

Office of Government Ethics

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Letter to a Federal Employee dated February 7, 1994

This is in reply to your inquiry asking whether the Standards of Ethical Conduct for Employees of the Executive Branch (the Standards) codified at 5 C.F.R. part 2635 apply to the employees of [a Federal agency]. The answer to your question is that the Office of Government Ethics (OGE) views the Standards as applicable to the employees of the [agency].

Section 2635.102(h) of the Standards states that "employee" includes "any officer or employee of an agency." Section 2635.102(a) of the Standards, in turn, states that "agency" includes "an executive agency as defined in 5 U.S.C. § 105. . . ." These definitions in the Standards are derived from Executive Order 12674 (as modified by Executive Order 12731), the authority under which the Standards were issued. 5 U.S.C. § 105 defines "Executive agency" as "an Executive department, a Government corporation, and an independent establishment." "Independent establishment" is defined in 5 U.S.C § 104 as "an establishment in the executive branch."

The issue of whether the [agency] is an agency under the Standards is dependent on whether the [agency] is an independent establishment of the executive branch under 5 U.S.C. § 104 and thus an executive agency pursuant to 5 U.S.C. § 105. Whether an entity is an executive agency pursuant to 5 U.S.C. § 105 is not a question that OGE can answer without guidance from the entity. OGE is not empowered to interpret an agency's enabling legislation and dictate the nature of the entity. OGE must rely on the interpretation given by the entity itself of its status, barring some clear and controlling authority or previous course of conduct which conflicts with the agency's interpretation.

Since the inception of OGE pursuant to the Ethics in Government Act of 1978, the [agency in question] has submitted financial disclosure forms to OGE and sought OGE's oversight over the [agency's] compliance with ethics regulations and a myriad of ethics issues that fall under OGE's jurisdiction. Given the comprehensive coverage of Federal employees by the Ethics in Government Act of 1978, as amended by the Ethics Reform Act of 1989, we believe that a Government entity is required to treat one of the three supervising ethics offices established pursuant to that legislation as being the supervising ethics office of that entity. The

[agency] has treated OGE as its supervising ethics office and has presented itself as an agency that, for purposes of the Ethics Act of 1978, the Ethics Reform Act of 1989, Executive Order 12674 and the Standards, is an executive agency subject to oversight by OGE. As the [agency] treats itself as an executive agency for purposes of application of the ethics laws and regulations, OGE concludes that the answer to the question of whether the Standards apply to [agency] employees is "yes."

As we believe that the analysis of the [agency's] status is inherently a matter for the agency, we recommend that any further question you have in this area be directed to the [agency].

Sincerely,

Stephen D. Potts
Director