohibits employees from receiving any salary or supplementation of salary as compensation for their Federal duties, does not cover SGEs at all. This means, for example, that SGEs may continue to collect their regular salary from an outside employer even for days on which they are providing services to the Government.

Other Statutes

There are a number of other ethics or ethics-related statutes, some of which apply to SGEs and some of which do not. Of particular note, SGEs are not covered by the statutory limits on outside earned income and other restrictions on the outside activities of noncareer employees, as found in 5 U.S.C. app. §§ 501 and 502. Agency ethics officials also should remember that SGEs are not covered by the provision in the Internal Revenue Code which allows employees to obtain a Certificate of Divestiture for nonrecognition of capital gain in the case of divestiture of property to comply with ethics requirement.



Standards of Ethical Conduct

The Standards of Ethical Conduct for Employees of the Executive Branch apply to SGEs. SGEs are covered by these Standards even on days when they do not perform official duties. SGEs generally are subject to the same requirements as regular Government employees. However, SGEs are subject to somewhat less restrictive standards in three areas: outside expert witness activities; outside teaching, speaking and writing activities; and personal fundraising. The following is a brief description of these three special provisions applicable to SGEs.

5 C.F.R. § 2635.805—With certain exceptions, employees may not participate as an expert witness, other than on behalf of the United States, in any proceeding before a Federal court or agency in which the United States is a party or has a direct and substantial interest. For most SGEs, however, this restriction applies only where the SGE participated officially in the same proceeding or in the particular matter that is the subject of the proceeding. For those SGEs who are appointed by the President, who serve on a commission established by statute, or who serve (or are expected to serve) for more than 60 days in a period of 365 days, the restriction also applies to any proceeding in which the SGE's own agency is a party or has a direct and substantial interest.

5 C.F.R. § 2635.807—With certain exceptions, employees may not receive outside compensation for teaching, speaking and writing activities that relate to the employee's official duties. All employees, including SGES, are prohibited from receiving compensation for activities that are related to their official duties in any of

Continued on page 9 column 1

Use of Attachments with SF 278

OGE issued a DAEOgram (DO-00-07) on February 22, 2000, that discusses in detail the information that is required to appear on brokerage statements, if they are used as attachments to the public (SF 278) or confidential (OGE Form 450) financial disclosure report. Brokerage statements, as well as bank statements, personal spreadsheets, and other financial materials, are acceptable as attachments in lieu of direct entries on an SF 278 only if they meet the statutory and regulatory reporting requirements.

The financial disclosure provisions in the Ethics in Government Act, at 5 U.S.C. app. § 102(b)(2)(A), permit OGE to authorize the use of alternative formats for disclosing information otherwise required by one or more schedules of a financial disclosure form. By regulation at 5 C.F.R. § 2634.311(c)(1), OGE established that, "In lieu of entering data on a schedule of the report form designated by the Office of Government Ethics, a filer may attach to the reporting form a copy of a brokerage report, bank statement, or other material, which, in a clear and concise fashion, readily discloses all information which the filer would otherwise have been required to enter on the schedule."

Attachments in lieu of entries on the SF 278 are insufficient for purposes of Schedule A when they do not disclose the type and amount of income from each asset during the full reporting period, or when they do not reflect income for assets that have been sold during the period, or when they do not clearly indicate a value for the assets still held.

Furthermore, attachments are inadequate if they require interpolation or estimation by reviewers in order to be understood, or if they require reviewers to perform extensive mathematical calculations, or to compile several sets of monthly or quarterly values for a large number of assets. It cannot be said that such attachments "readily" disclose "in a clear and concise fashion" all information required by the SF 278, the statute, and the regulation. Similar concerns can arise with respect to the reporting of asset transactions (purchases, sales, and exchanges) on Schedule B.

Filers must ensure that they observe the limitations on the use of attachments in lieu of data entries on an SF 278, as the financial information to be disclosed is required by law and is fully described in the instructions for completing the SF 278. Ethics officials are encouraged to remind filers through appropriate guidance memoranda or other means, that if filers choose to use attachments in lieu of direct entries, those attachments must clearly, concisely, and readily disclose all required information, in accordance with the above standards. When in doubt, the better practice for filers may be to compile the data from their brokerage reports and enter it directly on the disclosure report form.

All new filers are subject immediately to these requirements regarding the use of brokerage statements as attachments. Incumbents who will be filing annual reports in 2000 or termination reports prior to May 31, 2001, may be permitted to continue using attachments that have previously been accepted for their reports, even though those attachments may not strictly meet these clarified standards.

Annual Ethics Conference

The tenth Annual Government Ethics Conference will be held September 11-14, 2000, in Philadelphia, PA. Watch for further announcements or check the OGE Web site at www.usoge.gov.

Student Employees and Ethics Laws

Are students who come to work for the Government over the summer subject to the same ethics laws and regulations as other people who work for the Government?

It depends. Some students come to work for the Government as unpaid volunteers under the authority of a law that is an exception to the general bar against the Government's accepting voluntary services. Students who work as volunteers under that law, 5 U.S.C. § 3111, are not "employees" for purposes of the ethics laws and regulations. However, agencies may tell them how they are expected to conduct themselves, and may refer to the ethics laws and regulations when doing so.

Other students working for the Government would be regular employees or, if designated as such when appointed, special Government employees (SGE). The ethics laws and regulations would apply to them the same as they would to other regular employees or SGEs.

Regional Training

Introductory ethics training courses are tentatively scheduled to be held in the following cities:

- Boston, MA
- Cleveland, OH
- Indianapolis, IN
- Kansas City, MO
- Las Vegas, NV
- Los Angeles, CA
- Memphis, TN
- Pittsburgh, PA
- Salt Lake City, UT
- San Antonio, TX
- Washington, DC

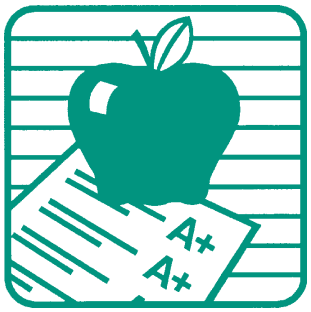
Intermediate ethics training courses are tentatively scheduled to be held in the following cities:

- Dallas, TX
- Denver, CO
- Philadelphia, PA
- San Francisco, CA
- St. Paul, MN

Regional Development Seminars are tentatively scheduled to be held in Denver and San Francisco in the early Spring.

At press time, the courses and dates for the cities listed above were not confirmed. The latest event schedule and course information is available on the OGE Web site www.usoge.gov.

Assessing Ethical Culture



In an effort to assess ethical culture within the executive branch and measure ethics program effectiveness from an employee perspective, OGE, in coordination with Arthur Andersen LLP, will be distributing a questionnaire to a random sample of Federal executive branch employees to obtain their opinions and insights. The selected sample includes employees covered by the financial disclosure and annual ethics briefing requirements, as well as noncovered employees, at 22 executive branch departments and agencies.

Through the use of this questionnaire, we hope to gather valuable information on four main areas of the ethics program: program penetration; employee perception of program effectiveness; ethical culture factors; and ethical outcomes, including employee perception of misconduct. The information we obtain will help OGE, as well as agency ethics officials, to do our jobs more effectively. The results of the survey should also provide a baseline against which to assess changes in the ethics program over time.

The survey will be anonymous, and the results will be analyzed only in the aggregate. Respondents will not be asked to provide any information that would reveal their or their agencies' identities, so analysis of responses on an agency-by-agency basis will not be possible.

OGE is currently in the process of developing the questionnaire and hopes to begin distribution by late Spring 2000.

SGEs and Conflict of Interest

Continued from page 6

the following ways: if the activity is performed as part of the employee's official duties; if the invitation to engage in the activity was extended primarily because of the employee's official position rather than expertise in the subject matter; if the invitation or offer of compensation was extended by someone with interests that may be affected substantially by the employee's duties; or if the information conveyed through the activity draws substantially on nonpublic information obtained through the employee's Government service.

Additionally, regular employees may not receive compensation for any activity that deals, in significant part, with: any matter to which the employee currently is assigned or has been assigned during the previous year; any ongoing or announced policy, program, or operation of the employee's agency; or, in the case of certain noncareer employees, the general subject matter area, industry, or economic sector primarily affected by the programs and operations of the employee's agency.

However, the restrictions described in the previous sentence are significantly narrowed with respect to SGEs: First, all SGEs are completely exempt from the restriction on receiving compensation for activities that relate to policies, programs and operations of their agencies. Second, all SGEs are also exempt from the restriction applicable to activities that relate to the general subject matter area, industry, or economic sector primarily affected by their agency. Third, all SGEs are restricted only in connection with activities that relate to matters to which they are currently assigned or have been assigned during their current appointment. Finally, SGEs who have not served (or are not expected to serve) more than 60 days during any year of appointment are restricted only in connection with activities that relate to particular matters involving specific parties in which they have participated or are participating personally and substantially.

5 C.F.R. § 2635.808—All employees, including SGEs, are subject to certain restrictions on their personal fundraising activities, including prohibitions on the use of official title, position and authority, and the solicitation of subordinates. Additionally, regular Government employees may not personally solicit funds or other support from any person known by the employee to be a "prohibited source." With respect to SGEs, however, this restriction is limited
to a narrower subset of the definition of prohibited source; specifically, SGEs are prohibited only from soliciting persons whose interests may be affected substantially by the performance or nonperformance of the SGE's own official duties.

Linking Together

In a continuing effort to share resources, ideas and training materials among the ethics community, OGE is looking for agency Web sites that contain ethics-related information. If your agency has a Web site or a page dedicated to ethics and/or Web-based ethics training and you would like for us to link to it please, contact Tonda King at tgking@oge.gov or Angelique Ewell at anewell@oge.gov. You may also call 202-208- 8000, ext. 1229 or ext. 1111, respectively.

Just around the Corner?

Stay informed about upcoming ethics due dates and events by checking out the updated Schedule of Ethics Events for the Year 2000. This calendar-style Schedule may be downloaded and printed from the OGE Web site at www.usoge.gov/usoge006.html#otherdocs. It is in a PDF file format.

Questions ...

Test Your Conflicts Knowledge

Test your knowledge about conflicting financial interests! Select the appropriate responses to the following questions, keeping in mind that each question may have more than one correct answer. The answers are provided on page XX.

1. Working on something in your job in which you or certain other persons to whom you have some connection (e.g., spouse or general partner, etc.) have a financial interest can be a:

a. Beneficial interest
b. Disqualification
c. Conflict of interest
d. Reason to seek new employment

2. Interests of which of the following are as disqualifying as your own financial interests for the purposes of determining a conflict of interest?

a. Spouse & minor child
b. General partner
c. Outside organization or entity in which you serve as officer, director, trustee, general partner, trustee, general partner, or employee
d. A person with whom you are negotiating for employment or have an arrangement concerning prospective employment

3. You have been assigned to work on a contract, but you suspect that you have a conflict of interest. How can you remedy this conflict?

a. Take an office poll to see if you should work on the matter
b. Where appropriate, discuss divestiture (e.g., if you have a stock interest) with an ethics official
c. Look for a new job
d. Recuse yourself from participating
e. Seek a waiver to allow you to work on the matter
f. Determine whether any regulatory exemptions apply

4. If the value of your publicly traded stock in a company rises above $5,000 while you are working on a particular matter involving specific parties that affects that company, you should:

a. Disqualify yourself from further participation in the assignment
b. Seek a waiver allowing you to participate in the assignment
c. Divest the amount over $5,000
d. Inform your supervisor after you finish the assignment

5. Your spouse has just landed a job with an agency contractor. She works in a division that sells products or services to your agency. Your duties are not related to any agency contract matters. You should:

a. Consider resigning from your job
b. Stay employed
c. Ask your spouse to quit her job

Test Your Answers

1. c. Conflict of interest

Explanation: It would be a conflict of interest for an employee to participate personally and substantially in any particular matter in which, to his knowledge, he or any person with whom he has certain specified relationships has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

2. a. Spouse & minor child
   b. General partner
   c. Outside organization or entity in which you serve as officer, director, trustee, general partner, trustee, general partner, or employee
   d. A person with whom you are negotiating for employment or have an arrangement concerning prospective employment

Explanation: Under the core conflict of interest statute, 18 U.S.C. § 208, these are all considered disqualifying interests.

3. b. Where appropriate, discuss divestiture (e.g., if you have a stock interest) with an ethics official
   d. Recuse yourself from participating
   e. Seek a waiver to allow you to work on the matter
   f. Determine whether any regulatory exemptions apply

Explanation: Depending upon the nature of the conflict, recusal, divestiture, or a waiver may be appropriate to resolve it. Discuss your concerns with your ethics official.

4. a. Disqualify yourself from further participation in the assignment
   b. Seek a waiver allowing you to participate in the assignment
   c. Divest the amount over $5,000

Explanation: For matters involving parties, there is a “de minimis” exemption that allows an employee to participate in the matter even though the employee owns $5,000 or less worth of publicly traded stock in a company that is a party to the matter. However, once the employee knows that the value of his stock exceeds $5,000, he must either disqualify himself from any further participation in the matter or seek an individual waiver under 18 U.S.C. § 208(b)(1). The employee may divest the portion of his stock that exceeds $5,000. This may be accomplished through a standing order with his broker to sell when the value of his stock exceeds $5,000.

5. b. Stay employed

Explanation: There is no financial conflict of interest in need of a remedy, because you do not participate personally and substantially in any particular matters affecting your spouse’s financial interest.

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

Official Business
Penalty for Private Use, $300