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Government

Ethics Newsgram

Annual Ethics Conference

Over 475 ethics officials attended this year's Tenth Annual Government Ethics Conference, held in Philadelphia, PA, from September 11-14. Viewed by the ethics community as a forum for community building, this year's conference reflected the steady growth and maturity of the executive branch ethics program in the depth and variety of its offerings.

The conference commenced with a plenary session by Beth Nolan, Counsel to the President. Ms. Nolan began by reflecting on the initial views she held about the field of ethics while working as a junior ethics attorney. She went on to describe how her views changed after working in ethics and to affirm her belief that ethics work is critical both to ensure that our Government works in the best interest of its people and to enhance the public's confidence in the Government.

An afternoon plenary session featured Singleton McAllister and Arnold Haiman, officials from the United States Agency for International Development (USAID), discussing USAID's seminars on ethical

decision-making and core values. The overall purpose of these seminars is to identify the ethical values of the institution and workforce and to provide a forum for both staff and managers to discuss and integrate their core values. In his presentation, Mr. Haiman, the USAID Designated Agency Ethics Official, demonstrated that although there may be some differences from agency to agency, there are shared core values such as honesty and courage which resonate throughout all agencies. Building upon the theme of ethical

organization works in the same ethical direction.

Sanford N. McDonnell, former Chairman and Chief Executive Officer of McDonnell Douglas Corporation, spoke about, among other things, his present work as Chairman of CHARACTERplus, a character education program initiated in St. Louis that now includes some 34 school districts representing 440 public schools. Mr. McDonnell stressed the need to return to basic values and to teach our young people the importance of "fitness of character." He further stated his belief that, "we in the adult world...have a responsibility to live and reinforce those same values in our private lives, as well as in our corporations and in our Government."



At a luncheon session, Carl Hanssen of Arthur Andersen, LLP, provided an analysis of the results of the OGE sponsored Executive Branch Employee Ethics Survey 2000. According to Mr. Hanssen, the survey provided important positive evidence of the effectiveness of the executive branch ethics program and of the presence of a basically ethical culture within executive branch agencies. Specifically, the survey found that awareness and understanding of the ethics program are high, especially among financial disclosure filers. It also revealed that ethics training is critical to developing employees' abilities to identify ethical issues when they arise and to having employees seek ethics advice. Interestingly, the survey found that the frequency of ethics training is directly related to an employee's positive perception of an ethical culture and of ethical employee behavior in the employee's agency. Finally, according to the survey results, supervisors and executives play a critical role in promoting and maintaining a positive ethical culture. In fact, supervisory attention to ethics and executive leadership in ethics are two of the most important factors for achieving desired ethics program outcomes.

decision-making within organizations, Linda Klebe Trevino, Professor of Organizational Behavior and Chair of the Department of Management and Organization at the Pennsylvania State University, discussed her studies on managerial ethics in organizations. Through interviews with corporate ethics officers and senior executives, Dr. Trevino discovered how crucial ethical leadership is for setting the ethical climate of an organization and gaining employees' commitment to ethical behavior. Her studies concluded that ethical leaders are themselves "ethical people" who make ethical decisions and create an ethical organizational culture. What comes from the exercise of executive ethical leadership, according to Dr. Trevino, is that employees are more satisfied, proud and committed, and everyone in the

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F. Gary Davis Retires

Acting Director F. Gary Davis retired in November after more than 21 years of service with the Office of Government Ethics. Gary's career at OGE spanned the entire history of the agency as he contributed his talents to building an agency and a program from the ground up. Gary started at OGE as a staff attorney in 1979 shortly after the Office was established. Subsequently, he became General Counsel in 1987 and Deputy Director in 1996.

Shortly after Gary became General Counsel, he was called upon to play a key role in implementing major changes in the executive branch ethics program resulting from the enactment of the Ethics Reform Act of 1989 and the issuance of Executive Order 12674 in April of 1989. As the chief legal officer for the agency, he oversaw the development of major new regulations in the areas of standards of conduct, conflicting financial interests, public and confidential financial disclosure, and training.

Gary's leadership and managerial skills became even more evident when he assumed the position of Deputy Director. The hallmark of his success as an administrator was his ability to work with people and to run things smoothly. Gary always found practical solutions to difficult problems. His leadership was also evident in the excellent relationship that he had with agency ethics officials. In 1995, he received the OGE Director's Award for his outstanding leadership in the ethics community. Gary also effectively represented OGE and the executive branch ethics program in dealing with Congress and the White House and in participating in U.S. Government ethics initiatives abroad.

Gary began his career in Government service as a Captain in the Army Judge Advocate General Corps where his duty stations included the Pentagon and the Republic of Vietnam. His other Government positions included service as a Special Assistant to the Assistant Secretary of Defense (Comptroller) and as a

staff attorney with the U.S. Postal Service. From 1968 to 1977 he was a partner with the Northern Virginia firm of Griffith, Davis & Chopp. He received his law degree from the West Virginia University and his undergraduate degree from California State College, California, Pennsylvania.

OGE's reputation for competence, fairness, and discretion in dealing with sensitive ethical issues is due in large part to the standards that Gary set as General Counsel and as Deputy Director. We at OGE will miss Gary's accessibility as a leader, his sound judgment, and his personal management style. And we will certainly miss his great sense of humor and genuine concern for everyone on the staff. We wish him great stories, sunny days, smooth greens and the best of everything in all his future endeavors.

New Director

On October 26, 2000, the Senate confirmed Amy L. Comstock to be the Director of the Office of Government Ethics. The Director is appointed for a five year term. Ms. Comstock comes to OGE with an ethics program background. From 1998 to early 2000, she served as an Associate Counsel to the President with responsibility for the White House ethics program. From 1993-1998 she served as Assistant General Counsel for Ethics at the U.S. Department of Education. Prior to that she held positions as Executive Assistant to the Department's General Counsel and as an attorney at the Department's Educational Equity Division. Before entering Government service, she was an attorney at Beveridge & Diamond in Washington, DC.

Ms. Comstock received a BA degree from Bard college and a J.D. degree from the University of Michigan.



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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, 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.

Newsgram Editorial Staff Changes

The Office of Government Ethics (OGE) is pleased to announce the following changes to the **Newsgram** staff. Cheryl Kane-Piasecki, a Desk Officer in the Education and Program Services Division, has assumed the position of Editor; Mary Petersen, of the Program Review Division, has taken over the position of Assistant Editor; and Jan Davis, also of the Program Review Division, has become a Contributing Editor.

OGE would also like to take this opportunity to express its gratitude to Donna Cencer, who recently left OGE to accept a position with the National Institutes of Health. Donna served as the **Newsgram** Editor for the past three years, working tirelessly to maintain the **Newsgram's** reputation as a timely and professional publication. Donna always made the needs and interests of the ethics community the top priorities when selecting articles for each issue, while at the same time introducing thought-provoking articles from outside the Government ethics community. Her talents will be sorely missed.

Finally, OGE would like to thank Peggy Harris for her time and valuable effort as Assistant Editor during her two-year tenure on the **Newsgram** staff.

OGE Presents 40 Ethics Program Awards

OGE recognized some 40 agencies, departments, and military installations for outstanding achievement in developing and managing their ethics programs at the Tenth Annual Government Ethics Conference. These awards are presented annually to those agencies whose ethics programs were reviewed by OGE's Program Review Division during the past fiscal year and were found to be in compliance with OGE requirements, receiving few or no recommendations.

In presenting the awards to this year's recipients, Jack Covaleski, Senior Associate Director of the Office of Agency Programs, noted that in recent years there have been fewer recommendations in the reports OGE issues. He also observed that many agencies receiving awards this year have had strong ethics programs over the years.

Congratulations to all of the recipients:

Central Intelligence Agency
Department of State
Federal Bureau of Investigation
Japan-United States Friendship Commission
National Labor Relations Board
National Mediation Board
U.S. Soldiers' and Airmen's Home

Department of Health and Human Services

- National Institute of Arthritis and Musculoskeletal and Skin Diseases
- National Institute of Child Health and Human Development



Director of Central Intelligence George J. Tenet congratulates General Counsel Robert McNamara, Jr., Ethics Counsel Dana Dyson, Senior Ethics Counsel Paul Kelbaugh, and Deputy General Counsel Thomas Benjamin on the Outstanding Ethics Program Award CIA's ethics program received at this year's Government Ethics Conference.

Department of Interior

- Minerals Management Service

Department of Treasury

- Office of the Comptroller of the Currency

Department of Defense

- Army and Air Force Exchange Service
- Defense Commissary Agency
- Defense Information Systems Agency
- Defense Security Service
- TRICARE Management Activity
- U.S. Pacific Command Headquarters
- Asia Pacific Center

Department of the Air Force

- 15th Air Base Wing, Hickam AFB
- Ogden Air Logistics Center, Hill AFB
- 2nd Air Force Headquarters, Keesler AFB
- 81st Training Wing, Keesler AFB
- 12th Flying Training Wing, Randolph AFB
- 19th Air Force Headquarters, Randolph AFB
- Air Education and Training Command Headquarters, Randolph AFB
- Air Force Personnel Center Headquarters, Randolph AFB

- U.S. Air Force Recruiting Service Headquarters, Randolph AFB
- 20th Fighter Wing, Shaw AFB
- 9th Air Force Headquarters and U.S. Central Command Air Forces, Shaw AFB
- 14th Air Force Headquarters, Vandenberg AFB
- 30th Space Wing, Vandenberg AFB
- 20th Air Force Headquarters, Warren AFB
- 90th Space Wing, Warren AFB
- Air Force Materiel Command, Wright-Patterson AFB
- 88th Air Base Wing, Wright-Patterson AFB

Department of the Army

- United States Military Academy

Department of the Navy

- Navy Public Works Center, Pearl Harbor
- Naval Facilities Engineering Command, Pearl Harbor
- Naval Surface Warfare Center, Dahlgren Division
- Portsmouth Naval Shipyard

Annual Ethics Conference

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The final day of the conference began with an interactive plenary session moderated by Carol and Ken Adelman from Movers and Shakespeares. This unique and fun-filled educational session entitled, "Shakespeare In Charge," exemplified how, as in Shakespeare's time, a strong ethical leader inspires others to behave ethically. Clips from the motion picture "Henry V" were interspersed throughout the session, with analysis and discussion afterward on such topics as best practices, empowerment, and accountability in ethics.

As in previous years, conference participants were able to select from a variety of topics during each of the 90-minute concurrent sessions. Following is a sample of some of the 32 sessions offered this year: "Speaking Invitations: To Accept or Decline," "Oops, Was That an Endorsement," "Technology Transfer," "Electronic Filing of Financial Disclosure Reports," "18 U.S.C. §§ 203 and 205 Issues," "What's Up in Procurement Integrity," "The Transition Paradigm: Working with Transition Teams and Coping with Transition Issues," and "Hatch Act Dos and Don'ts."

Donnell Nantkes, the Alternate Designated Agency Ethics Official at the Environmental

Protection Agency, received this year's Distinguished Service Award, given in recognition of an individual whose dedicated work has contributed to the success of an executive branch ethics program. In another special plenary session, OGE Ethics Program Awards were presented to some 40 departments, agencies, and military installations for outstanding achievement in developing and managing strong ethics programs. Other highlights included a preview of OGE's new video entitled, "You've Got It," and the unveiling of a new layout for OGE's Web site.

Be Our Guest: Dr. Martha Joynt Kumar

OE is delighted to feature Dr. Martha Joynt Kumar as our guest for this edition of the **Newsgram**. Dr. Kumar is the Director of The White House 2001 Project, a program dedicated to providing a smoother start for the next presidential Administration, by furnishing the new staff with substantive information about their offices based upon the experiences of past Administrations. A Senior Fellow at the Academy of Leadership at the University of Maryland, Dr. Kumar is also currently on leave from her position as a professor in the Department of Political Science at Towson University. A recipient of numerous grants and fellowships, she has also received awards for her scholarship and for her work on behalf of presidency scholars. Dr. Kumar holds a B.A. from Connecticut College and a Masters and Ph.D. in political science from Columbia University.

In addition to The White House 2001 Project, Dr. Kumar is currently at work on a book entitled, *Wired for Sound and Pictures: The President and White House Communications Policies*, to be published by the Johns Hopkins University Press. Her other published works include, *Portraying the President: The White House and the News Media*, as well as a variety of articles on presidential-press relations.

Dr. Kumar presented a panel on The White House 2001 Project at this year's Government Ethics Conference.

Smoothing the Path to Power: The Transition Into the White House in 2001

There is every incentive for an incoming President to gather information on the best practices of those who preceded him. In the months after the election, he has a brief window when his critics lay low while he makes his appointments and when the public attentively listens to his plans and goals. Upon taking office, a President must immediately make decisions on personnel, policy, and his budget, but in administration after administration he does so in a White House lacking an infrastructure capable of managing those tasks and decisions. The personnel operation provides an example. "You would think that the White House personnel system would be the most computerized, organized, well-thought-out system in which you picked the very best ideas from the previous two or three Administrations, incorporated them and built on them, used new technology and so forth," said

Harrison Wellford who has handled transition issues for the last four Democratic presidential candidates and observed those of the Republican party, as well. The data handled by that office includes information critical to their dealings with members of Congress, governors, and a host of people in the private world, not just information on the backgrounds of potential appointees. "So here is the most important single engine in the entire White House to maintain and nurture the political capital that you've gained from being elected and most of the time they start from scratch," Wellford continued. Whether the issue is personnel or policy, there is little institutional memory when it comes to starting up a White House.

To provide for a more orderly start for those coming into the White House in 2001, presidency scholars are accumulating information from past Administrations on White House operations, hoping the new team will eschew reinventing the wheel. Through an initiative begun by the Presidency Research Group, selected scholars are gathering information on White House transitions and operations from those who previously served in the White House, from the Nixon through the Clinton Administrations. Titled The White House 2001 Project, the program is associated with The Transition to Governing Project of the American Enterprise Institute and the Presidential Appointee Initiative of the Brookings Institution. It is funded by The Pew Charitable Trusts.

The first aspect of the project, the White House Interview Program, involves building an institutional memory for selected White House offices important to an effective start. The second part of the project, *Nomination Forms Online*, is a software package bringing together questions nominees are asked on four key forms: the White House Personal Data Statement, the SF 86, the SF 278, and the appropriate Senate committee forms for those appointed to PAS positions.

Providing Information on White House Operations

Through a private Web site and with materials on paper, we will give the new people information about the functioning of their offices over the last 30 years, the organization of their unit, and the roles played by the heads of each office. The offices we are studying are: Chief of Staff, Staff Secretary, Press Office, Office of Communications, Office of the Counsel to the President, and the Office of

Management and Administration. In order to build the "institutional memory" of the office, we are providing the new staff with the following information:

- ◆ Interviews with people who held jobs at the Director and Deputy Director level of the seven offices we studied. We currently have 79 interviews with present and former White House staff from the past six Administrations as well as with President Gerald Ford.
- ◆ Essays written by presidency scholars on the seven offices and three general essays covering the environment of the White House, White House transitions, and White House operations and work life. Based upon the interviews we conducted, a dozen presidency scholars are writing essays on various aspects of White House operations.
- ◆ A Rolodex of names, current addresses, phone numbers, and E-mail addresses of those who previously held White House positions in recent Administrations. Our interviewees are agreed, their predecessors were the most important source of information for them on the operation of their offices.
- ◆ Organization charts of the seven offices over the course of the last four Administrations. These charts graphically demonstrate the many ways offices were organized and what styles were favored, when, and by whom. The charts cover a 22 year period from the Carter White House in 1978 to the Clinton White House in 2000. Each office has at least a dozen charts.

Interview Findings: A Sampler on Transition Planning

The White House staff members interviewed for the project expressed some common themes in their interviews. Among the lessons they learned in their White House years and during their days serving in other positions where they watched incoming Administrations are:

- ◆ There is a suspension of partisanship following the election that provides the President with an opportunity to name his people to Administration posts with a minimum of opposition. It is important he and his staff make use of that opportunity as it will not come again.
- ◆ The Administration should focus early on personnel planning and getting an effective decision-making process in place. Many extolled the Reagan transition model as the most effective one in the modern period because of its well thought-out plans for personnel and policy.

Be Our Guest

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◆ The White House is the engine driving an Administration and its policies. In order to get an Administration on a firm footing, a President-elect needs to focus immediately on assembling a team of senior aides capable of setting up a process for handling issues ranging from staffing and administration, to creating a policy agenda. The Chief of Staff should be an early choice. In addition, the President-elect needs to appoint at approximately the same time the White House Personnel Director, Counsel to the President, Legislative Affairs Director, Director of Management and Administration, and Press Secretary. Ideally, the Chief of Staff should come first.

◆ There are people from whom an incoming team can learn about patterns associated with White House operations. The pool of knowledgeable people includes the outgoing team, those who a President brings in with him having White House experience, and the White House career staff, as well as those in the Office of Management and Budget.

◆ The transition period is a time when a President establishes relationships with those inside and outside of Government important to his policy goals. Two of the most important sets of constructive relationships a President must build are those with the congressional leadership and the news media.

The areas of disagreement concern the role of campaign people in governing and the place of the White House in policy-making and implementation.

◆ There is a division between those who believe it is important to include in the White House people who worked on the campaign and those several veterans who believed the tasks of campaigning and governing are sufficiently different such that the people with governing experience should dominate a White House.

◆ Some staff believe the White House should bring policy decisions within it and create shadow departments within its confines. Others believe a White House is no place to create policy, only to coordinate it.

Nomination Forms Online: The Software

The second part of the White House 2001 Project, *Nomination Forms Online*, seeks to provide relief to presidential nominees through a software package designed to ease the process of filling out forms. In order to deal with the plethora of forms, we will prepare a software package that

nominees can easily download from our Web site onto their computers and fill out for submission to the several relevant Federal agencies seeking information. In addition, we will provide an online manual to explain the software and to answer questions about the process. We are currently organizing an 800 number help desk to handle the simpler questions relating to the software. The software developer, Boston Educational Software Technology, will handle the more difficult ones. Scheduled for delivery in late-November, the software will be available through a Web site and on a CD distributed along with *The Survivors Guide*, a resource for nominees developed by the Presidential Appointee Initiative.

The goals of the White House Interview Program and *Nomination Forms Online* are very similar: to ease the way into office for those coming to the White House in 2001. Rather than seeking defined policy

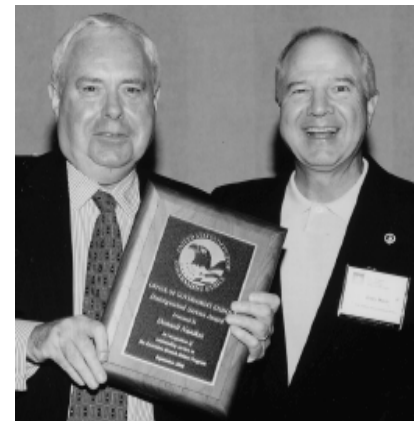
ends, our project is one where scholars are offering their services and their time to improve the processes of handling information and of organizing a White House as a new Administration takes office. We hope the objectivity of our effort, along with the commitment of those who previously served, will lead to the success of The White House 2001 Project. For more information about The White House 2001 Project visit the Web site at www.whitehouse2001.org.

Be Our Guest is a periodic feature of the **Government Ethics Newsgram**. We invite you to be our guest and share with the ethics community your unique or innovative ideas, anecdotes, helpful hints, and perspectives on any ethics-related issues. Contact the editor of the **Government Ethics Newsgram** at 202-208-8000, ext. 1182, if you have suggestions for articles or actual submissions that you wish to have considered for publication.

Donnell Nantkes Receives Distinguished Service Award

Donnell Nantkes, Alternate Designated Agency Ethics Official for the Environmental Protection Agency (EPA), received OGE's fourth annual Distinguished Service Award at this year's Government Ethics Conference, in recognition of his expertise in and dedicated service to the executive branch ethics program. The award is presented annually to an ethics official, or group of ethics officials, who have not only successfully managed strong ethics programs within their own departments or agencies, but who are standard-setters for the ethics community as a whole.

Mr. Nantkes has devoted more than 30 years to public service, and for nearly 20 years has worked exclusively on Government ethics and related issues. During his tenure he has experienced four Presidential elections and has ensured that each new Administration received consistent and accurate ethics advice. He is a gifted and entertaining trainer who personally trains all senior officials within his agency. Mr. Nantkes is the principal architect of the EPA ethics Web page, and in the past several years has played an important role in ethics litigation. A seasoned and well-respected member of the ethics community, Mr. Nantkes is frequently called upon to share his expertise with others.



Mr. Nantkes accepted the award from OGE Acting Director, Gary Davis. In his remarks, Mr. Davis stated that Mr. Nantkes is clearly an asset to both EPA and the executive branch ethics program. OGE and the ethics community as a whole value his continuing contributions. Mr. Nantkes, in a brief but gracious acceptance speech, stated that he deeply appreciated receiving the award from OGE, and that he was thankful to his colleagues at EPA for nominating him for this distinguished award.

Understanding the Challenges of Electronic Filing

As the Federal Government has become increasingly aware of the benefits of electronic transaction technology, so too have agency ethics officials recognized its usefulness in automating financial disclosure reporting. In response to this interest, OGE assembled a panel of experts at this year's Government Ethics Conference to discuss the challenges of electronic filing. This article provides a brief summary of those discussions, as well as other relevant background information.

The Government Paperwork Elimination Act (GPEA) of 1998 accelerated the Federal Government's move toward electronic filing by directing agencies to provide an electronic option for filing by October 2003, where practicable. GPEA also removes a major stumbling block to electronic filing initiatives by declaring that electronic signatures, a key component of electronic transaction technology, are not to be denied legal validity. It also provides agencies with needed flexibility by allowing the use of a wide range of electronic signatures.

While GPEA strongly promotes the adoption of electronic filing processes, it also seeks to ensure public confidence in the security and cost effectiveness of these processes. To achieve this, GPEA directed the Office of Management and Budget (OMB), the Department of Justice (DOJ), the Department of Treasury, the Department of Commerce, and the National Archives and Records Administration (NARA) to provide guidance on the proper implementation of GPEA-related processes.

In its final GPEA guidance, OMB has emphasized that the benefits of implementing electronic transaction processes should not be outweighed by the costs or risks. Consequently, OMB requires agencies to submit plans for implementing electronic transactions that include cost/benefit and risk assessments. OMB also asserts that such planning should respond to the interrelated requirements of the Paperwork Reduction Act, the Privacy Act, the Federal Records Act, the Clinger-Cohen Act and numerous other laws and regulations.

A key element in determining the cost, benefits, and risks is the choice of electronic signature technology. These include PINs/passwords, digitized signatures, biometrics, and Public Key Infrastructure (PKI) technology. Each method carries various costs and offers varying degrees of security and legal sufficiency.



To select a proper signature technology, agencies must address a series of questions about the information they are gathering and the electronic transactions they contemplate. These questions include: Do the transactions have legal significance?; Are the transactions historically susceptible to fraud or litigation?; Is the information collected sensitive

or protected by the Privacy Act or other law or regulation?

GPEA guidance currently under development by DOJ may help determine if any single method of electronic signature would be more appropriate for use in filing financial disclosure reports and associated records.

Agencies using electronic transactions must also contend with the issue of information and records management associated with such transactions. GPEA encourages agencies to collect, maintain, and provide records electronically. As a result, agencies implementing electronic transactions must ensure that the electronic data and records they intend to collect can be appropriately maintained and made available throughout their retention period. This requirement may entail integrating records management software into electronic transaction processes, developing detailed data migration plans, and scheduling new records, or related actions. NARA is developing guidance in this area.

Clearly, the transition from paper-based to electronic transactions entails considerable change. GPEA and OMB's implementation guidance recognize that the most efficient transition from paper-based to electronic transactions may require that agencies completely reengineer the processes they are planning to automate. By conducting Business Process Reengineering, OMB argues, agencies stand the greatest chance of realizing the potential benefits associated with electronic transaction technology.

These significant challenges notwithstanding, electronic filing initiatives for other administrative and programmatic processes are well underway in many agencies. As the basic infrastructure improves, the costs and risks associated with electronically filing financial disclosure reports should decrease.



Annual Survey of Prosecutions

OGE recently published its annual survey of conflict of interest prosecutions. The survey is a compilation of summaries of prosecutions for conflicts violations in the Federal Government, many of which are not elsewhere reported. This year's survey provides information on 12 cases handled by U.S. Attorneys' offices, the Public Integrity Section of the Criminal Division of the Department of Justice (DOJ), and DOJ's Civil Division. See DAEOgram of August 14, 2000 (DO-00-029).

Personal Use Policies for Electronic Resources

The Department of Defense's (DOD) draft policy on the authorized personal use of electronic resources was the focus of a panel session at this year's Government Ethics Conference. Al Novotne, an attorney with the Army Standards of Conduct Office who is actively involved in the development of this policy for DOD, presented the panel. The session underscored the need for agencies and departments with the requisite authority to establish clear policies on employees' personal use of electronic resources.

In discussing DOD's draft policy, Mr. Novotne focused on a variety of questions that any agency will have to answer in

attempting to formulate a personal use policy. For example, should electronic resources, such as the Internet, have the same incidental personal use allowances that GSA has authorized for telephones? Which personal uses of the Internet should be prohibited entirely? In its draft policy, for example, DOD has prohibited any use of electronic resources involving material that brings discredit to DOD and any material that is illegal, inappropriate, or offensive. Likewise, any agency interested in developing a policy will ultimately have to decide which personal uses are "out of bounds."

More technical matters DOD has considered in developing a personal use policy include personal uses that overload an

agency or department's system or that threaten the system's integrity. Such uses involve receiving personal mail with large attachments, allowing continuous datastream or instant messenger services, "spoofing," and sharing passwords, among others.

If anyone would like a copy of DOD's current draft policy, you may E-mail Mr. Novotne at the following address: alfred.novotne@hqda.army.mil. He will send you the DOD draft policy as an E-mail attachment. Mr. Novotne also welcomes any questions or comments the ethics community may have on DOD's draft policy specifically, or on personal use of electronic resources generally.

The Nominees Are Coming!

Once again, the transition to a new Administration is close at hand, which means a heavier volume of nominee SF 278s in the coming months. Agencies should examine their procedures and be ready to work closely with OGE and the new White House or transition team, to ensure timely and accurate processing. Here are some pointers:

- ◆ Obtain a supply of the revised SF 278 form, dated 3/2000, which nominees in the new Administration will be required to use. Typically, nominees will be supplied with a blank form by the White House or the transition team, but each agency should have a supply available for use by nominees in revising their submissions, as necessary. Printed paper originals of the revised form should be ready for departments and agencies to order through General Services Administration Customer Supply Centers nationwide within the next few weeks. In addition, both printable and fillable versions of the new electronic form are available in the Ethics Resource Library section of OGE's Web site at www.usoge.gov. Agency officials can also obtain a copy of the form from their OGE desk officer, if needed.

- ◆ Review OGE's DAEOgram on the revised policy limiting the use of attachments to an SF 278, such as brokerage statements. See DAEOgram of February 22, 2000 (DO-00-007). As specified by 5 C.F.R. § 2634.311(c)(1),

attachments are acceptable only if they readily disclose, in a clear and concise fashion, all information required by the SF 278's schedules. Attachments must cover the full period of the relevant SF 278 schedule, with all required descriptions and values, in an easily understood manner. When in doubt, the better practice may be to enter data directly on the SF 278, rather than relying on brokerage statements or similar attachments generated by third parties for other purposes.

Newsgram on the Web

Don't rely on "snail mail" to get your Newsgram! Get it faster from the WEB! If you have Internet access, you can download the Newsgram from OGE's Web site at www.usoge.gov. Look under "What's New in Ethics?" or "OGE Publications."



- ◆ Remind nominee filers that they must not use the "calendar year covered" box on the front page of the SF 278.

That box applies only to annual filers; nominee disclosures must cover the current and the immediately preceding calendar year (or for schedule D, the preceding two calendar years).

- ◆ Remember that, while some potential nominees (especially those at the Cabinet level) may begin working on drafts of their SF 278s in November and December 2000, the covered reporting period will change if they will be signing their completed nominee reports on or after January 1, 2001 (a new calendar year).

- ◆ Do not accept entries on an SF 278 that contain abbreviations which you do not understand.

- ◆ Once a nomination has occurred and the signed SF 278 has been received, the agency is required to forward the completed SF 278 and an opinion letter to OGE within three working days. See 5 C.F.R. § 2634.605(c). If any delays are anticipated, contact OGE immediately to determine an appropriate course of action.

For these and other matters concerning proper disclosures and procedures for processing nominee SF 278s, the assigned OGE contact person for each nominee report will be happy to assist.

Protecting Federal Records During the Presidential Transition

From time to time, agency ethics officials are asked to answer questions that fall outside of their area of expertise. During the upcoming transition in Administration, ethics staff may encounter questions from departing officials about the removal of Federal records and other documentary materials. Ethics officials should immediately refer such inquiries to their agency's records officer. Records officers, in turn, may consult with legal counsel, the agency's information security officer, staff of the National Archives and Records Administration (NARA), or other cognizant officials.

While ethics officials are not the appropriate authority to answer questions regarding the removal of Federal records, they should nevertheless be familiar with the principles that protect Federal records from unauthorized removal. NARA Bulletin 2000-03, provides advice and guidance on commonly asked records management questions. Specifically it reminds us that "[o]fficials may remove documentary materials that are of a purely personal nature when they leave public service," but that, "only with the agency's permission may departing officials remove extra copies of records."

The following questions and answers are taken from the guidance found in NARA Bulletin 2000-03. Any questions regarding the content below should be directed to the staff at the National Archives and Records Administration.

What materials are Federal records?

As defined in 44 U.S.C. part 3301, records are documentary materials that agencies create and receive while conducting business. Records either provide evidence of the agency's organization, functions, policies, decisions, procedures, and operations, or they contain information of unique value. Records may be in paper, film, tape, disk, or other physical form. They may be generated manually, electronically, or by other means.

Are there Federal documentary materials that do not qualify as records?

Materials such as library or museum materials, extra copies of records kept solely for convenience of reference, and stocks of publications and processed

documents are excluded from the definition of "record." (See 44 U. S. C. Chapter 33). These work-related materials, though excluded from the definition of "record," nevertheless belong to and are controlled by the Government. (See 36 C.F.R. §1222.34(f)).

Does the Government control personal documentary materials that I may bring into the office?

Federal records management requirements do not apply to personal materials that are brought to or accumulated at work. Personal materials include family and personal correspondence, and materials documenting professional activities and outside business or political pursuits. These materials belong to the individual, and the Government exerts no control over them.

How should I maintain the documentary materials in my office to distinguish and separate the different types of materials?

Federal records need to be maintained in agency files or electronic record keeping systems. Agency personnel need to know how to ensure that records are incorporated into files or electronic record keeping systems, especially records that were generated electronically on personal computers. Only records needed for current operations, such as open case files, should be maintained at an individual's desk. Depending on access restrictions, agencies may permit personnel to keep extra copies for convenience of reference in their offices and on their personal computers. However, you must get the agency's permission if you want to remove any of these materials for personal use. (See 36 C.F.R. §1222.42). Maintain personal materials separately from records and extra copies of records so that you will not have to separate them when you leave your position.

What do I do with records and other documentary materials that I no longer need?

Records are maintained in agency files and other record keeping systems. When a record is finalized, when a case file is closed, or at another appropriate time, you should follow established procedures for incorporating it into the appropriate record

keeping system. Records must be maintained in record keeping systems where they will be integrated, either physically or intellectually, with related records and will be accessible to all staff who may need them. Records must remain in the custody of the agency and may not be removed for nonofficial uses.

May I remove documentary materials from the agency?

You are likely to have extra copies of records kept for convenience of reference in your office or workstation. You may remove such copies for personal use only with the approval of a designated official of the agency, such as the records officer or legal counsel. Copies of records that are national security classified or otherwise restricted must remain under the control of the agency. If the agency permits removal, such records must be transferred to a facility that has an appropriate level security storage area. (See 36 C.F.R. § 1222.42). You may remove personal materials maintained separately from both records and extra copies of records. Consult the agency records officer if records, extra copies of records, and personal materials are intermingled.

Where can I get additional information?

Contact the agency records officer with questions about the maintenance and disposition of records and extra copies of records. Consult the records officer, legal counsel, or information security officer to find out if the agency allows removal of extra copies of records and how to secure approval. Your agency's records officer should have copies of "Personal Papers of Executive Branch Officials" and "Agency Record Keeping Requirements." These two NARA publications address both records creation and maintenance procedures, as well as how to distinguish between records and personal documentary materials. They are also available on the NARA Web site at www.nara.gov/records/index.html. Limited quantities of printed copies may be available. If you want a printed copy, please contact the Life Cycle Management Division on 301-713-6677. NARA records management regulations at 36 C.F.R. Chapter XII, Subchapter B, address the identification and protection of Federal records and are also accessible from the Web site mentioned above.

New Guidance on Diversified And Sector Mutual Funds

OGE issued DAEOgram DO-00-030, on August 25, 2000, to provide ethics officials and employees with guidance concerning the distinction between diversified and sector mutual funds, for purposes of certain regulatory exemptions promulgated under 18 U.S.C. § 208(b)(2). OGE received several requests for advice from ethics officials who reported difficulties in determining whether given mutual funds were diversified or sector funds. The DAEOgram addresses a number of these questions and attempts to set out both general principles and practical advice.

Mutual funds are pooled investment vehicles operated by management companies registered under the Investment Company Act of 1940. See 5 C.F.R. § 2640.102(k). Individuals may invest in these funds, which in turn invest in a portfolio of securities of a number of different issuers. For purposes of the financial conflict of interest law, 18 U.S.C. § 208, employees who invest in a mutual fund are deemed to have a disqualifying financial interest in any particular matter that would have a direct and predictable effect on any of the underlying holdings of the fund. Nevertheless, OGE has promulgated regulations, pursuant to 18 U.S.C. § 208(b)(2), that exempt certain employees from the disqualification requirement of section 208, where OGE has determined that the financial interest is too remote or inconsequential to affect the integrity of the employees' services. See 5 C.F.R. part 2640, Subpart B. Some of these exemptions have particular relevance to interests in mutual funds.

The distinction between diversified and sector funds is crucial, because diversified mutual funds are subject to a much broader regulatory exemption. In fact, diversified mutual funds are covered by an unqualified regulatory exemption, at 5 C.F.R. § 2640.201(a). Sector funds, on the other hand, are subject to much narrower exemptions, including the two de minimis exemptions for matters involving specific parties and matters of general applicability, at 5 C.F.R. §§ 2640.202(a) and (b), and the exemption for interests arising solely from the miscellaneous "non-sector" holdings of a sector fund, at 5 C.F.R. § 2640.201(b).

For purposes of the exemptions, a fund is diversified if it "does not have a stated policy of concentrating its investments in any industry, business, single country

other than the United States, or bonds of a single State within the United States" See 5 C.F.R. § 2640.102(a). By contrast, a fund is a sector fund if it does not meet this diversification standard, i.e., if it does concentrate its investments "in an industry, business, single country other than the United States, or bonds of a single State with the United States." See 5 C.F.R. § 2640.102(q).

The standard of diversification used in the regulatory exemptions is different from, and should not be confused with, the standards of diversification used in other rules, such as the financial disclosure rule applicable to "excepted investment funds," at 5 C.F.R. § 2634.310(c)(3), the rule on "diversified trusts," at 5 C.F.R. § 2634.404(b)(2), or the definition of "permitted property" in the certificate of divestiture rules, at 5 C.F.R. § 2634.1003(c)(1). Several issues regarding the distinction between diversified and sector funds are discussed in the DAEOgram. In particular, the DAEOgram addresses a number of related questions concerning what constitutes an "industry" or "business" for purposes of determining the requisite degree of concentration for a fund to be deemed a sector fund rather than a diversified fund. OGE's basic approach is to examine the degree of relatedness and overlapping interests and operations among the types of companies in which a given mutual fund specializes.

However, this examination must be performed in the context of realistic conflict of interest considerations, as well. For example, OGE will deem certain arguably discrete types of companies to be part of one industry or business sector if they share a common regulatory environment or if Government decisions affecting one type of company would be expected to affect the other, given their interdependence or competition with each other. Certain examples already found in the regulations follow this approach, such as example 2 following § 2640.202(b), which concludes that a health sector fund is not diversified, despite the fact that the fund focuses on a cluster of arguably discrete types of companies, each occupying an identifiable niche within the sphere of health care and health science.

However, a fund will not be deemed a sector fund just because the fund manager describes essentially generic categories of concentration. Relatively general or superficial similarities among a group of

disparate industries or businesses will not be sufficient to trigger the stricter treatment that OGE has reserved for sector funds. Thus, for example, OGE has found that funds marketed as focusing on "consumer products," "leisure," "venture capital," or "cyclicals" generally will not be sector funds but will be diversified, within the meaning of the regulatory exemptions. OGE does observe that funds expressly focusing on two sectors, such as "telecommunications and utilities," will be deemed sector funds.

The DAEOgram also discusses how to determine the concentration policy of a particular fund. The rule itself notes that whether or not a fund meets the diversification standard "may be determined by checking the fund's prospectus or by calling a broker or the manager of the fund." See 5 C.F.R. § 2640.102(a)(Note). As a practical matter, OGE has found that fund prospectuses often are readily available to employees and ethics officials through various means, including the Internet. OGE also suggests that the fund name, such as "ABC Healthcare," often will provide a good indication of whether the fund is a sector fund.

The DAEOgram cautions, however, that the appropriate focus is always on the express policy of the fund, not its actual holdings at any given time. Therefore, if a fund prospectus indicates a policy of investing in several different industrial or business sectors, it is considered diversified even if the actual portfolio on a given day appears to be concentrated more narrowly in one particular industry. This is one way in which the diversification standard in the regulatory exemptions clearly differs from the reporting rule on excepted investment funds.

The DAEOgram concludes with two lists of examples of common types of mutual funds in which OGE generally has been able to discern either diversification or a policy of sector concentration. These lists are accompanied by important caveats. The lists are necessarily tentative and incomplete, given the variability and growth of the mutual fund market. Moreover, agencies and employees are reminded to consider any peculiarities of a given fund and its prospectus where appropriate.



Teaching, Speaking, and Writing Rule Amended

OGE has published an interim rule, effective immediately, amending 5 C.F.R. § 2635.807(a), the prohibition on employee receipt of compensation for outside teaching, speaking, or writing that relates to official duties. Under section 2635.807(a), as amended, employees who are not “covered noncareer employees” as defined in 5 C.F.R. § 2636.303(a) will be able to accept travel expenses incurred in connection with teaching, speaking, or writing activities that are related to duties. “Covered noncareer employees,” on the other hand, will remain subject to the travel expenses ban. In general, the term “covered noncareer employee” means noncareer employees who are in positions “above GS-15” or whose rate of basic pay is at least equal to 120% of the minimum rate of basic pay for a GS-15. Special Government employees are excluded from the definition. See 5 C.F.R. § 2636.303(a).

The amendment, which does not affect forms of compensation other than travel expenses, responds to the *en banc* decision by the United States Court of



Appeals for the District of Columbia Circuit in *Sanjour v. Environmental Protection Agency*, 56 F.3d 85 (1995), as clarified in the decision on remand by the United States District Court for the District of Columbia, 7 F. Supp.2d 14 (1998). In *Sanjour* the Court of Appeals sustained a First Amendment challenge to section 2635.807(a), holding the “no-expenses regulations” unconstitutional. The Court reasoned that since a regulation of the General Services Administration (GSA), 41 C.F.R. § 304-1.3(a), allowed travel reimbursements in connection with official speech,

whereas section 2635.807(a) prohibited travel reimbursements in connection with unofficial speech, the regulatory scheme posed a risk of censorship based on viewpoint. The Court explicitly reserved judgment, however, on the constitutionality of the regulation as applied to “senior” executive branch employees. Resolving some remaining uncertainties, the District Court, on remand, made clear that the appellate ruling affected the ban on travel expenses in connection with all types of teaching, speaking, and writing related to duties under section 2635.807(a)(2)(i) and, further, that it prohibited enforcement of the ban against “employees below the senior executive service level of employment.”

The interim rule codifies OGE’s previously announced enforcement policy in response to the *Sanjour* litigation. See DAE Ogram of November 25, 1998 (DO-98-034). The interim rule was published at 65 Federal Register 53650-53652 (September 5, 2000). The 60-day period for submission of comments ended on November 6, 2000.

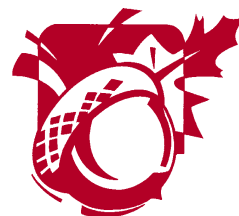
OGE Issues Proposed Amendments to 5 C.F.R. Part 2640

O n September 6, 2000, OGE issued a proposed rule that would amend the regulation at 5 C.F.R. part 2640 by revising some existing exemptions and adding new exemptions. Part 2640 describes financial interests that are exempt from the prohibition in 18 U.S.C. § 208(a). Section 208(a) generally prohibits employees of the executive branch from participating in an official capacity in particular matters in which they or certain others specified in the statute have a financial interest. Section 208(b)(2) of title 18 authorizes OGE to promulgate regulations describing

financial interests that are too remote or inconsequential to warrant disqualification pursuant to section 208(a).

The proposed regulation would raise the *de minimis* exemption for matters affecting interests in securities from \$5,000 to \$15,000. The proposed rule also would identify additional financial interests that would be exempt from the prohibition in section 208(a), including, in certain circumstances, interests of up to \$50,000 in a sector mutual fund and interests of up to \$25,000 in securities issued by a nonparty affected by a matter in litigation.

A copy of the proposed rule can be found on OGE’s Web site at www.usoge.gov. Any comments must be submitted to OGE not later than December 5, 2000.



New OGE Training Video

OGE's newest training video is now available. This 31-minute video, entitled "You've Got It," was previewed at this year's Government Ethics Conference in Philadelphia.

In the video, a Federal agency ethics official named Sarah is frustrated by day as she tries to advise a busy incoming political appointee named Scott about the Federal ethics and conflict of interest laws. In the evening, Sarah is corresponding by E-mail with a romantic interest whom she has not yet met, but who welcomes her philosophical

thoughts on several ethics issues. At the end of the video, the two correspondents meet and learn the true identities of their E-mail friends.

Although the video is intended especially for use during the Presidential transition and thereafter to focus the attention of incoming political appointees on the importance of the executive branch ethics program, OGE expects that the video may also prove instructive for other executive branch employees. Please check OGE's Web site at www.usoge.gov for ordering information.

New Edition of "A Brief Wrap"

In April 2000, OGE revised "A Brief Wrap on Ethics" to replace the February 1995 edition of the pamphlet. This 20-page pamphlet provides an easily understood overview of the rules of ethical conduct that all employees of the executive branch are required to follow. It contains the 14 general principles, followed by a narrative discussion of each primary standard of ethical conduct, with illustrative practical examples. The narrative sections make reference to relevant criminal statutes, and there is a brief discussion of the post-employment statute.

This pamphlet is geared toward regular employees and rules of general coverage, rather than examining unique applications for discrete subgroups (such as "special Government employees," procurement personnel, senior officials, or political appointees). Therefore, it should prove to be a useful resource for overall training, as well as a starting point for individual counseling and guidance on the rules that apply to all employees.

Over the summer, OGE offered this new version of "A Brief Wrap on Ethics" for sale by means of a rider on its requisition through GPO. For agencies who did not ride that order, you may download

this pamphlet from the Ethics Resource Library section of OGE's Web site at www.usoge.gov. For multiple copies, you may also want to contact the Superintendent of Documents at GPO (202-512-1800), as they may offer it for resale, for a limited time.

Ethics News Briefs

OGE Publishes Final Section 208 Census Exemption

OGE has adopted, as final without change, the interim rule exemption of last March under 18 U.S.C. § 208(b)(2) with respect to certain temporary employees of the Census Bureau of the Department of Commerce who work on the decennial census. See 65 Federal Register 47830-47831 (August 4, 2000), effective September 5, 2000. A short description of the interim rule was published on page 10 of the Summer 2000 issue of the **Newsgram**.

For Your Information

For the first time this year, OGE was able to accept the Government purchase card as a payment method for our Annual Government Ethics Conference.

Participation in the program was high, exceeding expectations. Purchase card payments are easy, fast, and convenient. For those of you who missed it this year, look for this option on next year's registration forms.



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